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THE WHITE HOUSE

WASHINGTON  
June 22, 1996

MEMORANDUM FOR JACK QUINN  
KATHY WALLMAN

FROM: ELENA KAGAN EK

SUBJECT: PARTIAL BIRTH ABORTION

1. Override votes on the partial-birth veto are scheduled for mid-July in the House (where a 2/3 vote is probable) and mid-September in the Senate (where a 2/3 vote is very unlikely). The idea, of course, is to stretch out the issue over as many months as possible. I am attaching materials put out by the Catholic Church indicating what it will do during these months. At a recent meeting of the White House "abortion team" (sans George), it was decided (assuming George signs off) (1) to send the DNC and Re-Elect the President's 3-page letter and a revamped set of talking points, for distribution as they think appropriate; and (2) to send to religious and regional press, around the time of the July override vote, a 750-word op-ed, with Secretary Shalala as possible signatory. I was tasked with the job of doing the talking points and op-ed, which I will send to you.

2. Melanne, Todd, Jennifer Klein, John Hart, and someone from Betsy Myers's office met a few days ago with the former President and the current chief lobbyist for the American College of Obstetrics and Gynecology (ACOG). For many months, the folks at ACOG had been unwilling to speak with us about the medical issues surrounding the partial birth ban, but Marilyn Yeager convinced them to do so, and this meeting was the result. It was something of a revelation.

Two important points emerged from the meeting. First, there are an exceedingly small number of partial birth abortions that could meet the standard the President has articulated. In the vast majority of cases, selection of the partial birth procedure is not necessary to avert serious adverse consequences to a woman's health; another option -- whether another abortion procedure or, in the post-viability context, birth through a caesarean section, induced labor, or carrying the pregnancy to term -- is equally safe. I will spare you all the medical details here. Suffice it to say that we went through every circumstance imaginable -- post- and pre-viability, assuming malformed fetuses, assuming other medical conditions, etc., etc. -- and there just aren't many where use of the partial-birth abortion is the least risky, let alone the "necessary," approach. No one should worry about being able to drive a truck through the President's proposed exception; the real issue is whether anything at all can get through it.

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Flame  
RUSA  
You (we) cannot let  
talking points  
Dnc/ Campaign  
going to call  
Congress  
only just  
regard of  
George  
outreach  
George  
outreach  
ack

Jack - Of course you're right. I will make sure  
the talking points get more general use - as aren't  
sure at all. Elena

Second and relatedly, of the five women who came to the White House, only two can truly say (though they all apparently believe) that the partial birth procedure was the least risky of their alternatives. Again, I'll spare you the details, but the other three -- all of whom were carrying malformed fetuses in the third trimester -- could have given birth, either through induction or through carrying the fetus to term, without serious risk to their health. (The partial birth procedure in these cases was the least risky method of abortion, but this is not a strong argument, given that all these fetuses were post-viability -- when most states, and the President himself, would prohibit all abortions except for life or health reasons.)

Those present at the meeting all agreed, on the basis of the thoroughness and care of the ACOG presentation, that these two points are probably just true, rather than a matter of medical opinion. (Betsy Myers and Jeremy Ben-Ami, neither of whom attended the meeting, have expressed the view that some other doctor might say something different.)

At the same time, none of us think that this information should cause us to change the standard the President has articulated or the rhetoric he has used. The letters and written materials we have used are really pretty accurate -- even though the proposed amendment the President has offered would allow fewer abortions than we knew. So too for the President's oral statements. Melanne believes that an appropriate time, prior to the debates or when the veto becomes an issue again, we should make sure the President knows that some of the women's stories are tighter than others; otherwise, she sees no need for any further briefing. I agree, but I also would keep a close eye out for -- so we can clamp down quickly on -- any extension of our rhetoric, whether by the President or others.