

jurisdiction of the Supreme Court and other federal courts. This memo was written in response to legislation introduced in Congress proposing to strip Federal jurisdiction on a number of controversial social issues. Now, Mr. Roberts was a constitutional scholar, and he did what constitutional scholars are frequently asked to do: argue a legal theory about congressional authority. Mr. Roberts was given this assignment by his boss, and he responded with the outstanding advocacy for which he is justly admired.

Making a legal argument, however, is miles away from endorsing the policy underlying the constitutional argument. And, as it turns out, John Roberts did not think that "court stripping" was good policy in the first place. Let me say again: John Roberts did not think that "court stripping" was a good policy in the first place.

The Associated Press reported, yesterday, that in 1985:

[A]s a lawyer in the Reagan White House, John Roberts wrote that Congress had authority to strip the Supreme Court of jurisdiction over cases involving school prayer and similar issues, but he added that "such bills were bad policy and should be opposed."

The second half of the story was he added that "such bills were bad policy and should be opposed." This tempest in a teapot over "court stripping" refers to a position that Mr. Roberts never agreed with in the first place.

That is the problem with a rush to judgment on a complex legal document—these documents that have been released just recently. Instant media reports can muddy the waters by confusing a legal opinion with a policy position. A legal opinion is different from a policy position.

Now, half the story only conveys half the truth. Half the story only conveys half the truth. And a half-truth is frequently 100 percent wrong. I hope those in the media who got it wrong will not make the same mistake again. This is the exact kind of misrepresentation I hope the Senate can avoid as it debates the Roberts nomination.

Now, Judge Roberts deserves a fair and dignified process. The Senate needs to be thorough and deliberate, but it must be fair. I would say to our friends in the media, half a story is frequently 100 percent wrong. Read all the documents before reaching a conclusion.

So, Mr. President, I suggest we all take a deep breath and not rush to judgment in an effort to get tomorrow morning's headlines out before we have read the entire story.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas.

STEM CELL LEGISLATION

Mr. BROWNBACK. Mr. President, I rise this morning to address some of the comments that have been made on the other side of the aisle regarding the Castle bill on embryonic stem cell research that passed in the House a few

weeks ago: I have heard the proposal this morning from my colleagues from the other side that we should discuss and talk about embryonic stem cell research and the proposed umbilical cord blood bill that have been put on the calendar here in the Senate, but without any discussion about human cloning. I want to try to put this issue in context a little, and to propose some factual information.

Mr. President, we need to have a broad discussion about bioethical issues in this body and all across the country, and it needs to involve the full range of issues that have come to light as we attempt to grasp the implications and come to understand the decisions that must be made in this challenging area.

This discussion should involve cord blood stem cells. These types of cells are stem cells that come from the umbilical cord when a child is born; they are a rich source of pluripotent stem cells that have proven very helpful in providing a number of treatments for humans.

We need to continue to talk honestly about embryonic stem cell research: the possible limitations of this research to cure diseases in humans, as well as the certain destruction of embryos that this type of research necessitates.

We need to talk about human cloning, whether or not we want to continue to allow the practice of cloning to take place in the United States of America (it is currently a legal process in this country, to clone, create and kill an embryo, a young human).

We need to talk about the cutting edge related research applications, we need to consider where the science is leading us on issues such as the creation and manipulation of chimeras—human-animal crosses that are created by, for instance, taking human brain cells and putting them in a mouse—we cannot bypass these critical issues in this discussion.

And we need to talk about some exciting new application prospects of these broad-based pluripotent cells, cells that can do virtually anything—but I speak of cells where it is not necessary to extract them from a human embryo, destroying that embryo in the process, but cells yielded from other places in the body.

With this background in mind, I want to point out a couple of quick facts.

No. 1, Mr. President, I ask unanimous consent to have printed in the RECORD, from this morning's Washington Post, an article describing new revelations about pluripotent adult stem cells that can answer many of these questions. I ask that the article be included and printed at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. BROWNBACK. Mr. President, I wish to read one section of this article:

A team of Harvard scientists is claiming the discovery of a reservoir of cells that appear capable of replenishing the ovaries of sterilized mice, possibly providing new ways to [create human eggs].

Adult stem cells in the body with the ability to create human eggs. Now, people may say: What do you mean by that? Well, here we have a pluripotent adult stem cell (derived from bone marrow) with a broad capacity to create a lot of different cells, so much so that they can generate, when placed in the right place in the body—a woman's ovary—human eggs.

Listen to what the scientists here say about this:

In addition, because the cells appear to be a particularly versatile type of adult stem cell—

I would like to pause for a moment to point out that there are no ethical problems or objections to research conducted with adult stem cells. We should put millions of dollars into this type of research. This type of research is yielding cures—65 treatment applications for humans with adult stem cell research. However, I'd like to conclude the reading of this excerpt:

... a particularly versatile type of adult stems cells [which] could provide an alternative to those obtained from embryos, avoiding the political and ethical debates raging around the use of those cells.

End of quote, in this morning's Washington Post, from Harvard researchers.

Mr. President, I ask then, why would we want to kill young human embryos, young humans, who are clearly alive, who are clearly human, when we have the capacity, in adult stem cells, to conduct useful and productive research to cure diseases, that is not hindered by ethical problems?

In an article from this month's The Lancet—a well-respected British medical journal—Mr. President, I ask unanimous consent that the article be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. BROWNBACK. The author of this editorial—this is the lead British medical journal—says:

... what is unarguable is that the human embryo is alive and is human, and intentionally ending the life of one human being for the potential benefit of others is not territory to which mainstream clinical researchers have hitherto sought claim—or which ethically conscientious objectors could ever concede.

These embryos are alive. They are alive. They are human.

I want to conclude, because time is very limited—Mr. President: I want cures for people. I want cures for juvenile diabetes, for cancer, for spinal cord injuries, for Parkinson's disease. And, with research generated from pluripotent adult stem cells, we are getting these treatments.

Mr. President, I ask unanimous consent to have printed in the RECORD a list of human clinical trials going on now, using adult or cord blood stem

cells, involving no ethical dilemmas, for 65 different human maladies.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 3.)

Mr. BROWNBACK. The number of areas of treatment for human ailments or medical conditions in humans using human embryonic stem cells is zero. So the notion that delaying this Castle-Specter bill is going to hurt current patients is completely false. If we want to help current patients, the key—the key—is to put more research into adult and cord blood stem cell research. If you want to help current patients, you should be ever so careful not to promise impossibilities to these hurting individuals; you should state what the scientists are telling us, that the possibility of embryonic stem cells yielding cures, if ever—and I really doubt if it ever happens—is decades away. And we have had problems in the past with these types or cells forming dangerous and cancerous tissues—a problem which has not yet been worked out. If we want cures, let's go the route where we know we are going to reach our destination, and where we know treatment is true possibility.

Mr. President, I yield the floor.

EXHIBIT 1

[From the Washington Post, July 28, 2005]

SCIENTISTS CLAIM TO FIND CELLS THAT RESTORE EGG PRODUCTION

(By Rob Stein)

A team of Harvard scientists is claiming the discovery of a reservoir of cells that appear capable of replenishing the ovaries of sterilized mice, possibly providing new ways to help infertile women have babies.

While cautioning that more research is needed to confirm that similar cells exist in women and that they can safely restore fertility, the researchers said the findings could revolutionize the understanding of female reproduction and the power to manipulate it.

"This may launch a new era in how to think about female infertility and menopause," said Jonathan L. Tilly, a reproductive biologist at Harvard Medical School and Massachusetts General Hospital in Boston who led the research. It is being published in tomorrow's issue of the journal *Cell*.

Other researchers agreed that the findings could have profound implications, but several expressed caution and skepticism, saying many key questions remain about whether the researchers have proved their claims.

"This is really exciting and a revolutionary idea. The implications are potentially huge," said Lawrence Nelson of the National Institute of Child Health and Human Development. "But before this could have any type of application to humans, a whole lot of work has to be done. We have to be careful not to get ahead of ourselves."

But Tilly said he was confident of his findings, which could, for example, enable women to bank egg-producing cells when they are young in case they have health problems that leave them infertile or they get too old.

"In theory, these cells could provide an insurance policy. We could harvest them and store them away for 20 years. Then you put them back in, and they are going to do exactly what they are supposed to—find the ovaries and generate new eggs" to restore fertility, Tilly said.

The discovery could also lead to ways to prevent, delay or reverse menopause, perhaps

by stimulating dormant cells in the bone marrow or "tweaking" the ovaries to accept them, Tilly said. It may also be possible to transplant them from one woman to another, he said.

In addition, because the cells appear to be a particularly versatile type of adult stem cell, they could provide an alternative to those obtained from embryos, avoiding the political and ethical debates raging around the use of those cells.

"The implications are mind-boggling, really," Tilly said.

The research is a follow-up to results the team reported in March 2004, when it claimed it had shown that mice can produce eggs throughout their lives. For decades, scientific dogma has been that female mammals such as mice and humans are born with a finite number of eggs. To alleviate doubts about their original claim, the researchers conducted another round of experiments, which they said confirm the findings and explain how it might work.

First, the scientists sterilized female mice with a cancer chemotherapy drug that destroyed eggs in the ovaries but spared any egg-producing cells elsewhere. They tested the animals' ovaries 12 to 24 hours later and found signs their egg supply was rapidly regenerating. Two months later, the animals' ovaries looked normal, and they remained that way for life.

After tests indicated the source of the cells may lie in the animals' bone marrow, the researchers infused marrow from healthy mice into those that were either genetically engineered to be infertile or had been made infertile with chemotherapy. Two months later, the recipients' ovaries looked normal, whereas those that had not received the transplants remained barren, the researchers reported. Blood transfusions produced similar results, they said.

The researchers then infused blood into infertile mice from animals that had been genetically engineered so that their reproductive stem cells glowed fluorescent green. Within two days, green egg cells appeared in the recipients' ovaries, which the researchers said indicated the cells had traveled through the blood to the ovaries.

Finally, the researchers screened human bone marrow and blood from healthy women and found that both tested positive for biological markers indicating the presence of immature reproductive cells.

"Mice and humans appear to be the same—they appear to have a set of genes in bone marrow consistent with . . . cells that can make themselves a new egg," Tilly said.

The findings could help explain previously mysterious cases of women sterilized by cancer treatment who spontaneously became pregnant after receiving bone marrow transplants, Tilly said. This may happen only rarely because some, but not all, techniques used to process bone marrow before transplantation may destroy the cells in some cases, he speculated.

The research triggered a mixture of excitement, caution and deep skepticism.

"It's quite amazing," said Hans Schoeler of the Max Planck Institute in Germany. "The idea that cells from bone marrow may be a reservoir for egg cells would be quite astonishing."

But Schoeler and other researchers cautioned that many crucial questions remained. Several researchers had doubts about some of the techniques the researchers used. Others were puzzled by the speed with which the ovaries appeared to be repopulated with eggs. Many pointed out that the researchers had failed to show the eggs were viable, the mice were ovulating or that they could give birth to healthy offspring.

"I'm very skeptical," said David F. Albertini of the University of Kansas Med-

ical Center in Kansas City, Kan. "There are a lot of holes in the research."

Tilly attributed the skepticism to the radical nature of the findings and said he already had work underway to address the concerns, including breeding studies aimed at producing healthy offspring.

"We hope we will have the answers very soon," Tilly said.

EXHIBIT 2

STEM-CELL THERAPY: HOPE AND HYPE

In the fifth year since human cloning to generate stem cells was legalised in the UK, what progress has been made towards taking stem-cell therapy from laboratory to clinical practice? In 2000, articulating robust UK Government support, then Health Minister Yvette Cooper proclaimed that stem cells from cloned human embryos "could prove the Holy Grail in finding treatments for cancer, Parkinson's disease, diabetes, osteoporosis, spinal cord injuries, Alzheimer's disease, leukemia and multiple sclerosis . . . transform[ing] the lives of hundreds of thousands of people". But 4 years later, the technical difficulties and biological hazards inherent in cloning human embryos and developing treatments from their stem cells led Richard Gardner, Chairman of the Royal Society Working Group on Stem Cells and Therapeutic Cloning, to doubt whether this would ever be a "a procedure that becomes widely available . . . There are concerns about the efficiency and elaborateness of the procedure, and it's going to be very time-consuming and very expensive". So, to paraphrase May 25th's Saving Faces event in London, UK, are stem-cell therapies hope, or hope, or substance?

Only two UK groups currently seek to clone human embryos, both with immediate aims not of developing therapies but of improving understanding of embryonic development or specific diseases. Techniques for culturing human embryonic stem cells have advanced—e.g., allowing them (like adult stem cells) to be grown—but an increasing appreciation of the hazards of embryonic stem cells has rightly prevented the emergence or immediate prospect of any clinical therapies based on such cells. The natural propensity of embryonic stem cells to form teratomas, their exhibit of chromosomal abnormalities, and abnormalities in cloned mammals all present difficulties.

The prospect of having to clone (to obtain embryonic stem-cells) every patient requiring therapy is surely unrealistic (the Korean report of cloning human embryos for stem cells used almost 250 human eggs in generating a single stem-cell line). If cloning is unrealistic and/or too hazardous, the autologous advantage of (cloned) embryonic stem cells vanishes: and immune rejection of embryonic stem cells generated from "foreign" in-vitro fertilisation or abortion presents further problems.

These biological problems only add to the ethical objections. The *Lancet* declared in 2001 that: "the creation of embryos solely for the purpose of producing human stem cells is not only unnecessary but also a step too far". Semantic questions about embryology and personhood are interesting, if unprovable, but what is unarguable is that the human embryo is alive and is human, and intentionally ending the life of one human being for the potential benefit of others (i.e., for research) is not territory to which mainstream clinical researchers have hitherto sought claim—or which ethically conscious objectors could ever concede.

So is stem-cell research a damp squib, another over-hyped funding gambit? Far from it, for the embryonic stem-cell story forms only one aspect. Excitement about the potential of adult stem cells was tempered by

reports in 2002 that in some circumstances such cells can fuse. Fusion might give a false appearance of metadifferentiation, the argument ran, therefore adult stem cells are not really multipotent, and are a nonstarter as an alternative to embryonic stem cells.

Fortunately, for the now highly expectant patient, reports of the death of adult stem cells were greatly exaggerated. Much research (some indeed antedating the fusion excitement) clearly shows that although fusion can and does occur in certain tissues, adult (say) bone-marrow-derived stem cells can also generate multiple lineages without cell fusion. Interestingly, fusion may be an unexpected mechanism of achieving repair, and could additionally offer means of delivering gene therapy. Normal (bone-marrow-derived) donor nuclei were found in the muscle of a patient with Duchenne muscular dystrophy, over a decade after bone-marrow transplantation for immune deficiency, offering proof of principle for fusion of bone-marrow-derived stem cells as gene therapy, and presenting tantalising therapeutic prospects. Also, it is now clear that aneuploidy represents a not uncommon, spontaneous, and normal process, rather than necessarily carrying sinister implications, as speculated.

Suggestions of low rates of differentiation of bone-marrow-derived stem cells and integration in situ, and of questionable differentiation, have also been addressed. Perhaps the most compelling (and extraordinary) evidence unambiguously confirming the ability of adult bone-marrow-derived stem cells not only to metadifferentiate but also to integrate fully into adult (human) organs, and survive for decades, comes from postmortem studies of sex-mismatched recipients of bone-marrow transplants, showing donor-derived fully differentiated neuronal cells of a highly complex morphology apparently fully functionally established within the host brain, with no evidence of fusion.

We now know that bone marrow-derived stem-cells circulate systemically and actively migrate into damaged tissue to contribute to spontaneous repair. Experimentally, therapeutic benefit occurs in numerous disease models but, importantly, repair by bone-marrow-derived stem cells does not stop at the laboratory door. Safety data from 50 years of clinical bone-marrow transplantation, during which nonhaemopoietic stem cells have inadvertently also been transplanted, and the accompanying clinical expertise in collecting, handling, freeze-storing, thawing, and delivering marrow, have safely allowed a rapid translation of bone-marrow-stem-cell science from laboratory to clinic. Controlled trials have shown significant benefit of marrow-derived stem-cell therapy in myocardial infarction, and trials are planned or underway in chronic cardiac failure, stroke, and other diseases: reports of successful adult stem-cell therapy in myocardial infarction, and trials are planned or underway in chronic cardiac failure, stroke, and other diseases: reports of successful adult stem-cell therapy in patients with corneal disease have just appeared. The next few years, not decades, will show whether adult stem-cell treatments are to join the mainstream therapeutic arsenal.

EXHIBIT 3

BENEFITS OF STEM CELLS TO HUMAN PATIENTS—ADULT STEM CELLS V. EMBRYONIC STEM CELLS (PUBLISHED TREATMENTS IN HUMAN PATIENTS)

ADULT STEM CELLS: 65—ESCR:0

Cancers

1. Brain Cancer
2. Retinoblastoma
3. Ovarian Cancer
4. Skin Cancer: Merkel Cell Carcinoma

5. Testicular Cancer
6. Tumors abdominal organs Lymphoma
7. Non-Hodgkin's Lymphoma
8. Hodgkin's Lymphoma
9. Acute Lymphoblastic Leukemia
10. Acute Myelogenous Leukemia
11. Chronic Myelogenous Leukemia
12. Juvenile Myelomonocytic Leukemia
13. Cancer of the lymph nodes:

Angioimmunoblastic Lymphadenopathy

14. Multiple Myeloma
15. Myelodysplasia
16. Breast Cancer
17. Neuroblastoma
18. Renal Cell Carcinoma
19. Various Solid Tumors
20. Soft Tissue Sarcoma
21. Waldenstrom's macroglobulinemia
22. Hemophagocytic lymphohistiocytosis
23. POEMS syndrome

Auto-Immune Diseases

24. Multiple Sclerosis
25. Crohn's Disease
26. Scleromyxedema
27. Scleroderma
28. Rheumatoid Arthritis
29. Juvenile Arthritis
30. Systemic Lupus
31. Polychondritis
32. Sjogren's Syndrome
33. Behcet's Disease
34. Myasthenia
35. Autoimmune Cytopenia
36. Systemic vasculitis
37. Alopecia universalis

Cardiovascular

38. Heart damage

Ocular

39. Corneal regeneration

Immunodeficiencies

40. X-Linked hyper immunoglobuline-M Syndrome
41. Severe Combined Immunodeficiency Syndrome
42. X-linked lymphoproliferative syndrome

Neural Degenerative Diseases/Injuries

43. Parkinson's disease
44. Spinal cord injury
45. Stroke damage

Anemias/Blood Conditions

46. Sickle cell anemia
47. Sideroblastic anemia
48. Aplastic Anemia
49. Megakaryocytic Thrombocytopenia
50. Chronic Epstein-Barr Infection
51. Fanconi's Anemia
52. Diamond Blackfan Anemia
53. Thalassemia Major
54. Red cell aplasia
55. Primary Amyloidosis

Wounds/Injuries

56. Limb gangrene
57. Surface wound healing
58. Jawbone replacement
59. Skull bone repair

Other Metabolic Disorders

60. Osteogenesis imperfecta
61. Sandhoff disease
62. Hurler's syndrome
63. Krabbe Leukodystrophy
64. Osteopetrosis
65. Cerebral X-linked adrenoleukodystrophy.

The PRESIDING OFFICER. The Senator's time has expired.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

PROTECTION OF LAWFUL COMMERCE IN ARMS ACT

The PRESIDING OFFICER. Under the previous order, the Senate will re-

sume consideration of S. 397, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 397) to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others.

Pending:

Frist (for Craig) amendment No. 1605, to amend the exceptions.

Frist amendment No. 1606 (to amendment No. 1605), to make clear that the bill does not apply to actions commenced by the Attorney General to enforce the Gun Control Act and National Firearms Act.

Reed (for Kohl) amendment No. 1626, to amend chapter 44 of title 18, United States Code, to require the provision of a child safety lock in connection with the transfer of a handgun.

The PRESIDING OFFICER. The Senator from Idaho.

AMENDMENT NO. 1626

Mr. CRAIG. Mr. President, we are back on this very important piece of legislation, S. 397, the Protection of Lawful Commerce in Arms Act.

Under a unanimous consent agreement entered into last evening, we are on the Kohl trigger lock amendment. I understand there is an hour equally divided, and we hope we can get to a vote on this before 12:30. This is an important amendment, which I am confident Senator KOHL will be here in a few moments to discuss.

In the short term, let me visit the broader issue of the bill itself. We now have 62 cosponsors. I am pleased Senator CONRAD has joined us in support of this important piece of legislation to limit predatory and junk lawsuits from attempting to destroy the capability of the private sector to produce legal, effective firearms for our Nation's citizens and for our police and military. Unlike most nations, we are a nation that does not have a government company or a government manufacturer of firearms. It has always been the responsibility of the private sector. They have done extremely well. Innovation and creativity has always allowed the latest and best firearm capability, not only for our private citizens but for the military and police departments and the armed services that contract with these private sector companies to produce not only the firearms but the effective ammunition for them.

Some years ago, we saw a frustration growing in the gun control community that the public and the Congress collectively would not bend to their wishes. The public, in its inevitable wisdom, recognized that guns were not an issue in deaths caused by guns or in the commission of crimes, but the criminal element was the issue and that we ought to get at the business of law enforcement and taking those off the streets who used a gun in the commission of a crime. That is exactly what this administration has done in the last 5½ years. The use of a firearm or criminal activities in which a firearm is used has rapidly dropped in the last