

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. EMANUEL) is recognized for 5 minutes.

(Mr. EMANUEL addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania (Mr. MURPHY) is recognized for 5 minutes.

(Mr. MURPHY addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Indiana (Mr. BURTON) is recognized for 5 minutes.

(Mr. BURTON of Indiana addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. HENSARLING) is recognized for 5 minutes.

(Mr. HENSARLING addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Kansas (Mr. MORAN) is recognized for 5 minutes.

(Mr. MORAN of Kansas addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Maryland (Mr. WYNN) is recognized for 5 minutes.

(Mr. WYNN addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mrs. MALONEY) is recognized for 5 minutes.

(Mrs. MALONEY addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Michigan (Mr. CONYERS) is recognized for 5 minutes.

(Mr. CONYERS addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio (Mr. RYAN) is recognized for 5 minutes.

(Mr. RYAN of Ohio addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gen-

tleman from California (Mr. SCHIFF) is recognized for 5 minutes.

(Mr. SCHIFF addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio (Ms. KAPTUR) is recognized for 5 minutes.

(Ms. KAPTUR addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from the District of Columbia (Ms. NORTON) is recognized for 5 minutes.

(Ms. NORTON addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Ms. MILLENDER-MCDONALD) is recognized for 5 minutes.

(Ms. MILLENDER-MCDONALD addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

#### SPECIAL ORDER VACATED

The SPEAKER pro tempore. Without objection, the 5-minute Special Order of the gentleman from New Jersey (Mr. PALLONE) is vacated.

There was no objection.

#### THE CASE FOR LIFE

The SPEAKER pro tempore. Under the Speaker's announced policy of January 7, 2003, the gentleman from Indiana (Mr. PENCE) is recognized for 60 minutes as the designee of the majority leader.

Mr. PENCE. Mr. Speaker, I rise today in the discharge of an idea that began for me in September of 2003; and now today it has its fourth manifestation, a series of remarks on the floor of this Congress that I simply call "The Case for Life."

My inspiration for today's discussion, which is entitled "The Case for Life: Abortion and the Problem of Pain," was inspired not by a contemporary in this Congress, though I just came from a meeting with really the intellectual and moral father of the pro-life movement in this Congress, the gentleman from Illinois (Mr. HYDE), chairman of the Committee on International Relations, who simply referred to my humble efforts on the floor and those of colleagues who will join me as, in his words, "a great idea." But it was not from the gentleman from Illinois (Mr. HYDE) that I drew my inspiration for these series, but rather from another distinguished gentleman who served in this body from the years 1827 to his death on the House floor in the year

1848. That was the late Congressman and the former President, John Quincy Adams, who history recorded after he served as President of the United States for a term in the early 1820s, he actually felt compelled to return to Washington, D.C. from his home State of Massachusetts as a member of the House of Representatives, truly an extraordinary exercise in public service.

One can scarcely imagine a former President in the modern era becoming a Member of Congress after he served in the Oval Office. But John Quincy Adams was not an ordinary man. His father before him, John Adams, was our second President. John Quincy Adams was considered one of the great moral and intellectual minds of the 19th century and is considered so to this day. But he came to Capitol Hill, Mr. Speaker, not simply, as some get wrongly accused, to occupy a chair. He came here on a mission, a mission encapsulated in a book I am reading now entitled "Arguing About Slavery." Because when John Quincy Adams came to the Congress of the United States he did so as a Northerner, a former President himself, the son of one of the founders of this country, and a man who believed that the scourge of slavery was a blight on this Nation and threatened its greatness and threatened its destiny.

So as history records, Congressman John Quincy Adams came often not to this floor, but to the floor of the Congress just down the hallway, every few weeks for the nearly 20 years he served in this body to speak about one issue, and that was the issue of the abolition of slavery.

Now, one would argue that having died in 1848, John Quincy Adams could scarcely point to any accomplishment in his life ending slavery; but there, Mr. Speaker, you would be wrong. Because it would be none other than a lanky, gangly freshman member of Congress that arrived on Capitol Hill the year that John Quincy Adams would die who would be sitting on the back row in what is now Statuary Hall in the House of Representatives and would listen to the great man speak, make his powerful moral orations against slavery. And that young Congressman, known to his friends as Abe Lincoln, would be deeply moved.

□ 1430

History would record that young Congressman would go back to Illinois and run for the United States Senate and eventually become our President and eventually sign the Emancipation Proclamation. I am confident that once we reach the other side of heaven, as opposed to this side of heaven, we will know to a certainty that that Abe Lincoln was inspired by the words and the example of that humble former President and Congressman.

After I learned that story, I thought of my own time. I thought of the short period of time that I would have here to serve, and I thought about my passion about the sanctity of human life,

and I thought about the enormity of this issue and the fact that apart from a few important legislative advances, despite the fact that this Chamber could be considered the heart of the most powerful Nation on Earth, that actually the subject of abortion comes up here very infrequently, even though the statistics are startling about the impact that abortion has and has had on our society over the last 30 years.

Think of it, Mr. Speaker. Each year more than 1 million U.S. teenagers become pregnant, and the teen pregnancy rate in the last 30 years has become truly alarming. With regard to those who elect to end that pregnancy out of wedlock in abortion, 80 percent are single, 60 percent are white, 35 percent are black. Eighty-two percent of women having abortions are among that single or separated category, but the most startling statistic to me, and I think the reason why, Mr. Speaker, it begs that we grapple with this issue on this floor from time to time, in the same way that John Quincy Adams, however inconveniently, grappled publicly on the floor of the Congress about slavery, is that according to Planned Parenthood's National Center for Health Statistics, nearly half of American women, 43 percent of American women, will have an abortion sometime during their life.

Let me say again. This procedure, validated in the case of *Roe v. Wade* in 1973, has now given rise to a procedure that literally impacts the lives not only of the unborn, but of nearly half of childbearing women in the United States of America. So it is in that spirit that back in September I launched this series on the case for life and today come to the floor on the subject of abortion and the problem of pain.

I mentioned earlier that there have been some recent and important legislative achievements. This Republican majority in Congress has advanced not one, but two historic pieces of legislation that advance the principles of the sanctity of human life. To a lesser degree is the Unborn Victims of Violence Act. I helped to draft that bill as a member of the Committee on the Judiciary, and while it is not a prolife piece of legislation, it does, on the Federal level, certify what two-thirds of the States of this Nation have certified long ago is that when there is violence against a pregnant mother that results in the loss of the unborn child's life, that there are two victims, and while I would say that it is not a prolife piece of legislation, the principle about the sanctity of unborn human life is nonetheless there, and it is important.

I commend my colleague, the gentlewoman from Pennsylvania (Ms. HART), who almost single-handedly muscled this legislation to the floor of the Congress and saw to its passage and signature earlier this year.

Obviously, the most significant piece of legislation and, in fact, the very first restriction on the abortion procedure since *Roe v. Wade* also passed in

this Congress and is now the subject of not one, but three separate pieces of litigation in the Federal courts, and it is in that context that abortion and the problem of pain, I think, justifiably comes before us today.

Congress, as I am sure my colleagues are aware, Mr. Speaker, actually managed earlier this year in overwhelming numbers to pass the Partial Birth Abortion Ban Act. For those not aware of this procedure, partial birth abortion essentially involves, as hard as it is to say, the breach delivery of a child post-20 weeks. Virtually in every case of a partial birth abortion, the child could be delivered whole and could survive. It is certainly at the stage of viability.

But in the partial birth abortion, the child is delivered partially, and then a suction tube is, I will say it gently, inserted in the back of the skull. The contents of the skull are removed, and the remains of the child are taken from the mother's womb. It is a horrific procedure.

It was one of the joys of my life on November 5, 2003, to sit on about the third row as the President of the United States over near the White House in the Reagan Building signed that ban of that horrific procedure. As the President said, Our Nation owes its children a different and better welcome. He went on to say, The bill I am about to sign protecting the innocent, new life from this practice reflects the passion and humanity of America. And so it did. It affirmed our basic standard of humanity which can be summarized in the duty that the strong have to protect the weak.

The American people obviously overwhelmingly support this legislation. One survey after another has shown enormous support. A recent Gallup poll showed 68 percent of Americans believe that partial birth abortion should be illegal. The same poll showed that even 50 percent of those who considered themselves to be prochoice on abortion supported the ban of this horrific procedure, and here is a compelling number for my colleagues. Fifty-seven percent of obstetricians and gynecologists want partial birth abortion banned as well, according to a survey in *Medical Economics Magazine*.

It seems, as we like to say back in Indiana, Mr. Speaker, to be a no-brainer procedure like this has no place in a civilized society, and Congress, in bipartisan fashion, agreed. Members from across the political spectrum after literally 8 years of wrangling on Capitol Hill, 8 years of expert testimony, 8 years of public debate, finally came to broad agreement. Members across the aisle, as I mentioned, many colleagues in the Democrat minority in the House and the Senate, strongly supported this legislation. Senators, from conservative Republican RICK SANTORUM to Senator TOM DASCHLE, approved this measure in a 64-to-34 vote, and House Members in this Chamber, the distinguished gentleman from Michigan (Mr.

DINGELL) and my friend the gentleman from Rhode Island (Mr. KENNEDY), joined conservatives like me in approving the ban 281 to 142.

Congress made specific findings in this legislation as well, that partial birth abortion was essentially an inhumane procedure that is, and this was a finding of the Congress that is important in this moment, Mr. Speaker, because it is being litigated in Federal courts around the country at this very moment, that the Congress found that one expert after another, and even in agreement with the American Medical Association that supports abortion rights in America, found that this procedure is never medically necessary. Let me say again. That after nearly 8 years of debate, after examination of experts, including the concerted opinion of the American Medical Association, it was concluded that this procedure, known as partial birth abortion by the AMA, as well as, of course, by the overwhelming majorities of this Congress, was found to never be medically necessary, and that is a critical, critical conclusion by this Congress.

Partial birth abortion, it was concluded almost unilaterally or uniformly by medical and legal and ethical experts to be inconsistent with the obligations of the law. So we find ourselves nevertheless in litigation in America, and as a former trial attorney, I can tell my colleagues, Mr. Speaker, I would never stand between any American and the courthouse door. We all have the right to seek redress in the courts, and some are doing just that.

In fact, this law, the Partial Birth Abortion Ban Act, signed into law last November is being challenged not in one, but in three separate cases in Federal courts around the country: in New York City before Judge Richard C. Casey; in Lincoln, Nebraska, before Judge Richard Kopf; and in San Francisco, California, before the honorable Judge Phyllis J. Hamilton.

In two out of three of those cases, though, interestingly, Mr. Speaker, the judges on the bench have ruled that an issue that we did consider in this Congress, but an issue that has not gotten a great deal of public discussion, was relevant to the deliberations on the constitutionality of the ban, and that is, as I have said in the title of this discussion today, the problem of pain. It is the problem of pain that is literally being considered in two out of three of the Federal cases, and it may ultimately cause some pain in the hearts of Americans who may be looking in on our deliberations or may be reading accounts of this, but it seems to me, as we try and come to terms with the cost of abortion in America, we do well to listen to the experts about this issue of pain, and I want to speak gently and respectfully about it today.

The truth is, in the New York City case, the National Abortion Federation never wanted Dr. Kanwaljeet Anand to testify in the Partial Birth Abortion

Ban Act trials, but he did, and no wonder. This Oxford- and Harvard-trained neonatal pediatrician had some jarring testimony about the subject of fetal pain, and it is truly made more astonishing when one considers the fact that Dr. Anand is not a stereotypic Bible-thumping prolifer.

In fact, interestingly, Mr. Speaker, Dr. Anand is not prolife at all. He is, in fact, a strong advocate of the right to an abortion. A native of India, he just does not meet the stereotype, not just the head wrap, the neat beard, the Rollie Fingers-style mustache, but he views abortion as an unalienable right for women in America. He gave his testimony in the New York court, even more credibility as one of the leading experts on fetal pain in America, if not the world.

Dr. Anand took the stand in the morning recently and testified for hours, excerpts of which I will read into the RECORD today. He testified for hours on a simple principle that unborn children can, according to his research, actually feel pain more vividly than recently born children or adults. It is an astonishing and truly chilling assertion that this expert came to.

Let me go back, as my old trial lawyer days taught me to do, and let me establish the credibility of the witness, if I can. Dr. Kanwaljeet S. Anand is a pediatrician specializing in the care of critically ill newborns and children. For more than 20 years, according to trial testimony, he has conducted intensive research on the study and the development of pain and stress in human newborns and fetuses.

I said before once again, and I repeat it for the sake of its significance and its addition to the credibility of his testimony, that Dr. Anand personally believes that a woman has an unalienable right to an abortion, which makes him solidly and unqualifiedly prochoice.

He received his medical degree from Mahatma Gandhi Memorial Medical College in Indore, India. After postdoctoral training in pediatrics, he was awarded a Rhodes scholarship to study at the University of Oxford. He received a Ph.D. from the Faculty of Medicine for research he performed on surgical pain and stress in premature and full-term newborns.

Following additional postdoctoral training at Oxford, Dr. Anand completed a fellowship in pediatric critical care at Massachusetts General Hospital.

He has numerous academic appointments, University of Oxford, Harvard Medical School, Emory University School of Medicine. He has authored or coauthored more than 200 articles and is currently professor of pediatrics at Arkansas University for Medical Science. Not a lightweight, and, virtually as we used to say in the law business, an unimpeachable witness on the subject of fetal stress and fetal pain.

□ 1445

Now, before I go into precisely what Dr. Anand had to say, it is important to point out that the damaging nature of this information coming in not only to the courtroom in New York, and not only has been ruled in order in Nebraska, Mr. Speaker, but also into the public domain was certainly not lost on the abortion rights activists who brought the challenge to the Partial-Birth Abortion Ban Act in both of those cases.

Literally, attorneys for the National Abortion Federation used virtually every legal tactic at their disposal to prevent Dr. Anand's testimony from being permitted in the court. NAF attorneys attempted time and time again to block Dr. Anand's testimony. And then once he was allowed on the stand, the plaintiffs' attorneys cross-examined him redundantly, in a style that actually drew the judge's rebuke. The judge actually asked one of the National Abortion Federation lawyers, he was being so pedantic and repetitive, and in some ways abusive of Dr. Anand on the stand, Judge Casey asked: "Is this a new school of cross-examination, where you make a statement and finish every statement with, is that correct?" Later, the judge actually drilled a plaintiff's lawyer for attempting to make one of their witnesses testify about events before they were hired.

It just was extraordinary the efforts to which the opponents of the Partial-Birth Abortion Ban Act went to prevent Dr. Anand's testimony from being allowed in. And for all the world, I do not think, Mr. Speaker, it was so much about what was happening in that courtroom as it was what was happening out here in the debate, the debate for winning the hearts and minds of 270, 280 million Americans who wrestle with this issue and are deeply divided. And not only are we divided just as a country, but most of even my very best friends and family members, who profess to be pro-choice, do so with a great deal of ambiguity about it, seeing abortion as a necessary evil in society, but an evil nonetheless.

I really believe, as I denominated this "case for life" installment, I believe that pain is a problem for the advocates of abortion in America, not just those who would oppose partial-birth abortion. Abortion and the problem of pain can be summarized in this idea, and forgive me if I have too high an opinion of people and particularly the American people, but I cannot help but feel that if most Americans became persuaded about the truth of what Dr. Anand has said, about the capacity of unborn children to experience pain, that we would, as a Nation, rethink this business of abortion.

And so I thought it all together fitting that we talk about the problem of pain in the little bit of time I have left. And I may be joined, Mr. Speaker, by the gentleman from Iowa (Mr. KING), who was actually in Nebraska, in the courtroom, where much of this testi-

mony took place and was facilitated just in the last 2 weeks.

Here is what Dr. Anand had to say, and I want to read this into the RECORD, if I can, Mr. Speaker, although I will submit the entire testimony for the RECORD.

When he was brought to the stand in New York City in the partial-birth abortion ban challenge case, Dr. Anand was asked a series of questions beginning with this: "Are there differences between fetuses and infants born at full term?" The answer: "There are certainly huge differences between a fetus at different stages of maturity and a full-term infant, yes."

Next question: "What effect, if any, does that have on your opinion in this case about a fetus's ability to feel pain?" This was the response of this Rhodes Scholar, Harvard-trained Ph.D. who supports the right to an abortion. Dr. Anand responded: "What we have noted from these multiple lines of evidence is that the pain system has a very low threshold, meaning that the fetus has a much greater sensitivity to pain during the early development of the pain system, and later on that threshold rises or the sensitivity decreases to pain. This is seen throughout development. So in a premature fetus, those 23, 24 weeks of gestation, they have a much lower threshold of pain compared to a full-term infant. A full-term infant has a lower threshold of pain as compared to, say, a 1- or 2-year-old child. And during childhood as well there is a progressive increase in the threshold of pain. So," Dr. Anand testified, "my opinion is that between 20 and 30 weeks of gestation there is the greatest sensitivity to pain."

The attorney went on to ask the question: "Doctor, can you explain the scientific reasons why that is so?" Dr. Anand responded: "There are many reasons to explain this increased sensitivity to pain. Firstly, there is the early development of the receptors and the density of these receptors is much greater in the fetal skin as compared to an older child or adult. These receptors have connections to the spinal cord," et cetera, et cetera, et cetera. "So it is that early period," he concluded, "there is the greatest sensitivity to pain."

Then it gets a bit more chilling, and this is where I would ask the forbearance of the Chair and any who are looking in; so that if there are little ears nearby, I, as the father of three small children, have no desire to offend, but this is offensive. Because here we will hear where Dr. Anand actually used the word "excruciating" to describe the experience of pain of an unborn child in a partial-birth abortion.

Question: "Do you have any opinion as to whether the partial-birth abortion procedure will cause pain to a fetus?" Answer: "Yes, it would, if the fetus is beyond 20 weeks of gestation."

And I would add parenthetically here, not as part of the testimony, that virtually all partial-birth abortions

take place after 20 weeks, according to medical statistics.

Back to the testimony. Question: "And could you describe, in your opinion, Doctor, what kind of pain you would anticipate the fetus would feel?" Dr. Anand responded as follows: "Given the increased sensitivity to pain at that period of gestation, the parts of the procedure associated with grasping the lower extremity of the fetus, of manipulating or rotating the fetus within the confines of the uterus, of delivering the fetus through an incompletely dilated cervix as well as the surgical incision made at the back of the head, the puncturing of the intracranial cavity through the occipital bone and through the membranes that cover the brain, all of those parts of the procedure would be associated with prolonged and excruciating pain to the fetus." So said Dr. Kanwaljeet Anand, a Rhodes Scholar and one of the leading experts on fetal pain in the Western World.

As you heard, Mr. Speaker, going literally step by step through each element, the doctor described of the procedure of a partial-birth abortion, and I cited here his reference to the grasping of lower extremities, the turning of the fetus in the uterus, the delivery of the fetus through an insufficiently dilated cervix, Dr. Anand concludes that these would all result in, and these are his words now, "prolonged and excruciating pain to the fetus."

There is more here; and as I mentioned earlier, Mr. Speaker, I will submit this testimony at this point in the RECORD, in its entirety, for any who might examine our work at some point in the future, because it is truly extraordinary to consider.

Mr. Speaker, I am grateful now to yield to a colleague and a friend who, while a freshman from the great State of Iowa, has arrived here with a vengeance and with convictions and with passion. And as I presented the issues that are being litigated at this very hour in New York and in Nebraska and in San Francisco, I was delighted to note that over the April recess, my colleague, the gentleman from Iowa (Mr. KING), was not content to stay in Iowa while these weighty matters were being debated.

As was reported to me, the gentleman from Iowa drove 470 miles one way to sit in the courtroom in Nebraska in the company of the Honorable Judge Richard G. Kopf, and reassert the principle of Congress' ability to make findings of fact and the deliberation that Congress used in concluding, as I asserted earlier, Mr. Speaker, that partial-birth abortion is never medically necessary. And, as I am sure the gentleman from Iowa will elaborate, that was a broad conclusion by this body.

Also, Mr. Speaker, I would be anxious to hear my colleague's reflections on the issue of fetal pain and how that may or may not play into this debate, both in and out of the courtroom.

My purpose today in this "case for life" entitled "Abortion and the Problem of Pain," is simply to do our part on this blue and gold carpet to bring these issues more into the public domain, not just to our colleagues here on the floor, but also to those that might be looking in, Mr. Speaker, to be aware that this business of banning partial-birth abortions, so overwhelmingly supported by the American people, is an unfinished work. The work goes on.

Mr. Speaker, again I yield to my colleague, the distinguished gentleman from Iowa (Mr. KING), a member of the Committee on the Judiciary

Mr. KING of Iowa. Mr. Speaker, I thank my colleague, the gentleman from Indiana (Mr. PENCE), for yielding to me to address my colleagues and America on this issue.

For many years now, this Congress, in response to the people of the United States of America, have fought diligently to end the most ghastly and ghoulish and gruesome procedure known to modern man. And as we have done so, this Congress has held hearings in the 104th, 105th, 106th, and 108th Congresses. That is over 8 to 9 years if gathering information and data and analysis of the concept of what we call and have defined in this Congress as partial-birth abortion.

Now, for myself, as I thumb through the phone book in the Washington, D.C. yellow pages, I can find in there ads for abortions up to at least 22 weeks, and I believe there are one or two that advertise up to 24 weeks. And if the advertisement goes to that, then you can be confident that those partial-birth abortions are taking place beyond the 24 weeks. And, in fact, in this country, there is a Supreme Court decision that allows for such a thing up until the very last minute before birth.

The circumstances around this law that we have then in this country come to Congress finally passing a ban on partial-birth abortion that was signed by our President. And that was something that was difficult, in fact impossible to obtain under the previous administration. We have it today.

I sit on the House Committee on the Judiciary, and we held hearings and we gathered facts, did fact-finding, due diligence, and gathered data that reaches out all across this country into all of the experts, the best experts that we can find, to bring them forward to testify before congressional hearings. There were people to testify on each side of the argument, both pro and con on this procedure that we know all across this Nation as partial-birth abortion.

And when that happens, these expert witnesses testify, they are cross-examined by nearly every member of the Committee on the Judiciary. At the end of that period of time, then we debate the relative merits of the issue. As that debate flows through, we bring the bill for a vote, and generally through subcommittee, full committee, and

then out to the floor. The same procedure takes place over in the other body.

That gathers all of the best expertise that can be gathered, it draws it all out of the United States of America, and then we have the administrative branch that also has their staff and their expertise, and they do their fact-finding.

So when the House of Representatives votes overwhelmingly and the other body votes overwhelmingly to ban that ghastly, ghoulish, and gruesome procedure of partial-birth abortion, and when Congress comes with findings that declare that a partial-birth abortion is never medically necessary to preserve the health of the woman, there is no system of fact-finding or data-gathering that exists in this country today that can begin to match the due diligence of the United States Congress.

□ 1500

So, when word came to me late Good Friday that a judge in Lincoln, Nebraska, had made remarks during the last witness' cross-examination in the case that is one of the three jurisdictions that the gentleman from Indiana spoke about, that the attorneys in the case had done more due diligence than Congress had, that echoed into my ears an hour or two, if not within minutes. When it did, it looked to me that the preparation was at least there to declare that Congress had not done due diligence, that the attorneys in the case had, and that would be reason or justification enough to overturn our congressional ban, our Federal ban on partial-birth abortion.

So the decision was made late that Friday afternoon, and I was in Lincoln at 9 on Monday morning. I make one minor correction to the gentleman from Indiana (Mr. PENCE): It was round-trip miles rather than one way. It was a little bit to adjust it into my schedule. I walked into the courtroom at 9, and I am confident most of the actors in the courtroom knew I was coming, judging by the reaction in the courtroom. I listened to that case between 9 and almost up to 12, nearly noon, just stepping out for a couple of message exchanges. At noon I went down there outside the Federal building in Lincoln, Nebraska, and held a press conference. I made the statement describing how Congress comes to their findings, what due diligence Congress uses, and that there is no substitute for the due diligence of Congress.

For a single judge to substitute his opinion for the collective wisdom of the United States of America is the height of arrogance. It also exposes judicial activism. It turns the law on its head. There is nothing that we could pass in this Congress that would meet that kind of standard that would allow a single judge to substitute his judgment for the wisdom of the people of America.

That is what that press conference was about. It echoed across this Nation

from the Atlantic to the Pacific Ocean and points in between, and I am hopeful that it echoes into that courtroom and the courtrooms of San Francisco and New York where any activist judge in this country realizes that the legislative power belongs to the United States Congress. That is defined in the United States Constitution. If we allow judicial activism to run its course, there is no point in this body existing. They will have taken away all of the legislative power of this Congress if we do not draw the line.

I would have said a year ago that the line was blurred between the judicial and the legislative branch of government. Today I will say it is obliterated. It has been obliterated in a number of cases not particularly relevant to the ban on partial-birth abortion.

We have the authority as Congress to rein in the run-away judiciary, to slap the wrists of judicial activism. In fact, all Federal courts, with the exception of the Supreme Court, exist because they have been established from time to time by the Congress. Whatever the Congress establishes, they can take away.

So it is conceivable that any of these Federal lower courts are not a requirement of Congress, we could do with them as we wish. We want to do what is prudent and appropriate, but we also have an obligation to preserve the separation of powers. I will continue to do that.

Mr. Speaker, I want to speak to the fetal pain issue as well. I do not think that is hard for any of us to understand. We have heard testimony during hearings of this Congress of a baby that was almost to the last moment of its life reaching its arm out with that fear-of-falling reflex. It is unrealistic to believe that baby did not feel the pain at that moment, at that moment when they are trusting into the hands outside the womb instead of the protection of the womb, to have those hands take the life and drain the brains from that innocent, most innocent little child.

If Members have seen the pictures that have been up on the Internet, particularly on the Drudge Report, during intrauterine surgery, a little hand reaching up, grabbing ahold of the finger of a doctor. Imagine a little hand grasping the hand of the surgeon that is there to protect and save its life, and that little hand and that little body cannot feel pain? Of course it does. For a doctor to say, I have never thought of such a thing, it did not occur to me whether there was pain there, that would not be the case if this were happening with an animal. There would be a national outrage, and there should be a national outrage on this.

We have to play this out in the courts in New York, Nebraska and San Francisco. We are going to see these three inferior courts come with a decision. Those decisions will find their way to the United States Supreme Court where the Supreme Court will in

the next year or so be obligated to make a decision on whether Congress can actually declare findings and declare fact. We have done so.

There are only two questions before the court, I understand. One of them is do congressional findings determine that a partial-birth abortion is never necessary to protect the health of the woman; and the other question is did we define partial-birth abortion accurately and precisely enough that one who is providing that procedure, and that is hard for me to say, understands clearly at what point they would be breaking the law?

I think we have a precise definition of partial-birth abortion. It is clear whether it is a head delivery or whether it is a breech delivery. We define that moment when it becomes a partial-birth abortion, and Leroy Carhart or any of those practitioners understand that, and they are simply trying to confuse the American public.

I will stand for life. I stand with the gentleman from Indiana (Mr. PENCE) and the hundreds of people in this Congress and the millions across this country that understand that innocent life begins at the instant of conception.

Mr. PENCE. Mr. Speaker, I thank the gentleman from Iowa (Mr. KING) for his statements, and again want to express my gratitude for the gentleman's tenacity in defending life and the processes of an institution. Our colleague, literally at a time when many Members of Congress with their families were stealing away to someplace warm, our colleague was headed to a courthouse to defend the integrity of an institution and the processes of this institution which the American people, many of whom may be looking into our conversation today, have a right to know that the Partial-Birth Abortion Ban Act signed 5 November, 2003, by this President was thoughtfully considered and carefully prepared and based upon findings of fact that are demonstrable.

I thank the gentleman from Iowa (Mr. KING) for his leadership and for his courage on behalf of the unborn and as truly a remarkable contributor to this institution in a very short period of time.

By way of closing this installment of the case for life, abortion and the problem of pain, I would reflect on those words from the ancient text that say whatsoever you do to the least of these, you do to me, and that for millions of Christians, me included, those were the words of God Himself. They express a principle that has been manifested throughout the 2,000-year history of Western civilization that societies and their justice and their definition of justice is defined on the manner in which the strong deal with the weak. That is the essence of justice.

At its very core, in my judgment, whether it is partial-birth abortion or abortion in any of its permutations, justice demands that we reconsider this practice. As the evidence that the

gentleman from Iowa (Mr. KING) defended in Lincoln, Nebraska, overwhelmingly attested in the case of partial-birth abortion, this is a procedure that is never medically necessary. In fact, we, from south of Highway 40 in Indiana, like to use common sense on things. It hardly seems like it could ever be in the interest of the health of a woman to deliver a child and to brutalize it in the birth canal, and that would somehow be safer for the mother than a simple caesarean section that is done countless times in America and has been done since Caesar, after whom it was named. It is never medically necessary.

Beyond that, it is my hope and my ambition, and I may even say my prayer, that the problem of pain becomes more widely known in this country. Just judging the intensity that abortion rights activists use to keep Dr. Anand's testimony about fetal pain out of the courtroom in these proceedings suggests to me that our opponents in this debate understand the political vulnerability because at our core I believe, as the President says so often, the American people are a deeply compassionate and caring people.

That is why I said at the beginning of this discussion today that in the case for life, the problem of pain is a problem for advocates of abortion rights. To the extent that these court cases and the attempts to challenge and pull down the Partial-Birth Abortion Ban Act ultimately result, whatever their outcome, in the American people having a broader understanding of the reality of what Dr. Anand called so chillingly that prolonged and excruciating pain to the fetus in a partial-birth abortion, then we may be making progress.

So I conclude this case for life, Mr. Speaker, with gratitude for your forbearance and those of my colleagues, with renewed appreciation to the gentleman from Iowa (Mr. KING), who, along with his lovely bride, are stalwarts on the case for life. I close this case for life with gratitude.

#### PRESIDENTIAL MISTAKES

The SPEAKER pro tempore (Mr. BURNS). Under the Speaker's announced policy of January 7, 2003, the gentleman from New Jersey (Mr. PALLONE) is recognized for 60 minutes as the designee of the minority leader.

Mr. PALLONE. Mr. Speaker, last week during President Bush's press conference, he had a difficult time with a question from one reporter asking him whether or not he had made any mistakes as President since the fateful events of September 11, 2001. Today I would like to basically join with some of my Democratic colleagues who have already spoken today during their 5 minutes in trying to help out the President to answer the question about any mistakes he has made as President since 9/11.

I think one of the President's biggest mistakes over the last year was signing