



**First Meeting
2005 Interim
Monday, August 1, 2005**

**LCR 1 & 2
State Capitol
Pierre, South Dakota**

The first meeting of the South Dakota Task Force to Study Abortion was called to order by Chair Dr. Marty Allison at 9:40 a.m. (CT), August 1, 2005, in LCR 1 and 2 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Senator Stanford Adelstein, Dr. Marty Allison (Chair), Senator Julie Bartling (via teleconference), Dr. Maria Bell (Vice Chair), Mr. Travis Benson, Senator Jay Duenwald, Senator Brock Greenfield, Ms. Linda Holcomb, Representative Roger Hunt, Representative Elizabeth Kraus, Ms. Kate Looby, Representative Kathy Miles, Dr. John Stransky, Dr. Allen Unruh, and Dr. David Wachs. Mr. David Day and Senator Theresa Two Bulls were excused.

Staff members present included Reuben D. Bezpaletz, Chief of Research and Legal Services; Jacquelyn Storm, Principal Legislative Attorney; and Teri Retrum, Senior Legislative Secretary.

(NOTE: For sake of continuity, the following minutes are not necessarily in chronological order. Also, all reference documents are on file with the Master Minutes.)

Opening Remarks

Chair Dr. Marty Allison thanked everyone for their attendance at today's meeting. Dr. Allison said that she realizes the sensitivity involved surrounding the abortion issue and expressed her confidence that everyone can work together in a respectful manner.

Vice Chair Dr. Maria Bell agreed with Dr. Allison's remarks and commented that often the answer lies somewhere in between both sides when an issue is controversial.

Mr. Reuben D. Bezpaletz, Chief of Research and Legal Services, LRC, explained interim committee structure and reviewed the agenda.

At the request of Dr. Allison, each Task Member introduced themselves.

Statutory History of Abortion Legislation in South Dakota

1889 - 1989

Mr. Bezpaletz apprised the Task Force of abortion legislation over time in South Dakota. He said that performing an abortion and soliciting an abortion were misdemeanor penalties in South Dakota's 1877 Criminal Code. At that time, Mr. Bezpaletz said that there was also an exemption for abortion in cases where the life of the mother was in jeopardy. He said that until 1973, those statutes remained unchanged. Mr. Bezpaletz explained the procedure that

the Legislature went through in an attempt to statutorily address the state's provisions when *Roe v. Wade* was decided on January 22, 1973. He said that the State Legislature's efforts at that time received bi-partisan support, and much of those provisions remain in effect today. Mr. Bezpaletz said that a bill was passed in 1980, with little controversy, to address informed consent.

1991 – 1998

Representative Roger Hunt distributed an outlined summary of legislation introduced in the South Dakota Legislature concerning abortion from 1993 to 2000 (**Document #1**). Representative Hunt said that in 1993, HB 1131—The Regulation of the Performance of Abortion—addressed parental consent. He explained that the Court ruled that portion of the legislation unconstitutional. To address the concerns of the Federal District Court, Representative Hunt said that in 1997, HB 1087 passed the Legislature and allowed a minor, who is seeking an abortion and does not want parents to be notified, to have the matter heard by a judge. The provisions of HB 1087 are currently the law in South Dakota. Representative Hunt said that HB 1210 from the 1995 Legislature provided for criminal penalties for certain crimes against an unborn child (homicide, assault, vehicular homicide, and battery). He said that HB 1088 that prohibited partial-birth abortions may have to be revisited in light of the Supreme Court's decision on Nebraska's law. Representative Hunt briefly touched on several other pieces of legislation. He said that throughout the 1990s, the South Dakota Legislature was very interested in the abortion subject.

Mr. Matt McCaulley, Former State Representative from Sioux Falls, South Dakota, distributed copies of materials supporting his view that *Roe v. Wade* was wrongly decided and should be reconsidered and that the authority to deal with abortion issues should be left to individual states. Mr. McCaulley listed two schools of thought on how best to achieve the goal of overturning *Roe v. Wade*:

- Chip away at *Roe v. Wade*; and
- Full frontal assault on *Roe v. Wade*.

Included in Mr. McCaulley's materials was a fact sheet on HB 1191, which was the legislation that would have banned abortion in South Dakota. House Bill 1191 passed the South Dakota Senate and House of Representatives, but the Senate refused to consent to the Governor's style and form veto, so HB 1191 failed to become law.

Regarding HB 1191, **Ms. Kate Looby** questioned Mr. McCaulley about the source for the contention that abortion puts a woman at greater risk of death than risks associated with a woman continuing her pregnancy to full term. Mr. McCaulley responded that the statement was based on evidence presented to the South Dakota Legislature and is part of the LRC record of testimony. Ms. Looby asked whether this would be backed by Center of Disease Control data. Mr. McCaulley said that for every study that concludes one side of the abortion issue is correct, there is another study that concludes the opposite. He said that it is up to the Legislature to decide the issue.

Responding to a question from **Dr. David Wachs**, Mr. McCaulley said that the United States Constitution extends to unborn human beings.

Dr. John Stransky said that the Bill of Rights protects the rights of an unborn child when it addresses inalienable rights.

Based on a theoretical premise, Mr. McCaulley also included in his materials charts and a graph showing the effect of abortion on K-12 enrollment, which could impact budgets of local school districts.

Ms. Looby asked whether Mr. McCaulley factored in how much impact there would be on the Department of Social Services' budget when children are born into abusive and suffering situations and questioned if this is the type of value South Dakota places on human life. Mr. McCaulley said that he did not consider dollars or budgetary impacts on other departments. He said that it was merely an attempt to put numbers to the situation of declining enrollment.

Representative Elizabeth Kraus said that, if financial impacts are going to be considered, the costs of dealing with the effects on a mother who has had an abortion also should be discussed.

Mr. McCaulley said that there are two victims of an abortion—a mother and the unique child that is begun with fertilization.

Responding to a question posed by Dr. Bell concerning abortion legislation in other states, Mr. McCaulley stated that he is not aware of any other state that has passed legislation comparable to HB 1191; however, many states are working on the "chipping away" approach. He said that HB 1191 outlines the most comprehensive ban on abortion in any state of which he is aware.

Dr. Allison asked about contraception measures outlined in section 7 of HB 1191. Mr. McCaulley said that the section provides that a contraceptive may be administered prior to the time when a pregnancy could be verified through medical testing. If a pregnancy test is negative, a woman could be provided with the available types of contraception; if a pregnancy test is positive, a doctor could not prescribe an available contraception.

Concluding his remarks, Mr. McCaulley said that it is his belief that abortion matters should not be decided by the nine people in black robes who are members of the United States Supreme Court, because he considers that to be a usurpation of power.

2005 Legislation

Representative Hunt reviewed HB 1233, which established the current Task Force, and HB 1166, which is the informed consent legislation that is currently in litigation.

Dr. Allison asked if there are already laws dealing with informed consent and whether this legislation expanded those laws. Representative Hunt responded affirmatively.

Responding to Ms. Looby, Representative Hunt said that he was involved in writing HB 1166.

Dr. Bell commented that, if the relation between a women and her fetus is included in informed consent, so, too, should be some of the risks of carrying the fetus to term.

2005 Litigation—(For Plaintiffs)

Ms. Looby addressed the case involving a 1973 law, which requires second trimester abortions to be performed in a hospital or a clinic with a "sufficient" supply of blood immediately available. She said that Planned Parenthood believes that it is unconstitutional to require that second trimester abortions be performed with those restrictions and, thus, unnecessarily imposes a burden on the taxpayers of South Dakota. Ms. Looby said that the trial begins August 8, 2005, in Sioux Falls.

Ms. Looby said that the second case is the informed consent lawsuit. She said that Planned Parenthood is challenging the changes that were made to the already existing informed consent law on the basis that they are unconstitutional and vague and that the state cannot require doctors to give patients an ideological message that is not based in fact. She said that Planned Parenthood won the preliminary injunction, and a hearing will be held on the permanent injunction in October in Sioux Falls.

2005 Litigation—(For Defendants)

Mr. John Guhin, Office of the Attorney General, reiterated that the case involving the 1973 law will be tried on August 8, 2005, in Sioux Falls.

Regarding the informed consent lawsuit, Mr. Guhin said that the state has appealed the preliminary injunction and that appeal will be heard in October in Sioux Falls.

The Task Force recessed at 12:12 p.m. and reconvened at 1:30 p.m.

House Bill 1233 from the 2005 Legislature

Representative Hunt reviewed HB 1233, which established the Task Force. He said that section 3 of the bill outlines the Task Force's charter. Representative Hunt said that the purpose of the legislation was to emphasize findings and facts concerning abortion. He said that he envisions the goal of the Task Force to obtain information and factual findings not necessarily to generate a great deal of legislation. Representative Hunt said that he believes the intent of the legislation was to have the Task Force act as a fact finding body.

Senator Stanford Adelstein asked Representative Hunt what is meant by the phrase unborn child in the legislation—what is the definition of the term, unborn child. Representative Hunt responded by stating that, in his opinion, the term unborn child defines the child at the time of fertilization. He said that he believes that there is more information available to support that definition since *Roe v. Wade*. However, Representative Hunt said that the definition of unborn child should be a point of discussion for the Task Force. Senator Adelstein asked whether the Task Force will hear from both sides of the issue. Representative Hunt responded affirmatively.

Public Testimony

Dr. Allison said that public testimony will be limited to the scope and goals of the Task Force and held in a manner to achieve those goals.

On behalf of Dr. Allison, Mr. Bezpaletz distributed copies of a letter from Dr. David C. Reardon, Ph.D., who is associated with the Elliot Institute of Springfield, Illinois, stating his input into the abortion discussion (**Document #3**).

Ms. Elie Schwiesaw, Rapid City, South Dakota, testified that her heart is with children and children's issues. Ms. Schwiesaw said that in a recent poll, eighty percent of respondents believe that abortion terminates a human life. She encouraged the Task Force to consider the laws and attitudes in South Dakota regarding abortion during its deliberations. Ms. Schwiesaw also asked the Task Force to review the physical, mental, and spiritual aspects involved in abortion. She requested that the Task Force be open and inviting to the public and also that the final report be available to the public.

Ms. Judy Brothers, Rapid City, South Dakota, asked the Task Force to be open to the public and to make people feel better about the proceedings of the Task Force. Ms. Brothers also encouraged the Task Force to ask for scientific information when statistics or statements are represented as facts.

Ms. Karen Miller, Rapid City, South Dakota, said that the Task Force should include a review of the history of abortion throughout the United States. She said that abortion has been pretty much common law in the United States even before *Roe v. Wade*. Ms. Miller said that she believes that women need to be informed about all forms of contraception, such as abstinence, family planning, health care, and options to them once pregnant. She said that the ability to create life is a great experience and that every child deserves to come to life as a wanted and loved child. Ms. Miller commented that she prays, hopes, and trusts that women will not have to go back to the days of fear and other concerns regarding abortion prior to *Roe v. Wade*.

Ms. Cindy Flakoll, McPherson County, South Dakota, testified that she believes that everyone at the meeting today is concerned about the health of women. She encouraged Task Force members to include discussion of what an abortion facility is like where a woman obtains an abortion. Also, Ms. Flakoll said that she would like the Task Force to consider a visit to an abortion facility. She commented that perhaps the Task Force would want to explore whether the state should regulate abortion facilities so that a women's health and care is protected.

Representative Phyllis Heineman, Sioux Falls, South Dakota, testified as a state legislator who is interested in the Task Force proceedings. She said that a great deal of discussion on

abortion occurred during the Legislative Session. Representative Heineman said that legislators heard a lot of good testimony. She said that the Task Force is extremely important and that everyone needs to be involved in the discussions. Representative Heineman said that as a member of the Executive Board she hopes that the Task Force will be true to the legislative intent and continue its deliberations in a fact-finding mode.

Committee Discussion

Dr. Allison said that HB 1233 outlines the issues that the Legislature directed the Task Force to study.

Representative Hunt said that, typically, this type of Task Force will invite experts to present information and questioned whether the Task Force will be able to stay within the three-meetings, five days total meeting allocation. He said that, normally, Task Force members would provide names to present testimony so that the Task Force can develop a final factual report on the issues.

Ms. Looby asked if there is a budget to pay for expert testimony.

Mr. Bezpaletz responded that a budgetary allocation has not been made for expert testimony. He said that in rare cases, such as when an interim committee has believed that a particular individual was so important to the discussion, a request can be made to the Executive Board for some type of reimbursement. Mr. Bezpaletz commented that there are a number of advocacy groups involved in the abortion issue which most likely could access and fund expert testimony relative to their particular position. Also, Mr. Bezpaletz said that written testimony and teleconference testimony are also acceptable means of addressing the Task Force.

Responding to Ms. Looby, **Mr. Jim Fry**, LRC Director, said that there is video conferencing capability in the basement of the Capitol.

Senator Adelstein said that he is uncomfortable with the prospect that only those who can afford to provide expert testimony would receive invitations.

Representative Hunt said that every legislative committee is open to the public, and anyone can participate in a manner suitable to them.

Dr. Bell asked Representative Hunt to define a public testifier and an invited guest. Representative Hunt responded that, usually, interim legislative committees rely on staff to gather names of expert testifiers from committee members and other avenues—then, to work with the committee chair to develop an agenda including all or some of those experts. Invited expert testifiers are listed on the agenda; public testifiers are invited to speak under the general agenda item of "Public Testimony."

Representative Kraus said that she thought the directive of the Task Force specifically was to review abortion in South Dakota—how the state's people feel about abortion. She said that there will be many people in the state who will want to testify.

Dr. Allen Unruh said that he does not perceive a problem with expert testifiers having the money to come to testify before the Task Force because most pertinent organizations want to present their position and are willing to pay for that opportunity, if necessary.

Ms. Looby said that, in her opinion, most of the experts on the issue of abortion do not come from South Dakota. While stating that she understands that the discussion needs to be geared for South Dakota, Ms. Looby said that most of the out-of-the state expertise is from nonprofit organizations, which are quite often short of cash. She also said that the Task Force needs to ask for input and facilitate testimony from nonprofit organizations.

Ms. Linda Holcomb agreed with Ms. Looby's statements. She said that the Task Force should seek objective, factual, and scientific information concerning abortion.

Dr. Bell commented that information from peer review journals, Center for Disease Control (CDC) statistics, governmental vital statistics, and the Department of Health would be a good place to start when acquiring objective, factual, and scientific information concerning abortion.

Representative Hunt said that he is reluctant to limit the submission of written testimony to academic studies. He said that the Task Force should listen to anyone who wants to provide testimony and then each member can judge what benefit it provides to them.

Senator Jay Duenwald agreed with Representative Hunt and stated that the Task Force should explore how abortion affects a woman and her family.

To address some of the concerns expressed regarding the budgetary impact of expert testifiers, Dr. Stransky suggested that the Task Force might want to view a National Geographic documentary video of a baby in the womb, which was made by an ultrasonographer, and also suggested that Task Force members watch a filmed clinical abortion.

Ms. Looby said that the Task Force should require equity of time distribution to make sure that it has equal experts from each side of the issue and also impose time limitations on both sides.

Ms. Holcomb agreed that experts on both sides should be invited to provide testimony and that their allotted time should be limited.

Dr. Allison said that the Task Force, first, should decide how it wants to hear testimony.

MS. HOLCOMB MOVED, SECONDED BY DR. BELL, THAT THE TASK FORCE IDENTIFY EXPERTS IN EACH AREA OF ITS ASSIGNED STUDY ON BOTH SIDES OF THE ISSUE, LIMITING THE TIME AND SCOPE OF THEIR TESTIMONY, AND ALSO, IN THE CASE OF PUBLISHED STUDIES AND STATISTICS, REQUEST PEER REVIEW INFORMATION WITH DISCLOSURE OF FINANCIAL BACKING.

Task Force discussion on the motion ensued. Representative Hunt asked whether the motion meant that only expert testimony can be heard and questioned how an expert will be defined. Ms. Holcomb said that those issues are beyond the scope of her motion. Representative Hunt said that that staff has the ability and the expertise to delineate among peers. Dr. Bell said that screening the expert testimony could be difficult. Ms. Looby asked whether it would be appropriate to limit the amount of expert testimony. Representative Hunt said that it could be difficult to sort out agendaed testimony and public testimony and questioned how the Task Force would decide peer review information. Dr. Bell commented that, if the Task Force solicited peer review information, there would be plenty of materials to sort through. Representative Hunt said that he does not mind being inundated with literature and also commented that he does not like to see a lot of restrictions on testimony. He said that the Task Force needs to be as open as it can and should not decide which information can be accepted and excluded. Dr. Wachs said that information such as that presented by Mr. McCaulley when he discussed societal and sociological data also is important. Dr. Unruh said that he agrees with Representative Hunt and commented that some of the debate is based on a person's ideology. Senator Duenwald said that some testimony will be presented which will not be considered peer reviewed. Ms. Looby said that she thought that the responsibility of the Task Force was to gather factual information. Representative Miles said that the Task Force needs to look at the effects of abortion in South Dakota, including financial, societal, and cultural effects. Ms. Holcomb said that determination of public testimony is beyond the scope of her motion. Representative Kraus requested a roll call vote on the motion.

Ms. Holcomb's motion, seconded by Dr. Bell, **THAT THE TASK FORCE IDENTIFY EXPERTS IN EACH AREA OF ITS ASSIGNED STUDY ON BOTH SIDES OF THE ISSUE, LIMITING THE TIME AND SCOPE OF THEIR TESTIMONY, AND ALSO, IN THE CASE OF STUDIES AND STATISTICS, REQUEST PEER REVIEW INFORMATION WITH DISCLOSURE OF FINANCIAL BACKING FAILED ON A ROLL CALL VOTE WITH 5 VOTING AYE, 9 VOTING NAY, AND 3 EXCUSED. Those voting AYE: Adelstein, Allison, Bell, Holcomb, and Looby. Those voting NAY: Benson, Duenwald, Greenfield, Hunt, Kraus, Miles, Stransky, Unruh, and Wachs. Those EXCUSED: Bartling, Day, Two Bulls.**

Representative Hunt suggested that Task Force members identify names of expert testifiers for the second meeting and save public testimony for the third meeting.

Mr. Bezpaletz offered a suggestion to set up a three-member subcommittee to help staff sort through the names.

Ms. Looby asked whether there would be any effort made to ask people on both sides of the issues to testify.

SENATOR ADELSTEIN MOVED, SECONDED BY DR. BELL, THAT THE TASK FORCE SELECT CHAIR, DR. ALLISON, REPRESENTATIVE HUNT, AND MS. LOOBY TO SERVE AS A SUBCOMMITTEE TO DETERMINE WHO SHOULD BE INVITED TO TESTIFY IN ANYTHING BUT A PUBLIC MANNER, THE TIME OF EACH TO BE DIVIDED EQUALLY BETWEEN TESTIMONY OF EACH POSITION FOR THE NEXT TASK FORCE MEETING.

Task Force discussion on the motion ensued. Representative Hunt questioned how equal time will be spent—time for one person to testify on one issue, time on one issue with several people to testify, etc. Senator Adelstein responded that his intent is that testimony be limited to equal time spent on each issue. He said that he is not talking about how many people will testify on each issue, only that the time should be equal for each issue. Ms. Looby asked if the time will be limited to the abortion issue as a whole or on specific issues surrounding abortion. Senator Adelstein said that he is interested in the time being spent on specific issues. Representative Hunt said that he thinks what Senator Adelstein is proposing would be acceptable for the next meeting; however, other issues might be raised during the testimony which the Task Force would also want to be addressed at the meeting after.

Senator Adelstein, with the agreement of the second, Dr. Bell, made the following change to his motion:

THAT THE TASK FORCE SELECT CHAIR, DR. ALLISON, REPRESENTATIVE HUNT, AND MS. LOOBY TO SERVE AS A SUBCOMMITTEE TO DETERMINE WHO SHOULD BE INVITED TO TESTIFY ~~IN ANYTHING BUT A PUBLIC MANNER~~ AS AN AGENDAED WITNESS, THE TIME OF EACH TO BE DIVIDED EQUALLY BETWEEN TESTIMONY OF EACH POSITION FOR THE NEXT TASK FORCE MEETING.

Task Force discussion ensued on the changed motion. Mr. Benson said that he was uncomfortable with a three-member committee deciding on the testimony that will be heard by the Task Force as a whole. Responding to Dr. Unruh, Representative Hunt said that the committee would act as a sounding board on the issue. Senator Adelstein said that the Legislature has set out in the legislation how the Task Force is supposed to conduct its deliberations. Representative Hunt said that he is hesitant to micromanage the agenda. Dr. Wachs said that he believes that the Task Force would have veto power over any decision of the three-member committee.

DR. STRANSKY MADE A SUBSTITUTE MOTION, SECONDED BY SENATOR GREENFIELD, THAT STAFF, WITH INPUT FROM THE THREE-MEMBER SUBCOMMITTEE, SELECT AGENDAED WITNESSES TO BE EQUAL ON BOTH SIDES OF THE ISSUE AND TO PROVIDE EQUAL TIME TO EACH ON THE AGENDA.

Task Force discussion on the substitute motion ensued. Senator Adelstein said that the Legislature gives directive power to a chair of an interim committee. Dr. Unruh asked staff to explore the possibility of e-mailing Task Force members concerning speakers. Ms. Holcomb said that many members of the Task Force are on a limited time schedule, and the large composition of the Task Force possibly could make it difficult to come to an agreement on an agenda. She expressed hope that people from all sides will have an opportunity to speak. Mr. Benson suggested that the proposed subcommittee meet with staff to develop the agenda for the next meeting. Dr. Allison said that the Task Force needs to determine how to begin collecting data.

At this point, Dr. Stransky, with the agreement of the second, Senator Greenfield, withdrew his substitute motion.

Senator Adelstein's changed motion, with the agreement of the second, Dr. Bell, **THAT THE TASK FORCE SELECT CHAIR, DR. ALLISON, REPRESENTATIVE HUNT, AND MS. LOOBY TO SERVE AS A SUBCOMMITTEE TO DETERMINE WHO SHOULD BE INVITED TO TESTIFY IN ANYTHING BUT A PUBLIC MANNER AS AN AGENDAED WITNESS, THE TIME OF EACH TO BE DIVIDED EQUALLY BETWEEN TESTIMONY OF EACH POSITION FOR THE NEXT TASK FORCE MEETING PREVAILED WITH 10 VOTING AYE, 4 VOTING NAY, AND 3 EXCUSED. Those voting AYE: Adelstein, Allison, Bell, Holcomb, Hunt, Kraus, Looby, Miles, Stransky, and Wachs. Those voting NAY: Benson, Duenwald, Greenfield, and Unruh. Those EXCUSED: Bartling, Day, and Two Bulls.**

With the consensus of Task Force members, Dr. Allison outlined the Task Force's study as follows:

1. Practice of abortion since legalization;
2. Body of knowledge concerning the development and behavior of the unborn child due to technological advances;
3. Societal, economical, and ethical impact of abortion;
4. Degree to which decisions of abortion are informed;
5. Effect on health of woman;
6. Matter of relationship between mother and unborn child;
7. Waive rights;
8. Whether unborn is capable of feeling pain;
9. Need for protection of women seeking abortion; and
10. Justification for changing abortion laws.

Senator Duenwald asked to have the order changed as follows:

1. Practice of abortion since legalization;
2. Whether unborn is capable of feeling pain;
3. Body of knowledge concerning the development and behavior of the unborn child due to technological advances;
4. Societal, economical, and ethical impact of abortion;
5. Effect on health of woman;
6. Degree to which decisions of abortion are informed;
7. Matter of relationship between mother and unborn child;
8. Waive rights; and
9. Combine need for protection of women seeking abortion (#9), and justification for changing abortion laws (#10).

Representative Hunt said that he would prefer not to put the list in such a rigid form and suggested that staff derive a less rigid list.

Senator Duenwald and Ms. Looby agreed.

Dr. Unruh said that perhaps even more topics listed on the study outline could be combined.

Representative Kraus reiterated her concern that the Task Force, along with discussing national abortion issues, specifically address abortion issues as they relate to South Dakota and its peoples' concerns.

Task Force members directed staff to plainly state in its next agenda that the public is welcome to attend any of the meetings and that, even though the second meeting will be devoted to agendaed testimony, the third meeting will be reserved for public testimony.

Next Meeting Date and Adjournment

The committee set September 21 and 22, 2005, as its next meeting date, beginning at 8:00 a.m. (CT) each day. The committee agreed to set subsequent meetings at a later date.

There being no further business, Dr. Allison adjourned the meeting at 3:55 p.m.



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