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ESSAYS

WHAT'S IN A NAME? THE *NEW YORK TIMES* ON "PARTIAL-BIRTH" ABORTION

KENNETH L. WOODWARD*

INTRODUCTION

The roots of this Essay extend back to December 4, 1998, when an article appeared in the *New York Times* under the following headline: *Inquiry Criticizes A.M.A. Backing of Abortion Procedure Ban*.¹ The procedure discussed in the article was already widely known as "partial-birth abortion." The question that came immediately to my mind was this: What is it about this form of abortion that, in its headline, the *New York Times* dare not speak its name? What follows is an effort to answer that question by examining it in the wider context of journalism as both craft and ethic.

Journalists make ethical decisions all the time. Most of these decisions are also and at the same time questions of craft: that is, they are intimately involved with the choice of words and phrases used in the stories written by reporters and in the editing done by editors. Even the writing of headlines, as I hope to show, can reflect value judgments. The craft of journalism demands that language be clear and accurate. Journalistic ethics demands that language be fair. In practice, these twin demands are not always respected or easily joined.

Because of its moral seriousness, its power to evoke strong emotions, its social consequences, and its political ramifications, the issue of abortion has severely tested news organizations in their efforts to be clear, accurate, and fair. One obvious problem is the question of labels. One party in the public debate over abortion calls itself "pro-choice," thereby making a "woman's right to choose," as it is usually put, the paramount issue. The

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1. Robert Pear, *Inquiry Criticizes A.M.A. Backing of Abortion Procedure Ban*, N.Y. TIMES, Dec. 4, 1998, at A27.

other side calls itself "pro-life," because it believes the central issue is the fetus's "right to life." Like trial lawyers and public relations experts, advocates on both sides of the abortion divide recognize that those who frame the issue control the debate. "[T]he language is everything," Douglas Gould, former vice president for communications at Planned Parenthood of America told the *Los Angeles Times* in 1990.²

Reporters, too, frame issues, and on abortion it is difficult to imagine a reporter who is personally not on one side or another. In 1985, a *Los Angeles Times* poll of journalists working on newspapers of all sizes found that eighty-two percent of them favor abortion rights.³ But reporters work within the context of their own news organizations, and beyond that within the larger world of the media in general. After years of internal newsroom discussions, those responsible for the nation's major newspapers gradually settled on "abortion rights" advocates and "anti-abortion" advocates as accurate labels that do not commit news organizations themselves to one viewpoint or the other. Once these terms have been established, "pro-choice" and "pro-life" are acceptable adjectives only for advocates and their organizations. Even here, of course, there is a hidden bias: "abortion rights" advocates are *for* something, "anti-abortion" advocates are *against* something. But these labels are about as fair as language will allow.

The problem of labels by no means exhausts the language choices that plague journalists who write about abortion. The clearest example is the media's continuing and virtually universal use of the medically accurate term "fetus" when referring to an unborn child in the post-embryonic state. The assumption, presumably, is that the term "fetus" is somehow neutral because "scientific" while the term "baby"—which a fetus undoubtedly is—implies that we are talking about a human fetus, which it also obviously is. One never hears a woman talk about "my fetus." In short, "baby," like "mother," is the coin of common discourse. Taken together, they are terms of endearment that imply a mutual relationship. Perhaps this is why abortion-rights advocates—or, alternatively, "reproductive rights" advocates—prefer the impersonal and non-relational language of "woman" and "fetus." To the extent that news organizations exclusively use the word "fetus," which most in fact do, they favor the "pro-choice" position.

2. David Shaw, *Abortion Bias Seeps Into News*, L.A. TIMES, July 1, 1990, at A1.

3. *Id.*

But there are all sorts of other ways in which news organizations can and do favor one side of the abortion issue over another. For example, when legislation on abortion is the news, it is almost always depicted in the media as “restricting” abortion rights, when in fact such legislation could, with equal justice, be described as “protecting” unborn life. The comprehensive study by the *Los Angeles Times* is full of examples demonstrating how the nation’s newspapers, news magazines, and network television news programs favor abortion rights. That study, which took a year to report and write, was directed by the newspaper’s media critic, David Shaw, who did not hesitate to criticize his own paper’s coverage of abortion. It was, by any measure, an extraordinarily bold and timely exercise in media criticism.⁴

The *Los Angeles Times* study was published five years before the emergence of one particularly controversial procedure, commonly known as “partial-birth” abortion, changed the national debate on the law, ethics, and public policy of abortion in the United States. In this Essay, I will examine the practice of a single newspaper, the *New York Times*, to avoid the use of the term “partial-birth” by consistently substituting “type of abortion” and similarly vague formulations in its news headlines, and its corollary practice of defining “partial-birth” solely as a term used by politicians and others who are opposed to abortion in general. I have chosen this narrow focus because I know of no other instance—though there may be some—in which the *Times* or any other news organization has created and consistently used linguistic formulations to frame an issue in a mono-dimensional way. The purpose of this inquiry is to determine whether the linguistic conventions used by the *Times* in its reporting on this highly contentious issue are clear, accurate, and fair. In the course of my examination, I will compare these formulations with those typically used by other news organizations. Finally, I will compare representative editorials by the *Times* on the subject of “partial-birth abortion” with its reporting on the same subject and ask whether the former has determined the latter.

4. The series of five articles ran on successive days, July 1–4, 1990. In addition to David Shaw, *supra* note 2, they are: David Shaw, *Abortion Foes Stereotyped, Some in the Media Believe*, L.A. TIMES, July 2, 1990, at A1; David Shaw, “Rally for Life” Coverage Evokes an Editor’s Anger, L.A. TIMES, July 3, 1990, at A1; David Shaw, *Can Women Reporters Write Objectively on Abortion Issue?*, L.A. TIMES, July 3, 2004, at A23; and David Shaw, “Abortion Hype” Pervaded Media After Webster Case, L.A. TIMES, July 4, 1990, at A1. Shaw did win a Pulitzer Prize that year for his work, but the judges excluded the abortion-bias series from the entry his editors submitted in nominating him.

If the subject of this modest inquiry is narrowly focused, the implications are much broader. The *New York Times* is not just another newspaper. Its influence is national, even international, especially on broadcast media. Because of this influence, the *Times* plays a major role in establishing the terms of public debate on law and public policy, particularly for those readers who rely on the *Times*—almost religiously, one might say—for guidance in understanding of public affairs.

I. NEWSROOM CULTURE

There is no question that the *New York Times*, like the *Washington Post*, the *Los Angeles Times*, and other big-city newspapers, supports abortion rights. This is true not only of the editorial board, which reflects the official position of the newspaper and its owners, but also of the institutionally-bred columnists it employs to write for its op-ed page.⁵ On the subject of abortion, they are all on message. Nor is there any question that the *Times* has been singularly parsimonious in the amount of space it has given to positions other than its own pro-choice stance: as a reader of the *Times* for forty years, I cannot recall more than a half-dozen instances in which the newspaper published op-ed pieces by outsiders arguing against the newspaper's strong and unwavering support for unrestricted abortion rights.⁶ Conversely, in any given week where abortion is in the news, it is not at all unusual to see the *Times* print three or four editorials and columns defending abortion rights. The only question of interest here is whether this institutional commitment to the pro-choice position also colors the way it reports the news.

5. By "institutionally bred," I mean columnists who previously were reporters or, more rarely, editors, of the *Times* before the newspaper chose them to be columnists. In the past, columnists were almost always chosen from within the newspaper. Current examples include Maureen Dowd, Nicholas Kristof, and Frank Rich, whose persistently pro-choice column, formerly in the Sunday Arts section, is now back on the op-ed page. Other newspapers use the term "home-bred" to distinguish those columnists who are on staff from those they regularly publish who are syndicated by other news services. Using that distinction, all the *Times* columnists are "home-bred."

6. The most recent I have located was from C. Everett Koop, the former Surgeon General of the United States. C. Everett Koop, *Why Defend Partial-Birth Abortion?*, N.Y. TIMES, Sept. 26, 1996, at A27. There have, of course, been occasional letters to the editor from readers opposing "partial-birth" abortion, though not nearly as many as those in support. The most significant letter-writer to be snubbed by the *Times* was the novelist-physician Walker Percy, whose letter in opposition to "partial-birth" abortion received no reply from the *Times*. The text of his letter can be found in WALKER PERCY, SIGNPOSTS IN A STRANGE LAND 349-51 (Patrick Samway ed., The Noonday Press 1992).

It is the job of the *Times*' recently installed Public Editor, David Okrent, to examine evidence of bias in the newspaper's reporting, and last year he addressed, albeit obliquely, this concern as it relates to the issue of abortion. On December 26, 2004, Okrent devoted his "Public Editor" column to examples of what, in his judgment, the newspaper does right. His prime example was a December 2 piece by reporter Robin Toner headlined, *Changing Senate Looks Much Better to Abortion Foes*.⁷ Okrent praised the article for being a "straightforward" and "illuminating" report that "addressed an extremely contentious issue without betraying the writer's own views."⁸

This struck me as faint praise at best, implying as it did that reporters for the *Times* are not always so self-effacing. But journalism is a communal enterprise, and no story appearing in the *Times*, or in any other newspaper (or magazine), is entirely the work of a single individual. What finally appears in print is edited and must conform to the newspaper's standards, including those of accuracy and fairness. But those who edit a newspaper, like those who run a university, operate within a community that has its own institutional culture. Okrent has addressed this communal aspect of the *Times* as well.

In a much-discussed previous column, Okrent asked rhetorically, "Is the *New York Times* a Liberal Newspaper?" His straightforward answer was: "Of course it is." As evidence he cited not only the editorial page but also the *Times*' reporting, and the issues he chose were not economic but social—abortion, gay marriage, and the like. Citing the issue of same-sex marriage, Okrent found much in the way of "implicit advocacy," not only in what the *Times* reported but what it did not. He then went on to observe that "if you are among the groups *The Times* treats as strange objects to be examined on a laboratory slide (devout Catholics, gun owners, Orthodox Jews, Texans); if your value system wouldn't wear well on a composite *New York Times* journalist, then a walk through this paper can make you feel you're traveling in a strange and forbidding world."⁹ Such frankness is rare among Public Editors.

What Okrent is talking about here is what journalists typically refer to as the "newsroom culture." By that I mean an implicit set of shared workplace assumptions about which values

7. Robin Toner, *Changing Senate Looks Much Better to Abortion Foes*, N.Y. TIMES, Dec. 2, 2004, at A34.

8. David Okrent, *First of All, There's the Continuing Daily Miracle . . .*, N.Y. TIMES, Dec. 26, 2004, at WK2.

9. David Okrent, *Is the New York Times a Liberal Newspaper?*, N.Y. TIMES, July 25, 2004, at WK2.

and attitudes on public issues are acceptable and which are not. Newsroom culture is what makes certain kinds of people seem odd to the paper's editors and, all too often, even to the beat reporters whose job is to cover these aliens on the American landscape. Clues to the newsroom culture show up not only in how these outsiders and their attitudes are covered, but also in the headlines assigned to stories about them, the quotes used from interviews with them, and the placement of stories which indicates an editorial judgment of importance—all the routine news decisions that collectively manifest the personality of the paper and distinguish it from its competitors. Failure to provide perspectives other than that of the newsroom culture, Okrent argued, occurs *not* by “management fiat, but because getting outside one’s own value system takes a great deal of self-questioning.”¹⁰

This statement is true but not complete or entirely accurate. Like other major newspapers, the *New York Times* not only publishes a style book on proper usage but also has an assistant managing editor, Alan M. Siegal, whose responsibility is to decide questions of usage or style. “We try very hard to arrive at neutral terminology for disputed issues,” Siegal told me in a series of emails, his preferred medium for answering questions from outside journalists. “Ordinarily on matters of language and style, I make the style decisions, though sometimes I consult the top editors of the paper if the issue is so controversial that it may appear to position the paper.” By way of example, Siegal said that it was through this process that the *Times* settled on “abortion-rights” and “anti-abortion” as its standard terms for identifying the contending parties in the abortion debate.

II. “PARTIAL-BIRTH”: A SPECIAL CASE

But the term “partial-birth” presents a special set of difficulties, especially for a news organization like the *Times* that is committed to unrestricted abortion rights. The first problem is *not* that “partial-birth” is an inaccurate definition of the procedure. The term is listed and defined in the *Merriam-Webster Dictionary*, which is used by the websites of the National Institutes of Health and Harvard Medical School, among other medical institutions and organizations.¹¹ Rather, the problem is that the term was

10. *Id.*

11. The Merriam-Webster Medical Dictionary defines partial-birth abortion as “an abortion in the second or third trimester of pregnancy in which the death of the fetus is induced after it has passed partway through the birth canal.” MERRIAM-WEBSTER MEDICAL DICTIONARY (2003), at <http://www.nlm>.

appropriated by politicians who initiated the first congressional effort to ban the procedure and was quickly adopted by anti-abortion organizations.¹² In this procedure, the physician typically pulls the fetus/baby legs first outside the mother's body and then, using scissors, reaches inside the birth canal to break the skull, causing it to collapse. The brains are then sucked out and the fetus/baby removed entirely from the mother. "Partial-birth" as a label emphasizes the fact the delivery of a fetus/baby takes place, but only up to a point, and solely for the purpose of destroying it.

Once the details of this abortion procedure were made public, the opposition to it was no longer limited to groups and politicians who oppose all abortions. Various polls show that most Americans opposed it by margins of up to two to one.¹³ In 1997, the House of Delegates of the American Medical Association endorsed a proposed congressional ban on the procedure, despite clear reservations about any law that would criminalize physicians who do them.¹⁴ Many physicians, including those who do abortions, found this procedure morally unacceptable. So did many politicians, both Republicans and Democrats, who are in principle pro-choice. The reason was obvious: as the late Senator Daniel Patrick Moynihan put it, this procedure "is infanticide."¹⁵ In short, "partial-birth" abortion was no longer just a

nih.gov/medlineplus/plusdictionary.html (on file with the Notre Dame Journal of Law, Ethics & Public Policy).

12. "The term 'partial-birth abortion' was first used in the original Partial-Birth Abortion Ban Act, as introduced by [Rep. Congressman Charles Canady of Florida] in June 1995. Mr. Canady settled on that term after consultation with me and with his staff counsel, because there was need to create a legal term of art and this term accurately conveyed the essence of the method." E-mail from Douglas Johnson, Legislative Director, National Right to Life Committee, to Kenneth L. Woodward (Feb. 21, 2005) (on file with the author).

13. Since 1995, the Gallup poll has shown that a majority of Americans support a ban on "partial-birth" abortions, rising from 57% in support and 39% opposed in 1996 to a high of 70% in support, 25% opposed in July of 2003. Lydia Saad, *Americans Agree With Banning "Partial-Birth Abortion"*, GALLUP ORG., Nov. 6, 2003 (on file with the Notre Dame Journal of Law, Ethics & Public Policy); Julie Ray, *Gallup Brain: Opinions on Partial-Birth Abortions*, GALLUP ORG., July 8, 2003 (on file with the Notre Dame Journal of Law, Ethics & Public Policy). Gallup and other polls also showed a majority of self-identified pro-choice respondents also favored a government ban on "partial-birth" abortions.

14. Katharine Q. Seelye, *A.M.A. Ratifies Leaders' Call for a Late-Term Abortion Ban*, N.Y. TIMES, June 25, 1997, at A11. The earlier ratification was by the AMA's Board of Directors on May 19, 1997. Note that the headline term, *Late-Term Abortion*, was widely known to be inaccurate even then, as the A.M.A. statement indicated.

15. The quote is from a joint interview with Senator Moynihan and Senator Orrin Hatch on *Meet the Press*. *Meet the Press* (NBC television broadcast, Mar.

partisan issue created by anti-abortion advocates but a moral issue that transcends political categories.

The second problem is that, unlike “fetus,” there was in 1995 no alternative “medical” term for this procedure that had been established and agreed upon by the medical profession. The reasons were simple: the procedure was not widely taught in medical schools, had never been subject to peer review, and therefore most physicians, including those who do abortions, were unaware of it. A search of the literature found that one physician, Dr. James McMahan, who pioneered this type of abortion, labeled it “intact dilation and evacuation.” Another physician, Dr. Martin Haskell, called it “dilation and extraction,” and under a third coinage it was called “intrauterine cranial decompression.” But these were coinages by individual abortionists and had no standing within the medical profession. As the House Judiciary Committee reported in 1995, “Just as the term partial-birth abortion is not found in medical literature, these terms are not found in medical literature because these horrific procedures are not generally accepted by the medical community.”¹⁶

Seeing the need for a term that would medicalize the procedure, the American College of Obstetricians and Gynecologists (“ACOG”), which supports abortion rights and represents many physicians who perform abortions, eventually adopted the term “intact dilation and extraction.” Even so, this term has never caught on with news organizations, including the *New York Times*, as a useful journalistic alternative to “partial-birth” abortion. For one thing, it is cumbersome for headline writers; for another, it does not really tell the reader what the fuss is all about.

The difference between “intact dilation and extraction” and “partial-birth abortion” is instructive. The former describes what the doctor does to the mother: dilate the cervix and extract the contents of her birth canal. “Partial-birth” describes what happens to the fetus/baby: it is partially delivered alive, at which point the physician can either proceed to a full birth or destroy the fetus/child—the latter being, of course, the purpose of all abortions. Significantly, neither term comes close to describing the violence done to the fetus/baby.

2, 1997). The full quote from Moynihan is as follows: “At the time [a Senate Judiciary Committee hearing in 1995], I remarked that the procedure was close to infanticide, and I voted—I voted with Orrin on this. . . . And now we have testimony that it is not just too close to infanticide; it is infanticide, and one would be too many.” *Id.*

16. H.R. REP. NO. 104-267, at 5 (1995).

III. POLITICS AND THE LANGUAGE OF EVASION IN THE *NEW YORK TIMES*

Given these problems, what kind of language should a news organization use in reporting this issue? Notice that throughout this Essay I have put "partial-birth" inside quotation marks. The quotation marks carry the meaning of "so-called" and signal to the reader that while this is the term by which the abortion procedure in question is commonly understood, it is not in any sense official, least of all within the medical community. The marks also signal to the reader that the label is contested, as are "pro-choice," "pro-life," and "reproductive rights." My examination of news articles on this subject dating back to 1995, when this form of abortion first generated public debate and therefore attracted media attention, shows that "partial-birth" is frequently the term of choice for headlines in the *Washington Post*, the *Los Angeles Times*, and *Chicago Tribune*.¹⁷ But not the *New York Times*.

Why?

From the beginning, the issues surrounding "partial-birth" abortion were political and legal. In June 1995, it should be recalled, a bill was introduced in Congress banning a procedure that its sponsors called "partial-birth" abortion. If the bill became law, it would be the first time since *Roe v. Wade*, the 1973 Supreme Court decision which found in "the right to privacy" grounds for a giving a woman a constitutional right to abortion, that any abortion procedure was declared illegal and that doctors who used it would be penalized. The bill passed but was vetoed in April of 1996, an election year, by President Bill Clinton. This was the first of several attempts to pass a bill outlawing "partial-birth" abortions, on both state and federal levels, which the Republican-controlled Houses of Congress succeeded in doing under President George W. Bush in October 2003.

But given the brutal nature of the procedure, the issues surrounding "partial-birth" abortion were also ethical and even medical. Some physicians testified that the procedure is unsafe and never necessary while others insisted that it is. Complicating matters further, there were no reliable statistics on how often the procedure was performed and how early in the patients'

17. A computer search of newspaper headlines since 1995 shows that the *Washington Post* used the term "partial-birth" or "partial birth" in sixteen headlines; the *L.A. Times* used it fourteen times; the *Chicago Tribune* used it twelve times. The terms were also widely used by the three newsmagazines, *Newsweek*, *Time*, and *US News and World Report*, which I know from experience. Newsmagazine headlines tend to be shorter than those of newspapers and therefore there is little room and no editorial appetite for vagueness.

pregnancies. In short, it was an important story with many dimensions. But in terms of journalistic craft and ethics it was also a nightmare. Like “heart attack” and “female genital mutilation,” which are not medical terms but are better understood than their textbook definitions, so “partial-birth abortion” is a common sense term, widely used and better understood than “intact dilation and extraction.” But “partial-birth” is the term of choice for those opposed to “choice” in abortion. On the horns of this linguistic dilemma, the *New York Times* devised a cumbersome solution.

From the outset, the *Times* determined to avoid using “partial-birth” in its news headlines. A computer search of the newspaper’s database since June of 1995 shows how persistently this prohibition has been enforced. Only once, on a news story published in April 2004, has “partial-birth” appeared in a headline.¹⁸ Instead, the *Times* has employed whenever possible a selection of opaque substitutes. The most frequently used terms were “type of” abortion and “form of” abortion, abortion “method” or “procedure” or “technique,” or simply a generic abortion “ban” or “curb.”¹⁹ Here is a sample of *Times* headlines, chosen for their variety of usages and published between 1995 and 2004:

*House Acts To Ban Abortion Method, Making It a Crime*²⁰

*President Vetoes Measure Banning Type of Abortion*²¹

*U.S. Judge in San Francisco Strikes Down Federal Law Banning Form of Abortion*²²

*Bush Signs Ban on a Procedure for Abortions*²³

Anyone who has ever written a headline knows that a way could be found in most of these examples to use “partial-birth.” From my computer analysis, I think it is obvious that the *Times* regards “partial-birth” as a toxic term. But why should this aversion result in headlines that, from a purely craft perspective, are so unclear? On this point, Mr. Siegal, the paper’s official in

18. Julia Preston, *U.S. Court in New York Rejects Partial-Birth Abortion Ban*, N.Y. TIMES, Aug. 27, 2004, at A12.

19. These various terms appeared in twenty-seven headlines on stories dealing directly with “partial-birth” abortion from June 1, 1995, through December 31, 2004.

20. Jerry Gray, *House Acts To Ban Abortion Method, Making It a Crime*, N.Y. TIMES, Nov. 2, 1995, at A1.

21. Todd S. Purdum, *President Vetoes Measure Banning Type of Abortion*, N.Y. TIMES, Apr. 11, 1996, at A1.

22. Adam Liptak, *U.S. Judge in San Francisco Strikes Down Federal Law Banning Form of Abortion*, N.Y. TIMES, June 2, 2004, at A13 (noting in the byline that Carolyn Marshall contributed reporting from San Francisco).

23. Richard W. Stevenson, *Bush Signs Ban on a Procedure for Abortions*, N.Y. TIMES, Nov. 6, 2003, at A1.

charge of style, was not much help. He does not, he said, "issue instructions on headlines." But on the frequently used term, "type of," he had this to say: "In the example you cite I think 'type of' is an explicit and diligent disassociation of the narrow legislation [banning "partial-birth" abortions] from a ban on all abortions." But surely "partial-birth," which in every headline cited above is the type or form or method of abortion referred to, is even more explicit and diligent.

A more plausible explanation is this: every one of the *Times'* headlines is designed to signal the reader that what is at stake in the "partial-birth" debate is its perceived threat to abortion rights in general, not just opposition to a distinct and discrete procedure. Thus, every story is framed as a narrative of assault on *Roe v. Wade*. This, I would argue, is the clear and obvious meaning of phrases like "type of" and the like. This meaning becomes obvious when we also examine certain formulas used in the stories the *Times'* headlines introduced.

For example, in the story that appeared on November 2, 1995, under the headline, *House Acts To Ban Abortion Method, Making It a Crime*, the reader is immediately told that a House vote to ban "a particular method of abortion" was the first such action since the Supreme Court decision of 1973. This is certainly true. In the second paragraph, we are told that this particular method is "known medically as intact dilation and evacuation," which, as we have seen, is false. Not until the fifth paragraph do we encounter the term "partial-birth" and then only as a term used by "opponents of the method."²⁴

By April of 1996, the *Times* had largely ceased defining the procedure in the first instance by using the "medical" terms. Here is what the *Times* wrote in a story published April 11 under the headline, *President Vetoes Measure Banning Type of Abortion*:

Aligning himself firmly with abortion-rights advocates in an election year, President Clinton today vetoed a bill that would have outlawed *a certain type of late-term abortion*, saying the women who need the procedure to safeguard their own health "should not become pawns in a larger debate."

Mr. Clinton vetoed the measure, then held an emotional White House ceremony at which he was flanked by five women who had undergone such abortions and who spoke tearfully about the disorders that threatened their

24. Gray, *supra* note 20.

lives and those of their fetuses and led to agonizing decisions.

The issue is likely to be a flash-point in the Presidential campaign, since *abortion opponents denounce the procedure*—performed only after 20 weeks of gestation—as a *gruesome “partial birth” abortion* in which the fetus is partly extracted feet first and its brain then suctioned out to allow the head to pass through the birth canal. But abortion rights groups vehemently opposed the bill as the first Congressional ban on a particular abortion method since the Supreme Court legalized abortion in *Roe v. Wade* in 1973.

At the White House ceremony, Mr. Clinton called the procedure a “potentially live-saving, certainly health-saving” measure for “a small but extremely vulnerable group of women and families in this country, just a few hundred a year.”²⁵

Once again we find an opaque headline that refuses to name the type of abortion at issue. In fact, it is given no name at all until the third paragraph. There, we learn, it is a procedure that abortion opponents denounce as a “gruesome ‘partial-birth’ abortion” But, as I have already pointed out, this statement, while true as far as it goes, is hardly accurate or fair, since by then there were large numbers of physicians and legislators who had declared themselves opposed to this particular form of abortion while remaining supportive of other abortion methods. But the *Times* chose to define the procedure as if the only issues at stake were political.

In the months that followed, there were two investigative journalistic reports, neither by the *Times*, that refuted the claims made by Clinton—claims that were also aggressively put forward by abortion rights advocates and ones that, perhaps because they were congenial to its newsroom culture, the *Times* found no reason to question. In September 1996, the *Bergen Record* (N.J.) found that in New Jersey alone approximately 1,500 “partial-birth” abortions a year were performed—three times the number that abortion rights advocates had claimed for the entire country. Moreover, far from being “late term” abortions, as abortion advocates and the *Times* had routinely identified them, and far from being on mostly on “disordered” mothers and fetuses, as Clinton claimed, the *Record* found that these abortions were per-

25. Purdum, *supra* note 21 (emphasis added).

formed mainly in the second trimester and mainly on healthy mothers and healthy fetuses.²⁶

Although the *Washington Post* is as strongly pro-choice as the *Times*, journalists there were also anxious to get at the facts of "partial-birth" abortion. A team led by David Brown, also a doctor, interviewed five abortionists in different areas of the country in an effort to figure out what percentage of these procedures involved women whose health was at risk and what percentage involved fetuses that would not survive if carried to full term. According to Brown, "a large number, possibly even a majority of these procedures were done on normal fetuses (and) most of them were done before the period of viability." Brown also found that "cases in which the mother's life was at risk were extremely rare."²⁷

From this reporting it was obvious that President Clinton and his White House staff had been badly misled by the abortion-rights advocates they had relied on. Ron Fitzsimmons, executive director of the National Coalition of Abortion Providers, announced that he had "lied" to the news media about the numbers of "partial-birth" abortions, and at what point in patients' pregnancies they were performed. On the contrary, Fitzsimmons said that the vast majority of these abortions are performed in the twenty weeks-plus range on healthy fetuses and healthy mothers. "The abortion rights folks know it, the anti-abortion folks know it, and so, probably, does everyone else," he said.²⁸ On the following June 25, as noted above, the American Medical Association issued its letter in support of a government ban on the procedure—the first time the AMA had taken a position on abortion since *Roe v. Wade* and only the second time in 150 years that it had endorsed legislation to prohibit any medical procedure.

Despite these red flags, the *Times* continued to march to its own drummer. Since in its headlines the *Times* refused to name

26. Ruth Padawer, *The Facts on Partial-Birth Abortion*, BERGEN RECORD (N.J.), Sept. 15, 1996, at O01.

27. *Media Matters* (PBS television broadcast, Jan. 1997). The published articles are Barbara Vobejda & David Brown, *Harsh Details Shift Tenor of Abortion Fight: Both Sides Bend Facts on Late-Term Procedure*, WASH. POST, Sept. 17, 1996, at A1, and David Brown, *Late Term Abortions: Who Gets Them and Why*, WASH. POST, Sept. 17, 1996, at Z12.

28. Diane M. Gianelli, *Abortion Rights Leader Urges End to "Half Truths"*, AM. MED. NEWS, Mar. 3, 1997, available at http://www.ama-assn.org/amednews/1997/pick_97/spec0303.htm (on file with the Notre Dame Journal of Law, Ethics & Public Policy). But newspaper stories about the interview appeared days earlier, probably based on an advanced news release from American Medical News, the official newspaper of the American Medical Association.

the abortion procedure it was reporting on, how did it define that procedure in the text? A computer analysis of the *Times* database shows that between 1995 and the end of 2004, the newspaper published more than 200 news articles (excluding personal columns, letters to the editor, wire service reports, and all stories under 200 words) in which “type of abortion” or “form of abortion” was followed immediately by phrases like “which opponents call ‘partial birth abortion.’”²⁹ This linguistic construction was so pervasive that it even appeared in stories dealing with views in South Dakota on the war in Iraq, the Vatican, television coverage of the presidential debates, and other pieces whose primary subjects were far removed from political and legal battles over “partial-birth” abortion.³⁰ The language of evasion had become a verbal tic.

Obviously, consistency of this kind can only be achieved by following an editorial recipe. Siegal, a genial and accommodating man, briefly described the process that led the *Times* to adopt its formulas. “On ‘partial-birth’ abortion,” he said, “we have had many discussions among writers and editors who cover both the politics and the science. We all agree that there is no factually correct neutral term, so we are stuck with ‘partial birth,’ but we try to qualify it with phrases like ‘known to opponents as partial birth abortion.’”

In other words, the discussion was entirely in-house. Siegal’s response reminded me of the observation by the newspaper’s Public Editor, Daniel Okrent, that “getting outside one’s own value system takes a great deal of questioning.” To be sure, in its longer news stories the *Times* has usually been diligent and fair in citing arguments from advocates on both sides of the “partial-birth” abortion debate. That is what newspapers are supposed to do. And it is true that the *Times* is not alone in using the evasive formulations I have described. But it *is* alone in using them

29. The database search was conducted February 12, 2005, on all articles published by the *N.Y. Times*, limited to articles greater than two hundred words, in order to eliminate short wire service stories, and excluding editorial desk or news summary or plural (letters). The search was limited to articles published after May 31, 1995. It searched for all articles containing “partial birth abortion” or “partial-birth abortion” that also included within ten words of these phrases the words “call” or “name” or “describe” or “phrase” or “characterize.” I want to thank Lisa Bergtraum and Sam Register of the *Newsweek* library for conducting the computer searches for this essay.

30. See Jodi Wilgoren, *Threats and Responses: The Mood; South Dakota Call-Ups Bring Iraq Close to Home*, N.Y. TIMES, Mar. 9, 2003, at 17; Laurie Goodstein, *Vatican Cardinal Signals Backing for Sanctions on Kerry*, N.Y. TIMES, Apr. 24, 2004, at A13; Alessandra Stanley, *Bush Shows a Different Side, but Not His Best One*, N.Y. TIMES, Oct. 9, 2004, at A10.

exclusively and consistently—indeed, one might say, dogmatically. This very standardization gives their entire coverage a mono-dimensional caste and conveys a single message to its readers: the only way to understand the issue of “partial-birth” abortion is to see it as a political threat to a woman’s right to an abortion of any kind and for any reason. And the corollary message is also clear: “partial-birth” is nothing more than a metaphor, or slogan, created by one party to the nation’s on-going debate over abortion itself. In short, “partial-birth” abortion is not to be regarded as a moral and medical issue in its own right.

As it happens, these have also been the consistent messages of the *Times* editorial board. Ironically, the editorial page is the one place over the last nine years where readers were likely to see the term “Partial-Birth” used in a *Times* headline. For example, as far back as April, 11, 1998, in an editorial headlined, *The Politics of Partial Birth Abortion*, the *Times* declared: “The conservative campaign to ban partial birth abortions is part of a strategy to limit abortion rights in general.”³¹

This has been the *Times*’ editorial position since the “partial-birth” abortion issue emerged in 1995. We see it again in *Frank Talk About Abortion*, a 1,302-word editorial published on September 30, 2003, that remains the longest and fullest expression of the newspaper’s point of view. The editorial, the only one on the page, is significant for the definitions it relies on: for example, it defines a human fetus as “a potential life,” implies that the ACOG’s definition, “intact dilation and extraction,” means medical acceptance of the procedure, and ignores the AMA’s support for a congressional ban on the very same procedure. The main purpose of the editorial, however, is to counter what it called “The ‘Partial Birth’ Strategy”:

“Partial birth” is a political battle cry, not medical terminology. People who want to end all abortion rights have made no secret of the fact that their strategy is to single out the aspects that create the greatest popular discomfort, chipping away until, as a practical matter, access to legal abortion is no longer available.³²

This, as I have shown, is precisely how the *Times* also frames—and ideologically sequesters—the issue of “partial-birth” abortion in its news stories. Moving from the news pages to the editorial page it is hard to know which is the sound, which the echo. One of the values that newspapers are expected to uphold is the absolute separation between the editorial page and the

31. *The Politics of Partial Birth Abortion*, N.Y. TIMES, Apr. 11, 1998, at A10.

32. *Frank Talk About Abortion*, N.Y. TIMES, Nov. 30, 2003, at WK8.

news pages. At the *Times*, this independence of news from editorial is symbolized by housing editorial writers on one floor, reporters on another. Yet on the issue of “partial-birth” abortion, those who edit the news and those who comment on it appear to be joined at the hip.

This conclusion should not surprise long-time readers of the *New York Times*. Nor am I under any illusion that the *Times* will, on this subject, rethink its one-dimensional newsroom practices, much less its constraining newsroom culture. A walk through the *Times*, as Okrent put it, can indeed make readers feel like “you are traveling in a strange and forbidding world.” It is a strange world where “women” carry “fetuses” but where it is forbidden to ever write that “mothers” carry “babies.”

This Essay is about journalistic ethics, not the ethics of abortion. My purpose throughout has been to demonstrate that even at the highest levels of journalism, the demands of craft and the demands of ethics are braided and seldom separable. Language is where the two most often intertwine, and when ideology determines what is written as news, language and its integrity are the first to suffer.