

major difference—namely, while current law allows a surface owner to effectively veto development of coal resources, under our bill a surface owner ultimately could not block development of oil or gas underlying his or her lands. This difference reflects our belief that appropriate development of oil and natural gas is needed.

#### Reclamation Requirements

The bill's third part (Titles III and IV) addresses reclamation of affected lands.

Title III would amend the Mineral Leasing Act by adding an explicit requirement that parties that produced oil or gas (including coalbed methane) under a Federal lease must restore the affected land so it will be able to support the uses it could support before the energy development. Toward that end, this part of the bill requires development of reclamation plans and posting of reclamation bonds. In addition, so Congress can consider whether changes are needed, the bill requires the General Accounting Office to review how these requirements are being implemented and how well they are working.

And, finally, Title IV would require the Interior Department to: (1) establish, in cooperation with the Agriculture Department, a program for reclamation and closure of abandoned oil or gas wells located on lands managed by an Interior Department agency or the Forest Service or drilled for development of Federal oil or gas in split-estate situations; and (2) establish, in consultation with the Energy Department, a program to provide technical assistance to State and tribal governments that are working to correct environmental problems caused by abandoned wells on other lands. The bill would authorize annual appropriations of \$5 million in fiscal 2005 and 2006 for the Federal program and annual appropriations of \$5 million in fiscal 2005, 2006, and 2007 for the program of assistance to the States and tribes.

Mr. Speaker, our country is overly dependent on a single energy source—fossil fuels—to the detriment of our environment, our national security, and our economy. To lessen this dependence and to protect our environment, we need to diversify our energy portfolio and increase the contributions of alternative energy sources to our energy mix. However, for the foreseeable future, petroleum and natural gas (including coalbed methane) will remain important parts of a diversified energy portfolio and we support their development in appropriate areas and in responsible ways. We believe this legislation can move us closer toward this goal by establishing some clear, reasonable rules that will provide greater assurance and certainty for all concerned, including the energy industry and the residents of Colorado, New Mexico, and other Western States. Here is a brief outline of its major provisions:

#### OUTLINE OF BILL

**SECTION ONE**—This section provides a short title ("Western Waters and Surface Owners Protection Act"), makes several findings about the need for the legislation, and states the bill's purpose, which is "to provide for the protection of water resources and surface estate owners in the development of oil and gas resources, including coalbed methane."

**TITLE I**—This title deals with the protection of water resources. It includes three sections:

Section 101 amends current law to specify that an operator producing oil or gas under a Federal lease must: (1) replace a water supply that is contaminated or interrupted by drilling operations; (2) assure any reinjected water goes only to the same aquifer from which it was extracted or an aquifer of no better water quality; and (3) to develop a proposed water management plan before obtaining a lease

Section 102 amends current law to make clear that extraction of water in connection with development of oil or gas (including coalbed methane) is subject to an appropriate permit and requirement to minimize adverse effects on affected lands or waters.

Section 103 provides that nothing in the bill will: (1) affect any State's right or jurisdiction with respect to water; or (2) limit, alter, modify, or amend any interstate compact or judicial rulings that apportion water among and between different States.

**Title II**—This title deals with the protection of surface owners. It includes four sections:

Section 201 provides definitions for several terms used in Title II.

Section 202 requires a party seeking to develop federal oil or gas in a split-estate situation to first seek to reach an agreement with the surface owner or owners that spells out how the energy development will be carried out, how the affected lands will be reclaimed, and that compensation will be made for damages. It provides that if no such agreement is reached within 90 days after the start of negotiations the matter will be referred to arbitration by a neutral party identified by the Interior Department.

Section 203 provides that if no agreement under section 202 is reached within 90 days after going to arbitration, the Interior Department can permit energy development to proceed under an approved plan of operations and posting of an adequate bond. This section also requires the Interior Department to provide surface owners with an opportunity to comment on proposed plans of operations, participate in decisions regarding the amount of the bonds that will be required, and to participate in on-site inspections if the surface owners have reason to believe that plans of operations are not being followed. In addition, this section allows surface owners to petition the Interior Department for payments under bonds to compensate for damages and authorizes the Interior Department to release bonds after the energy development is completed and any damages have been compensated.

Section 204 requires the Interior Department to notify surface owners about lease sales and subsequent decisions involving federal oil or gas resources in their lands.

**Title III**—This title amends current law to require parties producing oil or gas under a Federal lease to restore affected lands and to post bonds to cover reclamation costs. It also requires the GAO to review Interior Department implementation of this part of the bill and to report to Congress about the results of that review and any recommendations for legislative or administrative changes that would improve matters.

**Title IV**—This title deals with abandoned oil or gas wells. It includes three sections:

Section 401 defines the wells that would be covered by the title.

Section 402 requires the Interior Department, in cooperation with the Department of Agriculture, to establish a program for reclamation and closure of abandoned wells on federal lands or that were drilled for development of federally-owned minerals in split-estate situations. It authorizes appropriations of \$5 million in fiscal years 2005 and 2006.

Section 403 requires the Interior Department, in consultation with the Energy De-

partment, to establish a program to assist states and tribes to remedy environmental problems caused by abandoned oil or gas wells on non-federal and Indian lands. It authorizes appropriations of \$5 million in fiscal years 2005, 2006, and 2007.

IN HONOR OF C. BOOTH  
WALLENTINE

HON. JIM MATHESON

OF UTAH

IN THE HOUSE OF REPRESENTATIVES

Monday, December 8, 2003

Mr. MATHESON. Mr. Speaker, I rise today to recognize and pay tribute to Mr. C. Booth Wallentine of Utah on the occasion of his retirement from the Utah Farm Bureau Federation.

Booth has spent 41 years working for the Utah and Iowa Farm Bureaus, the last 31 of those years he has served as the Utah Farm Bureau Federation's CEO.

I first heard about Booth's efforts on behalf of our state's agricultural interests when he worked with my father when he served as governor of Utah. I have been privileged to have the same opportunity to work with Booth, and he has been an invaluable asset to me in learning about Utah's agriculture industry.

Since being elected to Congress, I have been impressed with Booth's tireless efforts to advocate on behalf of agriculture and rural issues. His work and dedication on behalf of Utah's farmers and ranchers has made a real difference across the state of Utah, and we all owe him a debt of gratitude for championing these issues on behalf of our state. He has been involved in so many efforts over the years, and it is difficult to imagine discussions about agriculture policy in Utah without Booth's participation.

I wish Booth and his family well in his retirement. I know he will continue to be involved in public service, and I look forward to working with him on his future endeavors.

DOCUMENTS REVEAL DECEPTIVE  
PRACTICES BY ABORTION LOBBY

HON. CHRISTOPHER H. SMITH

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Monday, December 8, 2003

Mr. SMITH of New Jersey. Mr. Speaker, today, I submit to the RECORD documents that reveal deceptive practices used by the abortion lobby. It is critical that both the American and foreign public are made aware of these documents because they shed new light on the schemes of those who want to promote abortion here and abroad. It is especially important that policy makers know, and more fully understand, the deceptive practices being employed by the abortion lobby. These documents are from recent Center for Reproductive Rights (CRR) strategy sessions where, according to a quote from a related interview session, one of CRR's Trustees said, "We have to fight harder, be a little dirtier." These documents are important for the public to see because they expose the wolf donning sheep's clothing in an attempt to sanitize violence against children. These papers reveal a Trojan Horse of deceit. They show a plan to

"be a little dirtier." In their own words, these documents demonstrate how abortion promotion groups are planning to push abortion here and abroad, not by direct argument, but by twisting words and definitions. In discussing legal strategies to legalize abortion internationally they go as far as to say, ". . . there is a stealth quality to the work: we are achieving incremental recognition of values without a huge amount of scrutiny from the opposition. These lower profile victories will gradually put us in a strong position to assert a broad consensus around our assertions." People should know about this stealth campaign, and that is why I submit these documents unedited and for public review.

INTERNATIONAL LEGAL PROGRAM SUMMARY OF STRATEGIC PLANNING THROUGH OCTOBER 31, 2003

Staff lawyers in the International Legal Program, (ILP) have met three times with Nancy Northup, Nancy Raybin and Elizabeth Lowell (September 3, September 23, and October 16) to discuss our strategic direction. In the periods between those meetings, ILP staff met and worked on the memos attached hereto, as well as two other working memos.

We have stepped back and considered the types of strategic legal work the ILP has worked on to date, examining in particular how we evaluate or measure our effectiveness. We reflected on our key accomplishments, and the constant challenge of being in far higher demand than we have resources. This led us to discuss and further develop the ILP's "theory of change." (See Memo 2.) What is our overarching programmatic objective and what should that mean in terms of hard choices on how to focus our work in the next 3-5 years? We have made some solid progress in answering that question, as outlined below:

The ILP's overarching goal is to ensure that governments worldwide guarantee reproductive rights out of an understanding that they are legally bound to do so.

We see two principal prerequisites for achieving this goal:

(1) Strengthening international reproductive rights norms.

Norms refer to legal standards. The strongest existing international legal norms relevant to reproductive rights are found in multilateral human rights treaties. Based on our view of what reproductive rights should mean for humankind, the existing human rights treaties are not perfect. For example, at least four substantive areas of reproductive rights illustrate the limits of international reproductive rights norms in protecting women: (a) abortion; (b) adolescents access to reproductive health care; (c) HIV/AIDS; and (d) child marriage. One strategic goal could be to work for the adoption of a new multilateral treaty (or addendum to an existing treaty) protecting reproductive rights. The other principal option is to develop "soft norms" or jurisprudence (decisions or interpretations) to guide states' compliance with binding norms. Turning back to the four substantive areas noted above, in all four cases, it is possible to secure favorable interpretations. Indeed, the Center has begun to do so. (For an in-depth discussion of this, see Memo 1.)

In theory, existing international norms are broad enough to be interpreted so as to provide women with adequate legal protections. Therefore, we are in agreement on the need to work in a systematic way on strengthening interpretations and applications of the existing norms. If, at the end of 2007, we determine that the existing norms are proving inadequate (as evidenced by the interpretations we seek), then we would reconsider

whether to undertake a concerted effort to secure a new international treaty or addendum to address this gap. We would supplement our own conclusions by convening a conference or expert group to consider whether it would be strategic to pursue such an effort.

(2) Consistent and effective action on the part of civil society and the international community to enforce these norms.

This action follows from the premise that the best way to test existing international reproductive rights norms is to make governments accountable for them. In other words, to work for their enforcement or implementation, would seek to do this by: (a) developing activities aimed at enforcement of international protections of reproductive rights in regional and international fora; and (b) working for the adoption and implementation of appropriate national-level norms.

The regional and international fora with a quasi-judicial character arguably offer the most promising venues for securing justice and interpretations that actually change governments' behavior. To date, we have used the Inter-American Commission on Human Rights (three cases, one pending) and the UN Human Rights Committee (which oversees compliance with the International Covenant on Civil and Political Rights) (one case pending). We believe that seeking favorable interpretations from the "quasi judicial mechanisms of the European human rights system, the African system, and other UN individual complaint mechanisms will be particularly important in the next 3-5 years.

Ultimately, underlying the goal of strengthening international norms and enforcement is that of ensuring that appropriate legal norms are in place at the national level so as to improve women's health and lives. Working on the above prerequisites can help bring about national-level normative changes (since one key way for governments to comply with international norms is to improve national norms). But these processes are not linear and the adoption of appropriate national-level norms may be feasible first (without advocates' emphasis on governments' obligation to apply international norms). Such new national-level norms can, in turn, influence and strengthen international standards. Our goal above is reached only when governments in fact guarantee women's reproductive rights; first by adopting appropriate laws and policies, and, second, by adequately implementing them.

We have begun the process of considering what the above theory of change means for our work: It will mean concentrating on securing strong interpretations the strength of international reproductive rights norms. But the work suggested by the discussion above is still greater than our resources. We must think in terms of working in a concerted way on certain reproductive rights issues; in a smaller number of focus countries; and on honing our ability to provide cutting edge input on relevant international and regional norms and on providing a comparative legal perspective. (i.e., analysis of laws and judicial decisions across countries).

MEMO #1—INTERNATIONAL REPRODUCTIVE RIGHTS NORMS: CURRENT ASSESSMENT

Our goal is to see governments worldwide guarantee women's reproductive rights out of recognition that they are bound to do so. An essential precondition is the existence of international legal norms that encompass reproductive rights and guarantee them the broadest possible protection. Our task, therefore, is to consider the current content of international law relating to reproductive rights and assess its adequacy for guiding government decision-making and holding

governments accountable for violations of international norms.

This memo provides an overview of the sources of international law that may be invoked to protect reproductive rights, examining both binding treaty provisions (hard norms) and the many interpretative and non-binding statements that contribute to an understanding of reproductive rights (soft norms). It examines four substantive areas that illustrate the limits of international law in protecting reproductive rights: (a) abortion, (b) adolescents' access to reproductive health care, (c) HIV/AIDS, and (d) child marriage. The memo then considers whether, given existing support for reproductive rights in international law, reproductive rights activists should seek new protective norms or whether our efforts would be better spent seeking stronger mechanisms for enforcement of existing norms. Assuming that our goal is to pursue the development of international norms, there are several approaches we could take:

Develop a jurisprudence of existing norms that guides states' compliance with binding norms;

Strategically work toward developing customary norms; and

Work to create another binding instrument, such as an international treaty or a protocol to an existing treaty.

*I. The foundations of reproductive rights in international law*

By way of introduction, international human rights law is grounded in both "hard" and "soft" norms. Legally binding or "hard" norms are norms codified in binding treaties such as the International Covenant on Civil and Political Rights (ICCPR) or the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). As a result of the hard-fought efforts of human rights activists, hard norms have gradually been extended to more and more of the human family, including ethnic and racial minorities, women, children, and refugees and internally displaced people.

Supplementing these binding treaty-based standards and often contributing to the development of future hard norms are a variety of "soft norms." These norms result from interpretations of human rights treaty committees, rulings of international tribunals, resolutions of inter-governmental political bodies, agreed conclusions in international conferences and reports of special rapporteurs. (Sources of soft norms include: the European Court of Human Rights, the CEDAW Committee, provisions from the Platform for Action of the Beijing Fourth World Conference on Women, and reports from the Special Rapporteur on the Right to Health.)

Reproductive rights advocates, including the Center, have found guarantees of women's right to reproductive health and self-determination in longstanding and hard international norms, relying on such instruments as the Universal Declaration on Human Rights (Universal Declaration), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). This approach received international affirmation (in a soft norm) at the International Conference on Population and Development (ICPD) in the conference's Programme of Action. Paragraph 7.3 of that document states:

"[R]eproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other consensus documents. These rights rest on the recognition of the

basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents."

We and others have grounded reproductive rights in a number of recognized human rights, including: the right to life, liberty, and security; the right to health, reproductive health, and family planning; the right to decide the number and spacing of children; the right to consent to marriage and to equality in marriage; the right to privacy; the right to be free from discrimination on specified grounds; the right to modify traditions or customs that violate women's rights; the right not to be subjected to torture or other cruel, inhuman, or degrading treatment or punishment; the right to be free from sexual violence; and the right to enjoy scientific progress and to consent to experimentation.

Our publications feature legal arguments resting on these broad principles, many of which have been well received by treaty monitoring bodies and other authoritative U.N. bodies. Still, there are some arguments that could be considerably strengthened with legal norms that relate more specifically to reproductive matters. The next section will briefly discuss four areas in which international law provides less protection than desired.

## II. Gaps in existing norms

### A. Abortion

We have been leaders in bringing arguments for a woman's right to choose abortion within the rubric of international human rights. However, there is no binding hard norm that recognizes women's right to terminate a pregnancy. To argue that such a right exists, we have focused on interpretations of three categories of hard norms: the rights to life and health; the right to be free from discrimination; those rights that protect individual decision-making on private matters.

Bolstered by numerous soft norms, the assertion with widest international acceptance is that a woman's right to be free from unsafe abortion is grounded in her rights to life and health. The right to life has been interpreted to require governments to take action to preserve life. The right to health guarantees the highest attainable level of physical and mental health. Because unsafe abortion is responsible for 78,000 deaths each year and hundreds of thousands of disabilities, criminalization of abortion clearly harms women's life and health. The international community has recognized the dangers of unsafe abortion. Statements to that effect were adopted at the International Conference on Population and Development in Cairo (1994) and the Beijing Fourth World Conference on Women (1995), as well as the recent 5-year reviews of these conferences.

While this has been an important stride, the global community has fallen short of recognizing a right to independent decision-making in abortion, providing us with relatively few soft norms. We argue that the right to make decisions about one's body is rooted in the right to physical integrity, which has been interpreted to protect against unwanted invasions of one's body. We assert that the right to privacy protects a woman's right to make decisions about her reproductive capacity. We also rely on the right to determine the number and spacing of one's children. Here, the soft norms arguably work against us, particularly given the

phrase repeated in both the Cairo and Beijing documents affirming that under no circumstances should abortion be considered a method of family planning.

We have also grounded our arguments in the right to be free from gender discrimination, which is protected in every major human rights instrument. Because restrictive abortion laws deny access to health care that only women need, they constitute discrimination in access to health care. This position is supported somewhat obliquely in a CEDAW general recommendation. In addition, we argue that by denying women the means to control their own fertility, restrictive abortion laws interfere with women's ability to enjoy opportunities in other sectors of society, including educational and professional opportunities. No soft norms affirm this argument.

### B. Adolescents—Access to Reproductive Health Services and Information

The Center has taken a leading role in pressing for protection of adolescents' right to access reproductive and sexual health information and services. In creating a human rights framework for such rights, we use the same hard norms that form the foundation for non-adolescent women's right to access reproductive health services. However, the challenge is to assert that the hard norms apply to adolescents under age 18. We rely almost exclusively on soft norms to do this since none of the treaties explicitly discuss adolescents' reproductive rights.

#### Rights Relating to the Right to Reproductive Health

The right to health (including family planning services and education);

The right to life; and

The rights to education and information.

With respect to the first cluster of rights, the hard norms relating to women's right to access reproductive health services and information are well established and accepted. However, there is no hard norm specifically stating that these provisions also protect adolescents' right to access reproductive health services and information. There is one important, and somewhat ambiguous exception. A recent interpretation suggests the provision on the right to health, which asks states parties to develop family planning services and education, applies to children/adolescents.

#### Rights Relating to Reproductive Decision Making/Autonomy

Right to privacy;

Right to plan the number and spacing of one's children; and

Rights to liberty and security of person.

In issues relating to adolescents' reproductive autonomy and decision-making, there are even fewer hard norms and it is even more difficult to say that these hard norms apply to adolescents under the age of 18 and their reproductive decision-making. For example, the Children's Rights Convention (CRR) provisions on the right to privacy are problematic, prohibiting "arbitrary or unlawful interference with his or her privacy." The provision is not explicit that the right applies to health services and the use of "unlawful" could imply that only interferences that contravene national law would be prohibited. There are no hard norms on: (1) confidentiality in provision of health services or information; (2) prohibiting parental consent requirements and (3) third party authorization for access to reproductive health services and information.

#### The Right To Be Free From Discrimination

While there are hard norms prohibiting sex discrimination that apply to girl adolescents, these are problematic since they must be applied to a substantive right (i.e., the

right to health) and the substantive reproductive rights of adolescents are not 'hard' (yet!). There are no hard norms on age discrimination that would protect adolescents' ability to exercise their rights to reproductive health, sexual education, or reproductive decisionmaking. In addition, there are no hard norms prohibiting discrimination based on marital status, which is often an issue with respect to unmarried adolescents' access to reproductive health services and information.

The soft norms support the idea that the hard norms apply to adolescents under 18. They also fill in the substantive gaps in the hard norms with respect to reproductive health services and information as well as adolescents' reproductive autonomy. Two important standards are applied in order to fill in the gaps:

The "Evolving Capacity of the Child" standard, which limits parental control to the extent that children take on more autonomy as their capacities grow. (e.g., An adolescent who is sexually active and is taking the initiative to seek out means to protect herself from STIs and unwanted pregnancy is demonstrating a level of maturity to justify access.)

The "Best Interest of the Child" standard, which mandates that in the context of health, parental involvement that prevents adolescents from accessing potentially life-saving information and services is NOT in the child's best interest. Rather, it is in the best interest of adolescents to have access to the means to protect themselves. It is often in the best interest of the child to be granted autonomy in decision-making.

#### Soft Norms Relating to the right to Reproductive Health

The Treaty Monitoring Bodies (TMBs) have explicitly interpreted adolescents' right to health as including the right to access services and information on reproductive health. In addition, they have called for sexual education in the context of the rights to education and information. Both the International Conference on Population and Development (ICPD) and the Beijing Platform for Action (Beijing PFA) further help to fill in the gaps in this cluster of substantive rights, clearly stating that these rights apply to adolescents.

#### Soft norms relating to the right to reproductive autonomy/decision-making

Soft norms supplement the dearth of hard norms. The TMBs have interpreted adolescents' right to privacy as ensuring a right to confidentiality in reproductive health services as well as the right to access services and information without parental consent.

#### Soft norms relating to the right to be free from discrimination

There are no explicit soft norms on the right to be free from discrimination based on age in the context of adolescents' reproductive rights. There are soft norms relating to the age of marriage, which would impact adolescents' ability to access services since in many countries married adolescents are granted access regardless of their age while unmarried adolescents are effectively denied access. This relates closely to soft norms on discrimination based on marital status. In this regard, the TMBs General Recommendations/Comments and Concluding Observations have explicitly condemned discrimination based on marital status in accessing reproductive health services.

### C. HIV/AIDS

The rights of women implicated by HIV/AIDS include: the rights to life, dignity, liberty, and security of the person, freedom from inhuman and degrading treatment, nondiscrimination and equality before the

law, the right to health, including reproductive health care and reproductive self-determination. There are no hard norms in international human rights law that directly address HIV/AIDS directly.

At the same time, a number of human rights bodies have developed soft norms to secure rights that are rendered vulnerable by the HIV/AIDS epidemic. In 1998, the Office of the U.N. High Commissioner for Human Rights and UNAIDS issued "HIV/AIDS and Human Rights: International Guidelines," which provide a roadmap for governments seeking to incorporate human rights protections related to HIV/AIDS into national law. In June 2001, the U.N. General Assembly Special Session (UNGASS) on HIV/AIDS resulted in a Declaration of Commitment on HIV/AIDS that included strong language on the need to integrate the rights of women and girls into the global struggle against HIV/AIDS.

In addition, the TMB's have interpreted existing treaties in the context of HIV/AIDS and reproductive rights, creating new and positive jurisprudence that safeguards women's reproductive rights.

In the national-level courts, the South African Constitutional Court interpreted the ICESCR Covenant progressively to enforce the right to HIV/AIDS prevention and treatment in a case brought against the government by the Treatment Action Campaign (an HIV/AIDS rights NGO) seeking to compel the government of South Africa to provide Nevirapine to pregnant women and their babies, to prevent the transmission of HIV from mother to child.

Practices with implications for women's reproductive rights in relation to HIV/AIDS are still not fully covered under existing international law, although soft norms have addressed them to some extent. Two of these include: (1) denials of the right to consent to HIV/AIDS testing of pregnant women and (2) the presumption of consent to sex in marriage.

#### 1. Pregnant women's consent to HIV/AIDS testing

There is a lack of explicit prohibition of mandatory testing of HIV-positive pregnant women under international law. General international law provisions relating to consent or refusal to consent to medical treatment under the ICCPR (article 15.1) and the ICESCR (article 7) has been applied.

The legal and ethical foundations for HIV testing broadly require respect for the conditions for informed consent, pre- and post-test counseling and confidentiality. But on many occasions in practice, HIV positive pregnant women are subjected to mandatory routine tests, without adequate counseling. These mandatory tests often owe their justification to public health demands to curb transmission of the HIV virus to their offspring.

HIV testing that is conducted without pre- and post-test counseling violates a woman's rights to autonomy, dignity, privacy and bodily and psychological integrity. The same degree of consent pre- and post-test counseling and confidentiality applicable to every other person undergoing an HIV test should apply equally to a pregnant woman.

Among the most persuasive "soft norms" are the UNAIDS Guidelines on HIV/AIDS and Human Rights, which call for international human rights norms to be translated into practical observance in the context of HIV/AIDS, point out that programs emphasizing coercive measures directed towards the risk of transmitting HIV to the fetus, such as mandatory pre- and post-natal testing, seldom prevent perinatal transmission of HIV/AIDS, because they overlook the health needs of women. In its policy statement on HIV testing and counseling, UNAIDS states

that pregnant women should not be coerced into testing nor be tested without their consent. But these guidelines do not carry the force of law as would be the case if language prohibiting mandatory HIV testing of pregnant women were included in an existing treaty.

#### 2. Presumption of consent to sex within marriage

Human rights law should explicitly address the legal and social subordination women face within their families, marriages, communities and societies, especially as these barriers expose women to the risk of HIV infection. International protections for the right of women to autonomy over their sexuality within or outside marriage can be found in the principle of bodily integrity enumerated in the ICCPR, which provides for the right to liberty and security of the person. However, with the challenges provided by HIV/AIDS, it is necessary to institute stronger protections of the rights of women in the family, especially their rights to autonomy over sexuality and reproduction. Some stronger language on women's rights in the context of HIV/AIDS is found in soft norms, including the recent UNAIDS guidelines on HIV/AIDS and human rights. In addition, both the ICPD Programme of Action and the Beijing PFA reflect an international consensus recognizing the inalienable nature of sexual rights. Paragraph 96 of the Fourth World Conference on Women Platform for Action states, "The human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence." Again, these rights are much more clearly articulated as a matter of progressive interpretation and jurisprudence than as hard norms in themselves.

#### D. Child Marriage (Marriage Under Age 18)

None of the global human rights treaties explicitly prohibit child marriage and no treaty prescribes an appropriate minimum age for marriage. The onus of specifying a minimum age at marriage rests with the states' parties to these treaties.

Several treaties prescribe the hard norms we use to assert human rights violations associated with child marriage. They include (but are not limited to): the right to freedom from discrimination; the right to choose a spouse and to enter into marriage with free and full consent; the right to health; and the right to protection from all forms of sexual exploitation and sexual abuse.

We have to rely extensively on soft norms that have evolved from the TMBs and that are contained in conference documents to assert that child marriage is a violation of fundamental human rights.

In the main treaties and conventions relevant to marriage and the rights of women and children, the issue of minimum age at marriage has been dodged by the use of phrases—such as "full age" and references to full and free consent as the proposed standard for determining the validity of a marriage. Even the Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages (1964) does not clearly articulate an appropriate minimum age. Notably, the African Charter on the Rights and Welfare of the Child, does recommend a minimum age of 18 and is the only treaty to do so.

Committees have issued general comments and recommendations emphasizing the problematic aspects of child marriage. Most have issued concluding observations that discourage and condemn child marriage as a human rights violation.

The Beijing PFA echoes most treaty provisions relevant to the issue of child marriage

by calling upon governments to enact and strictly enforce laws to ensure that marriage is only entered into with the free and full consent of the intending spouses. It also requires governments to "raise the minimum age where necessary." While thus provision does mark a step forward, it does not take a position on what the minimum age should be.

#### III. More norms vs. better enforcement

Because we wish not only to set standards for government behavior, but also to ensure that governments understand that they are bound to those standards, our success depends on some focus on enforcement of international law. Gaps in the substance of human rights instruments are accompanied by weaknesses in mechanisms for enforcing even the most accepted norms. Accountability is rarely achieved even for governments who engage in arbitrary killings and torture. It is even more difficult to ensure the enforcement of economic, social and cultural rights, which, while legally binding, offer few measures for compliance. We are particularly sensitive to the practical difficulties of enforcing the Women's Convention, which enumerates a number of rights that are fundamental to enjoyment of reproductive rights. A question arises as to whether promoting the recognition of an expanding body of rights might dilute the still untested gains that we have made in the past 20 years.

Many human rights activists have focused on developing better mechanisms for enforcing existing norms, rather than filling the substantive gaps in binding instruments. The campaign for the International Criminal Court is an example of an effort to make highly accepted international legal norms—the principles of the Geneva Conventions—more practically enforceable in an international forum.

As a program, we should consider whether we would be better served engaging in the process of enforcing existing norms—through international litigation, factfinding, reporting to the treaty monitoring bodies—rather than developing the substance of international law. (In reality, both of these goals can be pursued simultaneously, but our question here is one of emphasis.) We could also focus on developing new mechanisms for governmental accountability, which could themselves be the basis of a new legal instrument.

Should we decide, however, that we cannot move forward in our work without the development of stronger substantive norms, there are a few strategies we can take. These strategies are not exclusive and each can reinforce the others. However, because we wish to take a more self-conscious approach to choosing our strategy, we have laid them out in the following section.

#### IV. How to fill normative gaps

##### A. Seeking Authoritative Interpretations of Existing Norms

This approach involves developing a jurisprudence that pushes the general understanding of existing, broadly accepted human rights law to encompass reproductive rights. Such a jurisprudence is developed primarily through:

Report to the treaty monitoring bodies;  
Bring cases to international and regional adjudicative bodies (such as cases we have so far brought before the Inter-American Commission); and

Bring claims based on international law to national-level courts (such as the recent PMTC cases brought before the South-African Constitutional court by the local HIV/AIDS Advocacy group, Treatment Action Campaign).

While, given the variety of jurisdictions, the common law concept of "precedent" has little bearing in this context, international jurists are aware of how legal questions have been resolved by their peers in other fora. Arguments based on the decisions of one body can be brought as persuasive authority to decision-makers in other bodies.

There are several advantages to relying primarily on interpretations of hard norms. As interpretations of norms acknowledging reproductive rights are repeated in international bodies, the legitimacy of these rights is reinforced. In addition, the gradual nature of this approach ensures that we are never in an "all-or-nothing" situation, where we may risk a major setback. Further, it is a strategy that does not require a major, concentrated investment of resources, but rather it can be achieved over time with regular use of staff time and funds. Finally, there is a stealth quality to the work: we are achieving incremental recognition of values without a huge amount of scrutiny from the opposition. These lower profile victories will gradually put us in a strong position to assert a broad consensus around our assertions.

There are also disadvantages to this approach. As decisions are made on an ad hoc basis to apply to a variety of situations, there may be a lack of clarity or uniformity in the decisions. It thus may be harder to point to one position as an "accepted" interpretation. In addition, the incremental nature of this approach escapes the notice of not just our opponents, but also our potential allies. It is very difficult to gain press attention to issues affecting a relatively small group of people or a narrow set of facts. Finally, because we cannot rely on respect for precedent in international and national bodies of overlapping jurisdictions, gains that we achieve may be lost in subsequent decisions. While we have seen an encouraging trend in international jurisprudence, we are forever at risk of losing ground in the same fora.

#### B. Working Toward a Customary Norm

The second approach has much in common with the first. It involves a gradual process of seeking repetition of interpretations of existing norms to encompass and protect reproductive rights. Again, we seek affirmation in international adjudicative fora and national-level courts, as well as at international conferences. The difference in taking this approach is that it would require adopting an overarching strategy for our interventions. We could first develop a wish-list of international legal protections that need to be developed, ideally through convening workshops around the world designed to sound out additional gaps in existing international law and reinforce the interest of allies in following a set of strategic priorities. We would then seek every opportunity to get items on our wish-list incorporated into treaty interpretations and soft norms.

The advantages of such an approach are many. First, it would give focus to our current work, forcing us to establish a set of priorities. Our priorities could be reflected both in our advocacy and in our efforts to shape public opinion. The approach would draw a minimal level of distracting opposition, while increasing our visibility with our allies.

The major disadvantage is that developing a customary norm is a slow process and it is difficult to know when you have accomplished your goal. Very few norms that are currently considered accepted and mainstream can be attributed to recent deliberate campaigns. While the standard for creating a customary norm is open to some scholarly debate, most such norms can be traced to centuries of practice and belief. In addition,

although we are talking about undertaking a campaign of sorts, it is a difficult one to explain to non-lawyers and it is not very sexy.

#### C. Seeking Adoption of a New Legal Instrument

Finally, if we determine that the foregoing options are ineffective, we should consider whether the weaknesses in international law can only be remedied with the adoption of a new legal instrument. Such an instrument could be a protocol to an existing treaty (such as the optional protocol to the African Charter on Human and Peoples' Rights or a new protocol to CEDAW) or a free-standing treaty. A campaign for the adoption of a new international treaty would be an extremely involved, resource-intensive and long process. It might begin with a campaign for a General Assembly Declaration on Reproductive Rights or another soft norm. Then there would be a process of drafting a treaty, getting broad input from many key players. Again, workshops would have to be held around the world to establish buy-in. Then there would be a process of identifying sympathetic delegates in the General Assembly. These efforts would be followed by years of campaigning, with the leadership of a sophisticated, media savvy team.

There are clearly a number of advantages to this approach. First, it offers the potential for strong, clear and permanent protections of women's reproductive rights. Further, having a campaign with clear objectives could serve as a focal point for advocacy around the world. In addition, the campaign itself could have an educational function with the potential to influence national-level legislation.

There are also potential disadvantages to consider. Embarking on a campaign for a new legal instrument appears to concede that we do not have legal protections already, making failure potentially costly. Moreover, during the many years it takes to succeed in adopting an instrument, we create the impression that women are "protectionless." Second, the campaign is unlikely to succeed in the near term, and thus might be deemed a waste of limited resources. Finally, depending of the timing of the campaign and the surrounding conditions, it could stir up nasty opposition, which might ultimately set the movement back, at least temporarily.

#### V. Conclusion and further questions

There are a number of questions that we would need to answer before we decided on a strategy. Some of these questions may be best answered by people outside the organization. These might include Ruth Wedgwood, David Weissbrodt, Oscar Schacter, Donna Sullivan, Ken Roth, Rebecca Cook, Roger Norman, Widney Brown, Anika Rahman, and certainly others. Whatever strategy we pursue, we should continue to research our approach, perhaps by enlisting the assistance of students at a law school clinic.

Here are some questions we would like answered:

1. Are the weaknesses in international norms protecting reproductive rights of a severity that can only be remedied by the adoption of a new legal instrument?
2. Do most governments currently think that they have a duty to uphold reproductive rights? Do they care about interpretations of hard norms and do these interpretations shape their views about their obligations under international law?
3. As a matter of public perception, does pursuing a new instrument—without any assurance of success—undermine current claims regarding the existence of reproductive rights?
4. Would it be more strategic, to consider an instrument covering other "gaps" in legal

protections for women's rights and include these?

5. How have other movements succeeded at creating norms that governments consider binding?

6. What would be an appropriate timeline for pursuing a new legal instrument?

7. Would we be the group to take the lead on a campaign for a new legal instrument?

MEMO #2—ESTABLISHING INTERNATIONAL REPRODUCTIVE RIGHTS NORMS: THEORY OF CHANGE

Our goal is to ensure that governments worldwide guarantee women's reproductive rights out of an understanding that they are bound to do so. The two principal prerequisites for achieving this goal are: (1) the strengthening of international legal norms protecting reproductive rights; and (2) consistent and effective action on the part of civil society and the international community to enforce these norms. Each of these conditions, in turn, depends upon profound social change at the local, national and international (including regional) levels.

Ultimately, the goal of strengthening international norms and enforcement is to ensure that appropriate legal norms are in place at the national level so as to improve women's health and lives. Working on the above prerequisites can help ensure national-level normative changes, but these processes are not linear and the adoption of appropriate national-level norms may happen first and can, in turn, influence and strengthen international standards. Our goal above is reached only when governments in fact guarantee women's reproductive rights, first by adopting appropriate laws and policies, and, second, by adequately implementing them. Thus, a third prerequisite is suggested that reinforces international standards: adoption and implementation of appropriate national-level norms.

Achieving the above goal does not depend on legal strategies alone. Support for norms and their enforcement may require sustained public awareness-raising campaigns, media attention, and support from key sectors like the medical community, among others. The role of law in social change is a complex one. But the adoption of good reproductive rights norms at the national, regional and international levels is crucial because it indicates such norms' formal recognition, and provides a firm basis for the government's duties, including its own compliance and its enforcement against third parties. With formal recognition of reproductive rights through law, women's ability to exercise these rights is left to chance.

The remainder of this memo attempts to concretize the Center's theory of how such change can be achieved, with an emphasis on the Center's possible role in this process. This memo serves as an initial concept paper, not a work plan. In some cases, activities identified are already well underway. But, in any case, we recognize that we cannot undertake all the work suggested by the analysis below, but that this provides us with a more concrete starting point for identifying what needs to be done and our appropriate roles.

#### 1. Strengthening international legal norms

Our legal analyses to date are primarily based on interpretations of well-accepted international norms. There are at least three means of strengthening these norms to ensure greater protection of reproductive rights: broadening authoritative interpretations of existing norms; gradually establishing an international customary norm; and adopting a new legal instrument protecting reproductive rights. (For a more detailed description of these approaches, see Memo #1.)

Regardless of the mechanism, expanding legal protections requires action on multiple fronts. First, there is a process of developing broad international agreement among our allies and potential allies on what the norms should be. Second, steps must be taken to put reproductive rights on the agenda of international normative bodies. Finally, advocates must foster broad support for reproductive rights among governments while countering opposition. The following subsections will address each of these activities in greater detail.

#### A. Developing Agreement on Norms

Much of the work of developing agreement on norms protecting reproductive rights has been achieved at United Nations conferences, including the International Conference on Population and Development (1994) and the Fourth World Conference on Women (1995). While documents adopted at these conferences are not themselves legally binding, they are a clear articulation of most of our institutional values, and they have been formally accepted by nearly every government in the world. There are (as noted in Memo #1) a number of gaps in the content of these international agreements, and much work is needed to gather support for the Center's position on how these gaps should be filled. For example, the Center needs to continue its advocacy to ensure that women's ability to choose to terminate a pregnancy is recognized as a human right. Advocacy of this nature can be carried out through various means, including:

Public education and awareness-building, in part through production of advocacy materials and publicity surrounding their release;

Bringing reproductive rights into the mainstream of legal academia and the human rights establishment; and

Collaboration with NGOs engaged in establishing legal norms at the national level.

#### B. Putting Reproductive Rights on the International Agenda

Developing broad agreement on norms protecting reproductive rights does not in itself ensure that they will find their way into international law. Advocates have to look for opportunities—such as international conferences and meetings of treaty monitoring bodies and other UN human rights bodies—to put norms relating to reproductive rights on the international agenda. In some cases, the timing of such efforts may depend upon strategic considerations. For example, advocates for reproductive rights opted not to lobby for an official 10-year review of the International Conference on Population and Development, fearing that negotiations would be hijacked by the right-wing, which includes the current U.S. Government.

There are several means of putting reproductive rights on the agenda of international normative bodies, including:

Identifying allies in government and civil society who can champion reproductive rights;

Securing positive interpretations from the treaty monitoring bodies related to reproductive rights, either through the reporting processes or by bringing individual complaints;

By seeking action from such UN and regional bodies as the Human Rights Commission and its sub-Commission and the European, Inter-American, and African commissions/courts on human rights; and

Engaging the media in bringing reproductive rights to the attention of relevant international, regional and national normative bodies, including legislators, other government officials, local and international judicial bodies, as well as medical bodies that can influence law and policy.

#### C. Garnering Support Among Governments and Countering Opposition

Ultimately, we must persuade governments to accept reproductive rights as binding norms. Again, our approach can move forward on several fronts, with interventions both at the national and international levels. Governments' recognition of reproductive rights norms may be indicated by their support for progressive language in international conference documents or by their adoption and implementation of appropriate national-level legislative and policy instruments. In order to counter opposition to an expansion of recognized reproductive rights norms, we have questioned the credibility of such reactionary yet influential international actors as the United States and the Holy See. Our activities to garner support for international protections of reproductive rights include:

Lobbying government delegations at UN conferences and producing supporting analyses/materials;

Fostering alliances with members of civil society who may become influential on their national delegations to the UN; and

Preparing briefing papers and factsheets exposing the broad anti-woman agenda of our opposition.

#### 2. Enforcing international protections of reproductive rights

For legal protections of reproductive rights to be meaningful, they must be tested through concerted enforcement efforts. Enforcement of human rights norms can be pursued at the national, regional and international levels. Some enforcement strategies, such as the use of the treaty monitoring bodies, also serve the goal of strengthening legal norms, as described above.

Advocates' use of enforcement mechanisms can help cultivate a "culture" of enforcement in which violations of reproductive rights are recognized as such by victims, and complaints are addressed under conditions of impartiality and the rule of law. Specific activities that contribute to enforcing international norms include:

Using adjudicative mechanisms at the national, regional and international levels;

Documenting, and publicizing reproductive rights violations and recommending appropriate reforms; and

Supporting efforts to strengthen existing enforcement mechanisms, such as the campaign for the International Criminal Court and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

#### 3. Adoption and implementation of appropriate national-level norms

An important measure of the extent to which a particular government accepts its obligation to respect, protect and fulfill reproductive rights is whether it has adopted and is properly implementing appropriate legislation and policy. This may come about through means other than an international enforcement effort. For example, the national political moment may be ripe for change, with or without the influence of international standards. Such changes in one or more countries, particularly key countries in a region, may have a catalytic effect on neighboring countries or on the solidification of international norms. Moreover, these kinds of changes, whatever the impetus, must be encouraged as they are more likely to have an immediate impact on the health and lives of women previously unable to enjoy reproductive rights.

Similar to activities outlined in #2 above regarding enforcement, possible activities in this area include the following:

Providing input to civil society or government actors to change offensive laws or

adopt progressive laws where none had existed;

Examining the effectiveness of implementation of laws and policies; and

Assessing whether courts are adequately enforcing existing legislation.

#### DOMESTIC LEGAL PROGRAM SUMMARY OF STRATEGIC PLANNING THROUGH OCTOBER 31, 2003

Staff attorneys in the Domestic Legal Program (DLP) have met with our strategic planning consultants and Nancy Northup to discuss our current work and to plan for the future. At our initial meeting we focused on the following issues:

**Abortion Litigation:** Are the litigation strategies of the last 10 years still viable? If so, for how much longer? Should we be taking a different approach to some of the issues that we have been litigating?

How can we influence the people who influence the legal landscape around reproductive rights? How does CRR influence these communities now? Are there new strategies we should adopt? What are the key issues? What would it take to resolve those issues?

**Expanding Beyond Abortion.** What are the other reproductive rights issues we have not been addressing or that we should put renewed energies into?

As a result of these discussions, we formed working groups on the following four issues: (1) the future of our traditional abortion litigation; (2) development of systematic approaches to or "campaigns" concerning selected core issues; (3) the development of non-abortion related litigation; and (4) development of new approaches to influencing the legal landscape. A summary of our thinking to date follows:

##### 1. The future of traditional abortion litigation

We believe that the traditional abortion litigation that has formed the core of our legal program in the United States has been, and is likely to remain, the most effective strategy for protecting the right to choose abortion in hostile political climates, like that we face today, as well as in friendlier times. Even under pro-choice Administrations, women's right to choose has always needed, and will need again, the protection of the judiciary from hostile majorities in many, if not most, states. Moreover, Supreme Court decisions in litigation arising from these hostile states have defined the contours of the right to choose. If CRR is going to continue to have an impact on legal developments in our field, we need to continue to be involved in these cases. Therefore, we will carry on in this area, informed by evolving standards in some areas, such as TRAP and biased counseling cases. We have also made a plan for reviewing our options to bring new "affirmative" litigation in areas such as Medicaid funding and parental involvement. The attached memo (#1) discusses these issues in some more detail.

##### MEMO #1—FUTURE OF TRADITIONAL ABORTION LITIGATION

##### I. Traditional work

When the Center was founded in 1992, its staff was already well-known for the litigation conducted at the ACLU's Reproductive Freedom Project. The Center built on that reputation and, through the 1990's, solidified its position as the preeminent team litigating on reproductive rights in the U.S., with the largest caseload by far of any other group. The Center's reputation developed because of its willingness to litigate issues others had discarded (e.g., waiting periods and, originally, the "purpose" prong of Casey (which has since been eviscerated by the Supreme Court)), its determination to push the envelope with legal theories that were sometimes on the edge, and because of the sheer

volume of cases we have been able to handle with a fairly small staff. We have also earned a reputation as being very client focused—often assisting clients with issues that arise in their day-to-day operations—issues that other attorneys either cannot or will not handle (a recent example is the litigation in Michigan over the payment provision in the amendment to the waiting period statute, an issue the ACLU RFP declined to litigate). Although often in a defensive posture, challenging restrictive legislation enacted in the states, the Center sought to use this litigation to restrict the reach of Casey's undue burden standard and to strengthen the "state interest" inquiry in privacy and equal protection claims.

Recently, the frustration of funders with the current Administration and anti-choice Congress, and their assault on reproductive rights and the judiciary, has led some to question the usefulness of traditional abortion litigation. What good is all our work if the Bush Administration can simply take it all away with the stroke of a pen, by, for example, enacting the federal partial-birth abortion ban that we are currently fighting?

Therefore, we are examining whether our traditional work will continue or whether we need to anticipate a new legal landscape, either because limitations on the right to choose will be firmly established and viable legal challenges will dwindle or because *Roe v. Wade* will be overturned or substantially undermined, also eliminating the cases that make up much of our current docket.

#### A. Will Our Traditional Work Continue in Its Current Form?

This group examined our traditional work, particularly focusing on whether we should alter the standards we use to evaluate whether to bring a case in one of our traditional areas, such as TRAP, parental involvement, abortion bans, biased counseling/mandatory delay laws. We believe this work will continue, though in some altered forms. Two examples are:

It is unlikely that we will bring another federal court challenge to a requirement that women make two-trips to their abortion provider, but we will continue to evaluate whether these laws can be challenged on other grounds and whether a state court challenge is appropriate;

We may bring limited challenges to TRAP schemes, particularly where they threaten patient privacy (the outcome of our Arizona TRAP case on appeal to the Ninth Circuit will be important here).

#### B. Additional "Affirmative" Litigation To Bring in Our Traditional Areas?

We also examined whether there is additional "affirmative" litigation we should bring. While we think there is probably only one more viable state constitutional challenge to a Medicaid funding ban left, we believe that we should do additional research on state constitutional equal protection case law to insure that this is the case. Coming off our recent successes in Alaska and Florida, we have considerable expertise in state constitutional challenges to laws forcing parental involvement in a minor's decision to have an abortion. We will determine whether to move forward in any more states as part of our Systematic Campaign discussed in Memo #2.

We are also following through with our cases challenging Choose Life license plates and the fundraising these plates do for so-called Crisis Pregnancy Centers. We are currently seeking law firm support for new cases in two or three states.

#### II. What is the framework for answering these questions?

In developing our plans for new litigation, we will balance the following factors: impact

on clients; impact on women; helpful to jurisprudence; distinguishing ourselves from the field by taking on issues others wouldn't; dominating specific areas to insure CRR's impact in that area; other organizations' involvement in these issues; institutional resources; and costs.

#### MEMO #2—REPORT TO STRATEGIC PLANNING PARTICIPANTS FROM SYSTEMATIC APPROACH SUBGROUP

This group met to discuss "systematic approaches" or "campaigns" that CRR might pursue. We considered five possible topics for such an approach: (1) minors' access to reproductive health care; (2) developing our use of equal protection jurisprudence to protect reproductive rights; (3) minimizing the burdens of the undue burden standard; (4) abortion funding/Harris v. McRae issues; and (5) developing our use of first amendment jurisprudence to protect reproductive rights. These topics were suggested at the initial strategy meeting of the domestic program. For each topic, we considered whether a campaign would be useful to the field, what the positives and negatives would be to pursuing the campaign, whether the Center is well-positioned to pursue the campaign, and how the campaign might be effectuated.

It is our opinion that our field would benefit from a systematic approach in the first two of these areas—minors and equal protection—and that the Center is well-positioned to pursue such an approach in those areas. We believe that the Center needs to undertake work in the third area—undue burden—but that such work may not be well-suited to the context of a campaign. Finally, it is our opinion that a systematic approach would not be productive or useful to the field with respect to the last two areas—funding and first amendment. This does not mean that we wouldn't do work in these areas but just that they do not lend themselves as well to a systematic campaign.

The following is a summary of our discussion of the five possible campaign areas. For each area, we have included an articulation of the possible campaign and some thoughts about the positives and negatives of pursuing that campaign. With respect to the three areas where we thought a campaign—or, in the case of undue burden, other work—might be useful, we have also included some possible elements for the campaign.

#### I. Minors

**Articulation:** A project to secure the fundamental right of minors to access all reproductive health services confidentially. This includes: (1) undoing the notion that parental rights are an adequate justification for imposing additional burdens on minors seeking abortions or other reproductive health care; (2) staving off efforts to require parental involvement for minors seeking contraception and abortion; (3) undoing child abuse reporting requirements with respect to non-abusive sexual relations; (4) ensuring minors' ability to consent to all reproductive health services; (5) establishing minors' right to comprehensive information about reproductive and sexual health.

**Positives:** (1) This has always been one of our priority areas. (2) We are seeing the antis push hard to diminish minors' rights, so we should see what we can come up with to push hard back (i.e., being proactive in addition to defensive). (3) The topic lends itself well to a systematic approach. (4) The issue extends beyond abortion. (5) This is a topic about which we can coordinate efforts with our international program.

**Negatives:** (1) In terms of parental involvement for abortion, we have large body of federal case law against us (which makes our campaign harder), and the reasoning of that case law could be applied to contraception.

(2) It is very difficult to garner public and legislative support on issues concerning minors. (3) We will likely have to confront the politically difficult issue of whether minors have a right to have sex (and more generally, whether minors should be treated as adults). (4) This area involves difficult line drawing and subtle points that are difficult to convey to the public in an appealing way. (5) There is growing opposition amongst minors to abortion and being pro-choice (or at least a national pro-life campaign aimed at teens that is garnering more public attention).

#### Possible Elements:

(1) Legal research and writing to (a) debunk the extent of parental rights currently recognized; (b) discuss the development of minors' legal rights generally; and (c) analyze sodomy and death penalty cases to see how courts and litigants have relied on evolving societal norms and social science evidence.

(2) Comprehensive survey of available scientific evidence supporting our positions (e.g. re: competency of minors, importance of confidentiality for access), to use to (a) strengthen our position and to (b) assess where we need to fill in the gaps.

(3) Follow up to fill in the gaps with additional studies, development of expert witnesses, etc.

(4) Work with major medical groups to develop and expand public policy regarding minors' ability to consent to medical care and need for confidentiality.

(5) Advance legislation re: minors' ability to consent to care and confidentiality of care.

(6) Develop litigation—bring facial challenges to non-abortion consent and confidentiality issues in federal court; as-applied challenges to parental involvement for abortion laws in federal court; state courts cases to establish rights or minors.

(7) Public education strategy to support legislative/litigation efforts.

(8) Develop an international component, which looks at international norms on the rights of children.

#### II. Equal protection

**Articulation:** Project to expand the use of equal protection doctrine to protect women's access to abortion and contraception. This includes: (1) reversing decisions indicating that pregnancy and abortion discrimination are not sex discrimination; and (2) developing the fundamental rights strand of equal protection to prevent singling out of abortion and abortion patients from rest of medicine for the imposition of special burdens.

**Positives:** (1) This is an area of law that we could do more with. (2) Because this area of law is not yet firmly established in the abortion arena, we don't have to overcome lots of precedent to be able to make progress. (3) Equal protection claims get us out from under some of the proof difficulties we have with undue burden claims. (4) This project is more accessible to the public than the undue burden project. (5) This project gives us a way to talk about abortion in terms of fairness and discrimination principles, which are appealing and understandable to the public. (6) This issue is important to our goal of ensuring access to abortion. (7) This project might be able to be combined with the undue burden project.

**Negatives:** None articulated other than the potential for bad outcomes, which exists with all five possible projects, and the fact that federal courts have not yet been receptive to equal protection arguments where they have been advanced.

#### Possible Elements:

(1) Legal research and writing as to (a) abortion as sex discrimination; (b) abortion discrimination under the fundamental rights

strand; and (c) analyze sodomy and death penalty cases to see how courts and litigants have relied on evolving societal norms and social science evidence.

(2) Analysis of how equal protection jurisprudence has evolved in other areas.

(3) Public education to talk about abortion laws (and other obstacles to repro health care) as both discrimination against women and unfair discrimination against abortion.

(4) Look to expand the litigation areas in which we push equal protection claims and state ERA claims (e.g. contraceptive equity, challenges to abortion restrictions as applied to medical abortion).

(5) Analysis of the kinds of factual development we should do in cases in which we bring equal protection claims.

(6) Development of studies helpful to our equal protection claims such as (a) study comparing the morbidity and mortality of abortion with that for other office surgeries; (b) study establishing that other health care decisions women make are comparable to the abortion decision in relevant respects.

(7) Develop strategies for advancing legislation that would add to women's protections against sex discrimination in health care (e.g. establishing that disparate impact on pregnant women is sex discrimination).

### III. *Undue burden*

Articulation: Project to limit the application of the undue burden standard and to increase its "bite" so as to bring it as close to strict scrutiny as possible. This includes: (1) limiting the application of the undue burden standard (e.g. requiring a health exception and service of a legitimate state interest regardless of burdens); (2) developing meaningful purpose prong challenges; and (3) developing case law establishing some burdens as undue.

Positives: (1) The law in this area is not yet fully developed so we have some more room to make progress than we do in other areas. (2) Progress in this area would positively affect all our abortion cases. (3) This issue is important to our goal of ensuring access to abortion.

Negatives: (1) This project is difficult to support through public education or media (since it is so legally-focused). (2) These kinds of cases are very resource-intensive. (3) Successes in these factually-intense cases can be difficult to apply more broadly.

#### Possible Elements:

(1) Analysis of federal courts' application of the undue burden standard and assessment of where they have improperly articulated the standard.

(2) Legal research and writing regarding (a) how the standard should be interpreted; and (b) areas where we can try to limit application of the standard (e.g., with health exceptions, lack of legitimate state interest).

(3) Analysis of which types of abortion restrictions actually have the effect of imposing the greatest burdens.

(4) Obtain studies demonstrating the effects of those most burdensome laws.

(5) Litigation challenging those most burdensome laws in favorable circuits.

### IV. *Funding*

Articulation: A project to overturn *Harris v. McRae* by building upstate court opinions, state legislation and factual bases to compel the Supreme Court to overrule its prior decision as it did in *Lawrence v. Texas* with respect to *Bowers v. Hardwick*. The strategy would be to show that the law and social standards have evolved since *Harris v. McRae* in recognition of the fact that, for poor women, access to public funding for abortion is part of their constitutional right.

Positives: Funding is one of our priority issues, and the *Harris* decision has had a very significant on women's access to abortion.

Negatives: Unlike what happened with sodomy laws, we are not going to be able to get an expansion of abortion funding rights in the states: we are running out of state courts to rule in our favor on the funding issue, and in most states we have no chance of getting the legislature to act in our favor.

#### V. *First amendment*

Articulation: Project to enhance reproductive rights through the development of first amendment theories in areas like specialty license plates and biased counseling.

Positives: (1) We could try to develop this area of law, in which we have had some success; (2) restrictions that are imposed on speech about abortion, and preferences given to antiabortion speech, undermine the right by contributing to an anti-choice public dialogue about our issue.

Negatives: (1) First amendment theories have limited application to restrictions on reproductive rights; (2) this area does not lend itself as well to a "campaign."

MEMO #3—REPORT TO STRATEGIC PLANNING PARTICIPANTS FROM "OTHER LITIGATION" SUBGROUP

This group met to discuss "other litigation" that CRR might pursue in addition to areas in our current docket. We focused on three main areas: (1) contraception; (2) women of color; and (3) misleading information. These topics were discussed at the initial strategic planning meeting of the domestic program. For each of these topics, we considered some of the possible ways that we might pursue work in these areas; the positives and negatives of pursuing these strategies; and possible elements pursuing these issues might entail.

#### I. *Contraception*

Articulation: The Center's commitment to reproductive rights includes a woman's right to control if and when she becomes pregnant. We considered possible ways that we may be able to expand our work in the area of contraception, including potentially focusing on: (a) funding restrictions (e.g., restrictions in Medicaid, Title X, and in abstinence-only programs); (b) government restrictions, both on a macro and micro level (e.g., statutes and or regulations; police harassment of sex workers by destroying condoms; school policies that prohibit condom distribution); (c) Title VII and Title IX cases, expanding the Title VII precedents into the university setting; and (d) women of color's specific concerns in this area (e.g., steering towards certain methods; unique access issues; and implications in sentencing).

Positives: (1) This is an area in which the Center has had a long-standing commitment and it would affirm that commitment to litigate issues affecting access to contraception. (2) Work in this area could have a significant impact on the lives of women. (3) Increasing access to contraception is much less controversial than abortion. This could be potentially significant to donors, press, public, and courts. (4) Expanding our work in this area would undercut the criticism that we are solely an abortion-rights organization.

Negatives: (1) It is difficult to find legal theories to pursue many of the areas identified. (2) In those areas where legal theories are clearly articulated (e.g., Title VII and Title IX), it is difficult to find women willing to be plaintiffs and there are many groups pursuing these goals.

#### Possible Elements:

(1) Research and assess whether there are viable legal avenues to pursue in this area;

(2) In those areas where there are well-articulated viable legal avenues, assess whether or how much resources the Center should direct in light of other groups' commitment to these issues;

(3) Collaborate with groups that are working more directly with these issues to see if we can educate ourselves to possible litigation opportunities;

(4) Assess whether there are non-litigation opportunities and consider if this is an area we would consider directing resources.

#### II. *Women of Color*

Articulation: Laws restricting access to reproductive health services disproportionately affect women of color and women facing economic barriers. Our litigation work on funding bans is an example of our long-standing commitment to this area; however, we need to explore other ways of addressing the needs of this population head-on. While the work of the International Legal Program deals with many of these issues, we realize that the Domestic Legal Program could place more specific emphasis in this arena. Some of the possible areas of litigation which cross-over with ILP are: (1) women in the criminal justice system; (2) immigration; and (3) trafficking; and (4) safe motherhood/pregnancy.

Positives: (1) This has always been one of our priority issues; (2) we cannot claim to be serving the reproductive health needs of women in the U.S. if we are ignoring issues specific to women of color; (3) the issue extends beyond abortion; and (4) we may be able to coordinate efforts with the International Legal Program.

Negatives: (1) We are not sure that legal strategies are the most useful strategies to combat reproductive health issues specific to women of color and economically disadvantaged women; (2) we have little experience (and some would say credibility) in this area, other than defense of women being prosecuted for drug use and our Medicaid cases, and, therefore, would first need to take a systematic look at the needs of women confronting racial and economic barriers, and would need to devote the resources to do this properly; (3) cases in this realm might involve non-impact litigation, which we aren't as accustomed to taking on; and (4) we are a department/organization comprised largely of economically advantaged white women, which undermines our credibility in this area.

#### Possible Elements:

(1) Focus on areas in which we already have some expertise, e.g., treatment of pregnant women who use drugs or abuse alcohol, women in prisons and funding issues.

(2) Identify other areas in which specific issues facing women with economic and social barriers could be remedied or addressed through legal strategies, e.g., issues facing immigrants and migrant workers, and safe motherhood/pregnancy issues.

(3) Work in partnership and build relationships with other groups working on issues affecting the health of women of color.

(4) Identify legal strategies.

#### III. *Misleading Information*

Articulation: This area includes the following issues, which we believe contain misleading information by definition, or often incorporate misleading information: (1) abstinence-only education; (2) abortion/breast cancer link; (3) crisis pregnancy centers ("CPC's"); and projects by anti organizations such as Life Dynamics Inc. ("LDI") that distribute misleading information. The most noteworthy project by LDI was their campaign to public schools indicating that a school, or school employee, could be legally liable for distributing reproductive health information to students.

Positives: (1) Distribution of misleading information regarding reproductive health care can have devastating effects and undermines our goal of enabling women to be knowledgeable and obtain safe and medically

appropriate reproductive health care; (2) this has been a more recent and successful campaign by the antis, both to the public and in the courts; (3) outing the antis as liars would undermine their credibility; (4) although several medical and health people and groups, as well as legislators, are outraged by these tactics, there hasn't been much success in countering these attacks; thus, we could stand out on these issues. In fact, we are the only group with significant experience litigating (and refuting) the claims of an abortion-breast cancer link.

Negatives: (1) We have struggled for years without much success to try to develop legal theories to attack these issues proactively; (2) we think that there might be viable non-constitutional legal theories, but we are not experts in some of those areas and therefore don't even know of the existence of some avenues; (3) cases in this realm might involve non-impact litigation, which we aren't as accustomed to taking on; (4) individual cases in this area often are seen as less important than the impact litigation facing us and, therefore, fall through the cracks; (5) LDI has been quite careful to try to stay within legal bounds with their misleading attacks.

#### Possible Elements:

(1) Decide if this area is a priority for us and determine if that depends on whether we can litigate in the area or not. If so, proceed to the following elements:

(2) Brainstorm regarding litigation versus non-litigation tactics;

(3) Do fact research on types of misleading information and then prioritize potential attacks on the different types of dissemination;

(4) Do legal research in obvious areas with which we are familiar—i.e., First Amendment entanglement/establishment clause (see license plate cases and the Gibbons case in E.D. La.);

(5) Determine how to familiarize ourselves with other areas of law that we're not so familiar with—including business torts such as interference with business, torts, false advertising—both currently and how to keep abreast of changes in the area (have a law firm do a CLE for us and be our consultant on such matters?);

(6) If lawsuits are a viable option, decide how to proceed with them (alone? With a law firm?).

What are our criteria for project and site selection? Do we have "clients"? Are they our NGO partners? Women in need? UN agencies? Sister organizations in the US/Europe? How can we make these "clients" more a part of our strategic planning and priority setting?

#### C. Integrating the Center's Program Work

The Center's work in the U.S. and abroad has proceeded on independent tracks (e.g., we have not used the international human rights strategies in the U.S.). Should the new interest by the Supreme Court suggest we should be taking a human rights approach in the U.S.? What would that involve? Are there other ways in which our domestic and international work could be integrated?

#### STRATEGIC PLANNING: COMMUNICATIONS—FIRST STEPS

Like the other programs at the Center, domestic and international, Communications needs to be strategic. And for Communications to be strategic, the Center must have a clearly articulated goal.

So the first question we must ask is, Why communications? What purpose does it serve for the Center?

Depending on the organization, Communications strategies vary widely. Here are two examples from two organizations whose

Communications programs I directed before coming to the Center.

#### TWO COMMUNICATIONS MODELS

The Vera Institute of Justice had an entrepreneurial goal. We wanted government officials to hire us to make government justice systems fairer and more efficient. We believed that without actual government investment in the research and projects we piloted, there wouldn't be the necessary will to change. And we wanted to be known, unlike government bureaucracy, as an organization that got things done.

This goal meant that Communications strategy focused on marketing more than advocacy. We developed strong research reports and briefing papers, as well as attractive and forceful "identity" materials (that described what we do). We also established the president and other key staff and colleagues as trusted and authoritative resources. But we kept a very low media profile, with a few exceptions. For example, when we launched our citizens' jury project, which essentially acted as ombudsman for jurors in New York City courts, Judge Kaye encouraged us to publicize it as much as possible, because we wanted New York City residents to use the service. For the most part, however, we sought less to get our name in the media than, to change the quality of reporting on criminal justice. So we held a seminar for editors and reporters at which they and criminal justice experts exchanged (no holds barred) views on how the media could do a better job and how researchers could help them do it.

An adjunct goal of Vera's was to encourage the next generation of government official or public interest lawyer who might become our partner in future projects or perform pro bono work for us. For example, we invited law firms to propose young partners to attend a series of after-work seminars we held, introducing them to high-level officials in NYC government who could explain how various parts of the justice system worked.

The International Women's Health Coalition had a very different goal: to promote and protect women's and girls' reproductive and sexual health and rights. Our strategy focused in inserting a gender perspective into international policies and agreements, either directly through our own staff's involvement with global entities such as the World Health Organization or, on a country level, through funding and technical assistance to groups trying to change national and regional policy.

Communications developed and provided written and audiovisual "tools" to these groups (case studies of successful programs, how-to manuals, etc.), as well as policy papers, disseminating them widely through our website, and, when possible, publishing in peer-review journals.

We also engaged aggressively with the media, partly in order to embarrass the Bush administration for its failure to support the reproductive rights and needs of women globally. This included the development of Bush and Congress Watch fact sheets detailing the actions and appointments of this Administration that held back progress on women's reproductive rights both domestically and internationally.

Because IWHC also cared about involving the next generation of leadership, we too brought together potential leaders doing cutting-edge work from around the world to encourage dialogue and generate momentum for change. Communications sometimes published the results of those dialogues.

#### CENTER FOR REPRODUCTIVE RIGHTS: KEY QUESTIONS

In order to develop effective Communications strategies, we must first ask questions like these:

Is our goal to increase our visibility or is it to change how people think about the Center? If it is to become better known, for what and by whom?

What is different about the Center now as compared to earlier in its history? What do we want people to understand about how we've changed?

Is our goal to make people understand reproductive rights as human rights?

What is unique about our organization that we want people to know? What people?

Do we want to be known as a cutting edge organization that generates innovative ideas, i.e. a think tank for litigation and jurisprudence?

Do we have a special role to play to encourage thinking about the proper role of the courts in protecting reproductive rights?

#### CENTER FOR REPRODUCTIVE RIGHTS—STRATEGIC PLANNING WORKSHOP, NOVEMBER 10, 2003

##### AGENDA

##### Overview

1. Introductions, agenda for workshop, strategic planning overview, rules, and roles [9:00-9:30].

2. Agree on a planning perspective [9:30-9:45]:

What can we accomplish in this political and economic environment?

What are appropriate strategic planning horizons for the Center and our issues? e.g. Next 1-2 years; 3-5 years; 5 years plus.

How do we combine strategic cost reduction and strategic planning?

Identify the Issues Raised During the Strategic Planning Interviews and Staff Workshops [9:45-10:15].

##### Focus the Work

4. International Legal Program: How can we begin to focus our International Program? [10:15-11:30]:

What have we learned in pursuing our 4 key strategies?

Accomplishments and outcomes.

Shortcomings.

What is our Theory of Change guiding our future program activities?

How do we evaluate the effectiveness/sufficiency of existing international norms?

What does this evaluation mean for focusing our work, e.g.:

Testing international and regional enforcement mechanisms?

Timeframe?

Selecting priority countries, issues, projects?

Morning Break [11:30-11:45].

5. Domestic Legal Program: What are the opportunities and limitations in our agenda? [11:45-1:00]

What is the future of traditional abortion jurisprudence?

How is our defensive work moving the legal norms forward?

What is the importance of our continuing litigation work in other areas?

Who else does this work and what gives the Center a competitive advantage?

What is a more systematic approach to strengthening the abortion case?

What would it mean for CRR?

Which issues, e.g. minors and equal protection?

Who else do we bring to the table?

Lunch [1:00-2:00].

##### Coordination Across Programs

6. A Global Perspective: How can we better coordinate our International and Domestic programs? [2-2:45]

What are the implications for the U.S. as we advocate for international norms?

Why don't we treat the U.S. as a country in the world of nations?

Would the distinct programs have more commonality and synergy if the International Program focused on legal and Human Rights enforcements?

How will this coordination change/enhance our domestic and international agendas?

7. Communications: What issues should we consider as we make Communications a more substantive part of the work we do? [2:45-3:30]

How should we design a communications program to influence/shape the legal landscape around reproductive rights?

How should broader communications strategy integrate our litigation, legislative, research, and advocacy work?

How can we shape and frame our messages differently? More aggressively? With more resonance to more constituents?

What would a multi-year program look like?

Afternoon Break [3:30-3:45]

Leadership

8. Leadership: How can the Center use its expertise to exert more leadership? Distinguish ourselves? Become more collaborative? [3:45-4:45]

What do we mean by "leadership" and how do we better/more effectively communicate our leadership role and position ourselves as leaders?

Can we set the broader agenda for the Reproductive Rights (RR) movement?

What will it take to incorporate RR work into a broader Human Rights agenda?

What can we learn and apply from other serious disciplines?

What does it mean to "stay on the cutting edge"?

How do we engage the broader public interest bar?

Next 3-5 years

Wrap-Up and Next Steps [4:45-5:15]

Cocktail Reception [5:15-6:15]

#### PROGRAM STRATEGIES AND ACCOMPLISHMENTS

(The following program descriptions focus on our core legal program. We have not included descriptions of our state and federal programs as well as our ongoing counsel to providers and patients.)

**Domestic Legal Program.** Our core strategy domestically is the use of high-impact litigation to secure the highest constitutional protections for women's reproductive rights. Our domestic staff attorneys are among the most senior and experienced reproductive rights litigators in the country. With 21 cases in 13 states—on issues ranging from abortion bans to funding restrictions to forced parental involvement laws—we have the largest and most diverse docket of any pro-choice organization in the United States.

The Center has won two landmark cases before the United States Supreme Court: *Stenberg v. Carhart* (striking down Nebraska's so-called "partial-birth abortion" ban as an unconstitutional violation of *Roe v. Wade*) and *Ferguson v. City of Charleston* (affirming the right to confidential medical care and informed consent by striking down a drug-testing scheme targeting poor women of color). In addition, we have:

Secured and restored Medicaid funds for low-income women seeking abortions, with victories in 14 states;

Successfully fought "partial birth abortion" bans and other access restrictions, with victories in 16 states; and

Challenged parental consent and notification laws, with victories in 5 states.

**International Legal Program.** The Center's international program works to establish reproductive rights as human rights by using international law and legal mechanisms to advance legal norms and secure women's access to quality reproductive health care

globally. We are the world's only organization of international human rights lawyers that focus exclusively and extensively on reproductive rights. Nearly all of our international legal advisors come from the regions we cover; all have honed their skills at top law schools, legal organizations and national-level NGO's before joining the Center. At the heart of our international work is a commitment to building a global network for reproductive rights legal advocacy by building the capacity of NGO's to use international human rights laws and mechanisms to advance reproductive rights.

The Center's international program implements four key strategies:

Researching and reporting on national laws, policies and judicial decisions;

Advocating in international and regional human rights fora;

Documenting reproductive rights violations in fact-finding reports; and

Training NGO's and lawyers through legal fellowships and visiting attorney programs, workshops, published and online resources and other technical assistance.

Key accomplishments under these strategies include:

Conceptualizing and publishing the Women of the World (WOW) series. Non-governmental organizations must be able to identify national and regional legal obstacles to furthering reproductive rights in order to craft effective advocacy strategies for removing them. No comprehensive listing of laws and policies existed, however, until the Center launched the WOW series in 1996. Researched and written with partner NGOs, these regional reports document the laws and policies of 50 nations. They cover a range of issues, including: health, abortion, population and family planning, contraception, safe motherhood and women's legal status. To date, we have completed four regional reports: Anglophone Africa, Latin America and the Caribbean, Francophone Africa, and East Central Europe.

**Publishing Bodies On Trial**, which documents a significant gap between reproductive rights law and judicial interpretation in five Latin American countries. The Center's 150-page report serves as a resource not only in Latin America and the Caribbean but in other regions where advocates are evaluating potential litigation strategies to advance reproductive rights.

**Filing groundbreaking legal cases** in the Inter-American human rights system and in the UN Human Rights Committee, with two successful settlements to date to ensure that Peru's government abides by international agreements and its existing reproductive rights-related laws.

**Securing favorable interpretations** of international human rights law from UN and regional human rights bodies, and documenting the increasingly progressive jurisprudence of the UN Treaty-Monitoring bodies in our 300-page report, *Bringing Rights to Bear*.

**Investigating reproductive rights violations** in over seven countries, including two reports on Chile and El Salvador that highlighted the role of criminal abortion laws in maternal mortality and two reports that generated significant public pressure to reform criminal abortion laws in Nepal and to safeguard women's rights to informed consent in Slovakia.

**Providing technical assistance and capacity** to use legal strategies to advance reproductive rights to over 100 organizations in over 45 countries, including training over 16 lawyers in reproductive rights advocacy at our New York office for periods of at least three months.

**Launching the Safe Pregnancy Project**, a series of fact-finding reports that document

laws and policies contributing to maternal mortality in select countries, and make recommendations for change. Our first report, on Mali, was released in February 2003 and presented at the landmark Amanitare Conference in South Africa in March.

**Advancing adolescents' access** to reproductive health services through reporting, fact-finding and legal advocacy. Our WOW reports specifically isolate legal and policy barriers to adolescents' reproductive and sexual health and rights. Our analysis of the Convention on the Rights of the Child is a definitive resource for advocates and key UN staff alike, as is our fact-finding report, *State of Denial*, on the inadequate legal and policy protections of adolescents' access to services and information in Zimbabwe.

**Establishing our website** as the go-to online resource for international reproductive rights legal advocacy. In the past year, advocates in over 150 countries downloaded over 250,000 Center publications.

#### THE CENTER FOR REPRODUCTIVE RIGHTS SUMMARY AND SYNTHESIS OF INTERVIEWS

In August, September, and October of 2003, Nancy Raybin and Elizabeth Lowell of Raybin Associates conducted some 18 strategic planning interviews with members of the Center's Board of Directors (10), representatives of long-term institutional funders (5), and colleagues at other organizations concerned with reproductive rights (3). (We did not discuss funding opportunities with any specificity during these conversations because these issues were being addressed in separate Development Assessment interviews by Miller/Rollins.)

We also interviewed members of the management team and other Center staff and facilitated several brainstorming sessions with Center staff of both the Domestic Program and the International Program. All of these (continuing) conversations, either face-to-face or by telephone (when geography or schedule did not permit a personal meeting), focused on creating a vision and future strategies for the Center. Raybin Associates' work intentionally did not focus on internal management and organization, as that had been the subject of fairly recent strategic planning work.

A "white paper," prepared by President Nancy Northup, was sent to each study participant prior to the interview. Some interviewees read the material, some did not, and several Trustees felt that they did not know enough to comment intelligently on the issues and questions raised in the paper. In most instances, they deferred on issues of strategy to Center staff, whom they trust to define and set the direction for the future. Board members unequivocally welcomed the Center's new Director and praised the staff's legal expertise.

The remarks below are both a synthesis and summary of what we learned in our interviews with Trustees, funders, and colleagues. There is no input here from the staff workshops. We have separated the comments made by Trustees from those made by funders and colleagues. A copy of our Interview Guideline is appended; it is important to note that some participants' lack of knowledge meant that many of our questions were not addressed.

#### MISSION AND VISION

##### *Differentiating the Center*

Most Trustees noted that what differentiates the Center is its law and legal work. They noted "expertise around Reproductive Rights (RR) and Human Rights (HR)," "brilliant, focused, sophisticated lawyers who can fight and win," and "who work on the 'cutting edge.'" One Trustee noted that it is the only organization working on the legal and

human rights aspects of RR, but most felt at a loss to speak concisely and specifically about what the Center does that makes it different from other "players" in the field. Trustees also cited international work as a unique aspect of the Center, but were unclear as to the specifics of this work.

Funders and Colleagues could, and did, give definition to the international role. They talked about the Center's role in "linking groups of people trying to advance women's issues globally," how the Center helps "to define and challenge national legal systems," and how "finely-honed the legalistic work" is. One funder declared, however, that the legalistic often comes at the expense of economic and social justice—and gave a stark example of a Somali woman.

While one funder noted that the Center is unique because of its strong commitment to RR, two others noted: "other organizations are also grappling with these issues." "The Center should place itself within the range of other groups which do similar work. . . . It is not enough to assert you are unique—you must describe why." "The Center is not unique in litigation; both Planned Parenthood and the ACLU also litigate: How are the client base and issues different and has the Center deliberately developed their expertise accordingly. . . . or has it just happened?" One colleague asked about how the Center views itself: "as a litigating organization or as a broader advocacy group?"

#### *Articulating a broad vision for the next five years*

Trustees hold the Center's staff in extremely high regard. Their level of respect and trust is extraordinary. Most Trustees would largely defer to staff in setting the vision for the future and determining the direction. Having said that, most believe that the domestic focus should still be on abortion. Several Trustees mentioned that they would also like to see work in the related areas of Emergency Contraception (EC), contraceptive equity and comprehensive sex education, including work with adolescents.

Most Trustees think that the image and reputation of the Center needs clarifying and heightening and that collaboration with other RR and HR groups would help to improve the Center's visibility as well as move the agenda(s) forward.

Funders and colleagues believe strongly that the broad vision for the next five years must be "ruthlessly prioritized." "Their approach should be outcomes-oriented. It's not good enough just to research, write and present. Engineer backwards from what they want to see happen." "I understand the causal model of theory of change; spell it out for us; define the outcome you expect. . . . not just winning decisions." Most see this as requiring more sharing of expertise. Indeed, partnering with other organizations, both domestic and international, was a strong and recurrent theme in all of their comments. Nepal and Slovakia were cited as examples, where the Center had identified local groups with which to work and had been successful. Acknowledging that the Center cannot do it all, "after the outcomes are defined, then the Center needs to determine who best to work with locally." "Greater collaboration must be a defining characteristic of the Center's future work."

In speaking about the international program, one colleague suggested that "publicly shaming a country, so that it is coerced in doing the right thing (the Amnesty International model) will not work around Reproductive Rights. If, however, the ILP saw itself as a midwife to the global choice movement, that would be a longer-term, albeit, less glamorous vision."

Funders and colleagues also envision the need for continuing emphasis on Reproduc-

tive Rights. "We must 'stay the course.'" Several commented: "the Center must continue as the legal reference point for policy implications and shaping thinking and monitoring." Most called for a more proactive stance identifying and analyzing trends—and potential backlash. "This is a real need—and one that the Center could fill. They need to tell the rest of us what's coming down the pike." Added another: "The Center needs to think through the leadership role it can play. . . . there is a gap at the national level, which the Center could fill."

They would also like to see the Center "provide new and useful information and training" and "more paper for colleagues and constituents." "We should get something every three to six months from the Center about what's happening in the field." "But, there is so much information reaching people in the RR arena that if the Center were to spend time better packaging and abbreviating materials, it would get more mileage out of its work." "Electronic newsletters are effective." Several funders proposed a serious analysis of *Roe v. Wade* soon to ascertain the roadblocks lying ahead and the best options for addressing them. None thought that *Roe v. Wade* would fall, but that it "might be left out there, hanging all by itself. . . . Then what? We need to think that through now." "What happens after PBA? If we win? If we lose? The legal win should not become the public relations loss. There must be a strategy for this."

#### *Involving and energizing constituents*

Trustees, funders and colleagues agree that shaping the Center's focus and making it more easily articulated will help constituents become more involved. "If we comprehend it ourselves and can explain it to others, we are more likely to activate people." Trustees noted: "our inability to clearly articulate makes us poor ambassadors for the cause." Trustees would also like to see a succinct list of successes, both domestic and international, with a timeline, and an explanation of the impact and practicality of these successes. A visual of what has been accomplished in RR—since the Center's founding would help to bring home the "so what factor"—"So what difference have we made?"

Funders and colleagues emphasize that consistent partnering with other groups will strengthen the Center's overall visibility, present constituents with the bigger picture and bigger numbers, thereby offering more assurance - "there's some safety in numbers." They stress that the Center should take the time now to identify who those long-term partners might be, both domestic and international, and if relationships do not now exist, begin to build them. They further cautioned that in all collaboration the "emphasis should be on the success of the work rather than the credit." "The need to be the dominant partner can sap energy and good will."

#### STRATEGY AND PROGRAM

##### *Assessing progress to date*

Most Trustees said that the Center "does program and strategy well," but they were short on specifics. Most believe that the Center "litigates well." Backing up this assertion, two Trustees cited the Center's role in the Nebraska case and its work on Partial Birth Abortion (PBA). Several others referred to its pro-active role around EC. They noted that, despite domestic "wins," the current political climate undercuts the Center's work.

One Trustee cited progress in Chile and Mexico, which could not have happened without the Center's activities. All knew that litigation around abortion was a domestic

hallmark, but most could not explain the essential components of the international programs. One did, however, single out the "spectacular WOW reports, their use at the UN and their import to other international organizations working in the RR and HR arena. Another cited the work in Nepal.

Funders and colleagues alike felt that "the Center has moved well since its founding." More familiar with the international component than the Trustees, three mentioned "fabulous" reports. . . . but "want to know what happens next." One said candidly, "I am unable to assess—it's been all over the place," but remarked that the Center is most effective bringing attention to the issues." Nearly all funders and colleagues were familiar with and spoke highly of the work in Nepal. "It demonstrated change processes, the train of intervention, the change itself and needed follow-up." And one referred passionately to the "practical, hands-on-quantifiable, usable-elsewhere, most effective work in Slovakia."

With one exception (who did not think the Center should devote itself to international work at all), funders and colleagues felt that the international program could be more effective by "working on a country by country basis." "Legislative debates are needed; they have proven useful and educational elsewhere." One argued for taking more cases internationally through the European Court of Human Rights. And, returning to the issue of collaboration, one funder said that the Center has been least effective internationally "when it goes off on its own initiatives that are not well-developed with other partners."

#### *Measuring success*

Trustees, funders and colleagues were unaware of any systematic or specific efforts to measure the Center's success. All agreed, however, that measurements and benchmarks will be important moving forward. Some said, "the hard data—what's quantifiable—is the easy part—number of cases won, number of cases lost." What's harder, but equally valid is the soft data—the qualitative—which takes note of "laws changed (although perhaps not immediately), lives improved, learnings which help the Center in other cases." "If we lost, did we educate, create a precedent?" There was strong consensus overall that as new strategies are developed, they must be evaluated against the Center's vision.

#### *Substance guiding future strategy*

Several Trustees identified the "shoring up of favorable state constitutions" as core to the domestic work ahead. They also want the Center to "identify trends." Funders and colleagues looked for a more proactive role around the intersection of needs, e.g., RR and HIV/AIDS. Again, they stressed network building (domestically and overseas), collaboration and outcome oriented strategies rather than identifying specific goals, litigation or issues per se (as requested by the interviewer). They also expressed their belief that new leadership at the Center would embrace these tactics.

#### *Domestic and International programs informing each other*

Trustees were not sure how the domestic and international programs could inform or better inform each other, but they were quite insistent that it needs to occur. They do not know the frequency of interchange between the two staffs, although they assume that there is some and that there should be more.

Funders and colleagues spoke about thinking collectively with other groups to move the agenda forward, broadening the discussion well beyond the Center staff. A greater

awareness of what others are doing nationally and internationally “can make us all more effective as we focus on what each does best.” Most talked of identifying “cross country issues,” where both domestic and international could bring experience and expertise to bear, e.g., medical abortions, access to various forms of contraception, RR and HIV/AIDS. Said one “be more clear about the connection between global and national. Look at the US impact globally.”

*Race and Ethnic Discrimination as a Program Component*

All study participants recognized that minorities and the poor are underserved in RR and HR. How this should factor in to the Center’s program development, non could specifically say.

*Domestic Program*

Expanding domestic litigation beyond abortion?

The Trustees believe that abortion is still the key issue. But many also think that the Center should “move beyond” and address linked issues. They cited EC, HIV/AIDS, work, with teens, and family planning “wherever there are legal issues (e.g., women denied prenatal care.)” “If Medicare funding changes, will there be a legal issue there? Is there a legal issue around the misinformation around abortion on the government website?”

Trustees have a deep concern that the image of the Center is “only around abortion” and believe that image must change, so that the public has a greater understanding of the overall impact on women’s lives of what the Center does. One suggested that every time the Center is litigating a case, there be a full explanation of how the case fits into the larger context.

One Trustee believes that *Roe v. Wade* could be overturned and that the Center should begin now to develop strategy. Another said, “If it is overturned, we’ll know in advance and have time. We need to keep the thought in play, but we can’t focus completely on it.” Most felt that *Roe* itself would remain intact, but several concurred that, given the current political climate, its impact could be gutted.

Only two funders commented on *Roe v. Wade*. One said, “it’s not going to be overturned, but everything else will be. Therefore, look to work at the state level.” Another stated: “We need a serious analysis of the decision and come out with an opinion whether or not to continue to defend it. There are lots of weaknesses in the legal approach to *Roe v. Wade*. If it is flawed, we need to come up with a remedy. Is the Center satisfied that it can continue to defend it? Commenting on other issues, one funder commented: “Look at the things that are winning and advancing. What is the principle that appeals and the legal strategy that can be derived and applied?” Asked one colleague: “Would the Center take up a broader rights issue, e.g., women’s access to the full array of health services and gender choice and what that means for women’s advancement in society? Who is active on college campuses and universities—there is a role here that needs to be filled.”

*Other Strategies To Make Forward Progress in the Courts*

Most Trustees felt that there was nothing to be learned from the Conservative Right “because they just play a different game.” Another, however, remarked, “We’re not vocal enough. People pay attention to the loud voices. We have to fight harder, be a little dirtier. Be graphic and show all the roadblocks.” Said yet another, “We should shine a bright light on the U.S. internal policies.”

There were no specific strategies suggested for succeeding in non-litigation areas, but

many Trustees felt that the Center should be thinking in terms of education. “Young women don’t know what they are losing.” “Abortion is a medical procedure and all medical students who enter the OB/GYN specialty should be required to learn the procedure. Medical school curricula must address this.” All agreed that collaboration is a strategy that the Center must use. Law schools, bar associations, universities, the Alan Guttmacher Institute, and the Brookings Institution were suggested as potential partners.

Funders and colleagues said: “Keep fighting.” They returned, yet again, to the issue of collaboration and while most did not identify specific partners (“other mainstream human rights groups”), they urged working together. One quite specifically said “the Center and the ACLU should work reach out together to clergy, so that there are religious voices for choice—so that we’re not called ‘barbaric, irreligious, immoral’—we need to have the ethical leaders of our society with us at press conferences.” Another noted that the “litigation messages need to be coordinated” and went on to say “litigation alone is not going to carry the day. It’s also how to position and leverage the court cases, so that the Center can do its long-term strategy. It’s very hard to think that way when you’re preparing a brief at 120 mph.”

*International Program*

*Global, Political, Health-Related Factors Driving Scope and Direction of International Work*

Most Trustees felt that they did not know enough to comment on the direction of the international work, except to say “helping NGO’s understand and implement their laws seems appropriate.” One with a deeper knowledge of the international scene remarked: “There’s a need for a catalyst in developing countries. Help the women in Eastern and Central Europe get their laws enforced and that new laws don’t violate basic human rights. The Center can be a catalyst rather than an active litigant.” Another said, “Step up the international work and link it with the domestic. The US domestic policy is affecting international programs, and we need to link with other US organizations and do advocacy, as well as testify how the US is affecting the health of women. We also need to train NGO’s in developing countries to make their concerns known.” “Do more and link more with other HR and RR groups.”

Funders and colleagues say that “one size does not fit all” and that the Center needs to do a quick assessment on the work already done and make a long-term commitment in a few key places, where they can support and transfer skills to in-country advocates, rather than coming up with an overall rationale.” “Choose litigation where it will work.” “It is more important for the ILP to choose well than it is for domestic—pick certain countries because they’re key priority areas, or long-term relationships, or because—you can leave something behind.” “Make smart political judgments.” “Collaborate with NGO’s.” Said one, “Push the expertise down and out.”

One interviewee talked at length about the need for developing contacts within the European Union because “there is no real debate in Europe on abortion and, there is funding available.” Noted one colleague, “All these factors (i.e., global, political, economic and health-related) drive the scope and spectrum of the program, but it is how an issue is seen politically, socially and culturally that makes it a flashpoint and drives the work forward. Something often becomes a symbol and that’s what you work with.

The Center needs to be able to jump on these.”

*Balancing Tensions in the Focus and Commitment of Resources*

Once again, most Trustees felt themselves unequipped to talk about this. One said, however, that the Center “should select issues such as abortion laws, violence against women, adolescent law, and a more minor role in genital mutilation, where we are better suited to be the data gatherers.” Said another “select the strategic issues, those that will command attention, linking RR and HR with rights of child/girl. The HR link is education and protection. The Center needs to bring out the whole discriminatory process against groups associated with AIDS and everyone with AIDS.”

Funders and colleagues noted that the Center cannot work at the “wholesale” (global) level, because the resources are not there. “Track and report country by country, within the context of all other international agencies working in these countries.” Several commented “it’s not an ‘either/or.’” Both the human rights approach and the comparative legal approach have merit and must work together. “One creates an opening and the other backs it up.” No one wanted to see the Center locked into mega projects, preferring “prioritized focus where you can make an impact” and staying “nimble around opportunities.”

Asked one: “Has there been a mapping of pro-Choice groups in various, parts of the world, because donors need to know who they are and how the Center can serve as a backstop?”

*ORGANIZATION AND OPERATIONS*

Most Trustees said that they really did not know enough to comment on the organization and operations. All expressed their pleasure with new Center leadership. Several voiced concern about the expense of the Washington, DC office and wondered aloud about its role and necessity. Most are concerned about Center communications. They want more and better coverage in the press. Several commented that there needs to be “rigorous media training for the main spokespeople.”

When it came to talking about the Board of Directors itself, the operative word is more.

Trustees expressed a desire for: A bigger Board; more people on the Board with money and access to money; more lawyers on the Board; more younger people (especially women) on the Board; a few more doctors; and more international representation.

They also talked about the need for substantive Board education, more effective and efficient Board Meetings and training in their fund-raising role. Most recognized that they could indeed play a much more active role for the Center and be of greater assistance with education and training than they have been in the past.

Funders and colleagues could not comment on the Board, but they spoke highly of staff. One said, “They are a precious resource with skill and focus and ‘on the attack.’” Another said, “Given the importance of collaboration in moving forward, it is the bridging skills that may need strengthening. And, you may need some on-the-ground communications/community people.” Yet another spoke of the need for “better coverage in the international press.” Another suggested that there is “a role for a broader education program and perhaps putting more resources into advocacy, public education, media.”

One colleague did suggest that, in terms of structure, the Center needs a working i.e., “giving and getting,” Board and another entity composed of “non-traditional allies—Fortune 100 CEO’s, heads of universities,

heads of major religious denominations" to give heft and an ethical imprimatur to its work.

#### FINANCIAL IMPLICATIONS

##### *Money for new strategies*

Trustees, funders and colleagues alike have no sense of how much money will be needed to finance new strategies. Several Trustees and one funder spoke of redirecting more, if not all, of the unrestricted money into the domestic program. Said one Trustee: "The ratio should be 6:1 Domestic to International. It's where we need to focus our efforts." Most Trustees suspect that new strategies will have leaner resources with which to be implemented and therefore, the strategies will have to be "very focused."

##### *Source(s) of money*

All study participants concur that the source of future monies will need to be individuals. Funders said "it's a tough time for us. Some have left the population field; some have been affected by the stock market. (We) don't see much new money and the existing money is shrinking." One funder pointed to a great deal of government funding available in Europe, should the Center choose to involve itself there.

##### *Building capacity*

Trustees worry about the age of individual donors. "This is an area largely funded by donors over 60 years old. Where are the people in their 30's and 40's?" They see a critical role for the Center's Board in attracting the next generation of donors who will keep the issues alive and fund them.

One colleague noted that "the Center is way ahead of others in capacity building," and without offering any suggestions, is confident that funding will be found. Funders, colleagues and Trustees expressed confidence and hope in the Center's new leadership and other staff (specifically, Development, Domestic and International Program leaders) to articulate the needs and to identify and solicit the funding necessary to carry the Center forward.

#### APPENDIX: CRAFTING A STRATEGY FOR THE NEXT FIVE YEARS—INTERVIEW GUIDE

##### *Background*

Describe current task, the link to prior strategic planning efforts, and coordination with the development audit

Clarify terms, language, jargon  
Understand Interviewee's:—Experience and knowledge in this or related fields; and experience with and knowledge about the Center.

##### *Reactions to White Paper*

##### *Mission and vision*

What does the Center do that differentiates it from other organizations and individuals?

What have been the Center's emphases in the "mission and values" statement in the last 5 years?

How would you articulate a broad vision for the next 5 years? How will this affect: Scope of activities/projects/docket; size; "Competitive advantage; and Image/reputation, etc.?"

How will the Center involve and energize both internal and external constituents, in a new and/or expanded vision?

##### *Strategy and Program*

##### *Overall*

How would you assess the Center's progress to date?

What does the Center do well? Less well? Why?

What have been the essential components of the domestic and international programs?

Where/when has the Center been most effective? Least effective?

Where/when should the Center be more proactive?

How has the Center measured past success? How should the Center think about and measure future success?

What should be the substance guiding the future strategy?

Specific goals we should accomplish? (Identify)

Projects that we should undertake? (Identify)

Substantive issues we should address that we are not addressing now? (Identify)

Litigation we should pursue proactively. (Identify)

Other. (Identify).

How can the international work be more informed by the domestic work, and vice versa?

How should the Center's concern about race and ethnic discrimination factor into program development?

Specific (at a level of detail appropriate for the interviewee)

Should the Center expand the domestic litigation agenda beyond its primary focus on abortion?

Do clients have other issues that we should understand and pursue? If so, what are they?

While we have a broad set of abortion cases on our docket, do we run the risk of running out of interesting/effective strategies or losing our funders' interest and support?

Do we need to develop a strategy now if *Roe v. Wade* is overturned?

Are there more important/different issues that we are missing because of our focus on abortion? Does this matter?

What other strategies can the Center pursue to make forward progress in the courts?

What are the programmatic components of a more comprehensive strategy?

What can be learned from the Conservative Right as they pursue their multi-faceted strategies to change jurisprudence?

How can the Center succeed in non-litigation areas, e.g., education and training?

With whom can the Center collaborate, e.g., similar legal organizations, advocacy and policybased reproductive rights organizations, law schools, etc.?

What are the global political, economic, and health-related factors that drive the scope and direction of the international work?

How all of the different strategies required in different parts of the world recognizing that "one size does not fit all?"

Given a rapidly changing world, where should the Center focus its work to be most effective and demonstrate results?

With whom should the Center collaborate?

How should the international program balance tensions in the focus and commitment of resources, e.g.,

"Promoting the application of international human rights standards to reproductive rights issues at global and national levels (human rights approach) vs. providing expertise on developing national-level legislation/policies (comparative legal approach)?"

"Focusing on certain core issues (abortion, quality of care, safe pregnancy, etc.) vs. consistent strategies/activities (litigation, documenting violations, legislative reform)?"

"Wholesale ("global") vs. retail (national-level) impact?"

"Locking ourselves into mega-projects vs. nimble and responsive to sudden opportunities."

##### *Organization and operations*

What are the talents and resources—managerial, legal, programmatic, policy, political, communication, etc.—that we need to pursue different strategies?

How should the Center shape the organization to support/implement new strategies and take advantage of new staff and Board leadership?

What additional structures and systems are needed to support the Center as it grows and evolves?

What are the talents, size, and mix of staff and Board we need to successfully implement the new strategic plan? What does the transition look like?

##### *Financial implications*

(Not intended to be redundant with Development Audit questions.)

How much money is needed to finance the new strategies?

Could the Center redirect current unrestricted money to more effective new strategies?

What is the financial plan to support the new strategy?

Where will the money come from to fund our new vision/strategy/plan?

Who are the likely donors?

What is the timing?

What are the appropriate phases?

What might we be doing now to build capacity for the future?

#### TABLE OF ABBREVIATIONS AND GLOSSARY

##### *General terms*

Comparative Law—The study of legal standards from several countries or systems.

Customary Law, Customary International Norm—When there is a very consistent pattern among nations on a particular normative issue it is called a customary international law or customary international norm and it attains the force of international law—for example, that countries should outlaw executing mentally incompetent people or prohibit official torture.

Fact-finding—A research methodology employed to expose human rights violations, seek accountability from responsible parties, identify and secure a remedy for those whose rights have been violated, and help develop an effective advocacy strategy.

Jurisprudence—Law developed by judicial or quasi judicial bodies.

NGO—Non-governmental organization.

Norms (legal norms, international norms, hard norms, soft norms)—Legal standards, such as constitutional provisions or legislation. Hard norms are binding treaty provisions. Soft norms are the many interpretative and non-binding statements, for example by Treaty Monitoring Bodies; that contribute to an understanding of reproductive rights.

##### *UN and regional instruments and bodies*

African Charter on the Rights and Welfare of the Child—Regional human rights treaty protecting the rights of children in Africa.

Beijing Conference—1995 United Nations Fourth World Conference on Women: Global conference on women's human rights.

Beijing Platform for Action—Beijing Declaration and Platform for Action, United Nations Fourth World Conference on Women: Consensus document adopted by nations participating in the Beijing Conference.

Cairo Programme—Programme of Action of the United Nations International Conference on Population and Development: Consensus document adopted by nations participating in the International Conference on Population and Development.

CEDAW—Convention on the Elimination of All Forms of Discrimination against Women: International treaty codifying states' duties to eliminate discrimination against women.

CEDAW Committee—Committee on the Elimination of Discrimination against Women: UN body charged with monitoring states' implementation of CEDAW.

Children's Rights Convention (CRR)—Convention on the Rights of the Child: International treaty upholding the human rights of children.

Convention against Racial Discrimination—International Convention on the

Elimination of All Forms of Racial Discrimination: International treaty upholding individuals' human rights to be free of discrimination on the basis of race.

Economic, Social and Cultural Rights Committee—Treaty Monitoring Body that monitors state compliance with the Economic, Social and Cultural Rights Covenant.

European Convention for the Protection of Human Rights and Fundamental Freedoms—European treaty upholding the rights of the Universal Human Rights Declaration.

IACHR—Inter-American Commission on Human Rights: International body upholding the American Convention on Human Rights.

ICCPR—International Covenant on Civil and Political Rights: International treaty protecting individuals' civil and political human rights.

ICESCR—International Covenant on Economic, Social and Cultural Rights: International treaty protecting individuals' economic, social and cultural human rights.

ICPD Programme of Action—Programme of Action of the International Conference on Population and Development: Consensus document adopted by nations participating in the International Conference on Population and Development.

Treaty Monitoring Bodies (TMBs)—United Nations Treaty Monitoring Bodies refer to the six committees which monitor governmental compliance with the major UN human rights treaties. While the TMBs are not judicial bodies; they influence governments by issuing specific observations about states' progress and compliance with human rights obligations. Four committees also hear individual complaints.

Universal Declaration—Universal Declaration of Human Rights: UN human rights instrument at the foundation of modern international human rights law.

THE CENTER FOR REPRODUCTIVE RIGHTS BOARD OF DIRECTORS—PRIMARY AFFILIATION INFORMATION

#### *Executive Committee Members*

Nicki Nichols Gamble (Vice Chair), Former President and CEO, Planned Parenthood of Massachusetts

Francis W. Hatch, III (Vice Chair), Chairman, The John Merck Fund

Betsy K. Karel (Chair), Board Chair, Trellis Fund

Nancy J. Northup (Ex-Officio 1/13/03), President, Center for Reproductive Rights

#### *General Members*

Laurie G. Campbell (Treasurer and Chair of Finance Committee)

Jane E. Hodgson, MD, MS, FACOG, Founding Fellow, America College of Obstetricians and Gynecologists

Sylvia A. Law, Elizabeth K Dollard Professor of Law, Medicine and Psychiatry, New York University Law School

Marcie J. Musser, Vice President and Treasurer of the Board, General Service Foundation

Nafis Sadik, MD, Special Envoy for United Nations, Secretary General for HIV/AIDS in Asia and Pacific

Sheldon J. Segal, PhD, MD, FRCOG (Secretary), Distinguished Scientist, The Population Council

Marshall M. Weinberg, Board Member, American Jewish Joint Distribution Committee

## DELUXE HOTEL

### HON. WILLIAM J. JANKLOW

OF SOUTH DAKOTA

IN THE HOUSE OF REPRESENTATIVES

*Monday, December 8, 2003*

Mr. JANKLOW. Mr. Speaker, on August 12, 2003, the Deluxe Hotel, a small business in Woonsocket, South Dakota, commemorated 100 years of family ownership and operation of the hotel.

The hotel itself is an original structure built in 1883—two months before there was a town of Woonsocket and six years before South Dakota became a state—by railroad supervisor, Charles H. Prior and his wife. On August 12, 1903, Joseph Lane and Margaret Kirby Brown bought the hotel for \$2,250 in cash plus a Springfield, South Dakota hotel valued at \$1,500.

Currently, J.L. and Margaret Brown's granddaughter—Delores Brown Bissel—owns and operates the hotel. She was born in the hotel in 1926, and has been involved in its operation ever since. The descendants of Joseph Lane and Margaret Kirby Brown gathered in Woonsocket on August 2nd to commemorate 100 years of family and business history.

Family-owned businesses, such as the Deluxe Hotel, are the backbone of many small, rural South Dakota communities. I congratulate the Brown Family for this remarkable milestone, and hope that this longstanding contribution to the Woonsocket community and surrounding area will continue far into the 21st century.

#### TRIBUTE TO THE FANNIE E. RIPPPEL FOUNDATION

### HON. RODNEY P. FRELINGHUYSEN

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

*Monday, December 8, 2003*

Mr. FRELINGHUYSEN. Mr. Speaker, I rise today to honor the Fannie E. Rippel Foundation, a New Jersey philanthropic organization which is highly esteemed nationally and especially in the Northeast, and that will celebrate fifty years of grant making on December 11, 2003.

During the past five decades the Fannie E. Rippel Foundation has awarded grants amounting to more than \$113 million and has demonstrated its continuing commitment to improving health care in our state and nation.

The Rippel Foundation, established under the will of Julius S. Rippel, provides funds to aid the aged and women of all ages, to aid hospitals and to support institutions involved in heart disease or cancer treatment and research.

In the past, for example, the Foundation has provided and furnished funds for the construction of or to aid in the erection of hospitals and provided funds for their equipment as well as hospital maintenance.

The Foundation has also supported humanitarian programs, emphasizing ethical issues in medicine, pastoral education, programs in rural health, better case and disease management. In particular, the Foundation has supported most generously women's health programs for elderly women with chronic conditions, academic and educational programs for

women, and programs that promote better advocacy of women's health. The Foundation also stresses what is known as "humanistic medicine," and advances the importance of belief, support, communications and relationships in the healing process.

Mr. Speaker, there is no doubt that each and every dollar the Fannie E. Rippel Foundation gives to a hospital or a medical research facility is much appreciated. And, we can all be grateful for the Foundation's efforts because of its dedication to helping under-served rural and urban populations, and its interest in changing the wellness behavior of people through research and preventive care.

Throughout the years, the Fannie E. Rippel Foundation has earned an incredibly positive reputation for the many generous acts of its Board of Trustees, Officers and Staff.

Mr. Speaker, I know that you join me and my colleagues in recognizing and honoring the Fannie E. Rippel Foundation for its outstanding services to humankind for fifty years, and I ask that you and all our colleagues extend sincere best wishes for a successful Rippel Foundation Reception on December 11, 2003.

#### INTRODUCING THE WAR PROFITEERING PREVENTION ACT OF 2003

### HON. RAHM EMANUEL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Monday, December 8, 2003*

Mr. EMANUEL. Mr. Speaker, I am proud to rise with Representatives DEFAZIO, and DELAURO as original cosponsors to introduce the War Profiteering Prevention Act of 2003. This is an identical companion to legislation introduced by Senators LEAHY, CLINTON, DURBIN and FEINSTEIN.

This bill closely resembles an amendment that I offered during consideration of the Iraq reconstruction bill. Unfortunately, the Rules Committee declined to allow debate on my amendment, which would have established tough criminal penalties for individuals who defraud the government involving contracts related to the war or reconstruction of Iraq.

As the government begins to spend the roughly \$20 billion appropriated for rebuilding Iraq, it is essential that we protect these funds from waste, fraud and abuse. To that end, the War Profiteering Prevention Act establishes a maximum criminal penalty of 20 years in prison and fines up to \$1 million for war profiteers and cheats who exploit the postwar relief efforts.

Unlike most nations where we send foreign aid, there is no functioning government in Iraq. While I believe the Coalition Provisional Authority is doing the best it can, it simply does not maintain the manpower necessary to adequately monitor reconstruction funds. Regrettably, a handful of politically connected corporations, including some with scandal-ridden business records, are taking advantage of this situation.

While anti-fraud laws protect against wasteful spending here at home, there are no such laws prohibiting war profiteering overseas. In response, my bill criminalizes overcharging taxpayers for any good or service with the specific intent to excessively profit from reconstruction. The legislation also prohibits fraud