

When Judge Joseph W. Moylan of Omaha, Nebraska, was asked to approve a teenager's request to waive the requirement that she seek her parents' approval for abortion, he faced a crisis of conscience. Unable to adhere to the law of the state, the 61-year-old judge with more than two decades on the bench, resigned saying, "I simply cannot enter an order authorizing one human life to put to death another totally innocent human being.... I am reminded of Lincoln's statement: 'No law can give me the right to do what is wrong' (from *Omaha World Herald*, 10/8/94).

NO LAW CAN GIVE ME THE RIGHT TO DO WHAT IS WRONG

Judge Joseph W. Moylan

First of all, I want to thank University Faculty for Life for the honor of being here today to speak about my resignation. Let me begin by repeating a true story told by Charles Rice, a University of Notre Dame law professor:

On October 26, 1991, Alan Hayat, M.D., performed an abortion on twenty-year-old Rosa Rodriguez in his Manhattan clinic. He charged her fifteen hundred dollars. Doctor Hayat had estimated that she was between the twelfth and sixteenth week of pregnancy. In fact, she was between thirty-two and thirty-four weeks. New York law permits abortion after the twenty-fourth week only to preserve the mother's life. When Miss Rodriguez awoke from the anesthetic, Dr. Hayat told her the abortion was incomplete and advised her to go home and return to him the next day. That night, however, she delivered a live baby girl, Ana Rosa Rodriguez, whose right arm had been severed below her shoulder. The New York State Department of Health had been investigating complaints against Dr. Hayat for several years. After the Rodriguez case hit the papers, seven other women came forward to accuse him of botching abortions he had performed on them. The Department then moved to revoke his medical license.

Ana Rosa's severed arm triggered the outcry that cost Dr. Hayat his license. If he had done his job skillfully — if he had killed the child instead of mutilating her — the case never would have come to public notice. The outpouring of indignation and sympathy for Ana Rosa after her birth, however, could not change the reality that, in public opinion as in law, she was regarded before her birth as less than human. She lacked even protections against cruelty afforded by the law to animals. In the usual abortion procedure, as in the attempt on her life, the living child is torn limb from limb, which procedure could mean a jail term if it were inflicted on a dog or cat.

There is a federal law that if you move, damage, or destroy an eagle's egg or nest, you can be subject to a \$5000 fine or a year in prison, but there is no penalty for putting to death a human in the womb.

In 1991 Nebraska passed what is called a Parental Notification Abortion Law. By this law, if a pregnant teenager (seventeen or younger) wants to have an abortion, she has to notify a parent. The law also provides that if she does not want to do this, she can file a petition in court to get a hearing. That sounded good when first introduced. In fact, I think judges were quite lax in not keeping up on this bill before it got passed. When this bill, taken from a Minnesota law, did get passed, it stated that at the hearing the pregnant minor is entitled to have an attorney appointed for her, and even a guardian *ad litem*. There is nobody on the other side, unless a judge takes it on himself. Now I know of no other case that is like that, where it is truly one-sided. If after that one-sided hearing, the judge finds that the girl is mature and can give an informed consent, then the judge is *required* to authorize the abortion physician to perform the abortion. That was quite unsettling to a lot of judges. It looks like, and I still believe, that a judge so acting would be a direct material participant, and the only thing that occurred to me is that it is like putting a contract out on somebody.

You are just as guilty as if you did the actual killing. The abortion could not be performed unless I signed the order. I thought that was especially ironic for me. In Juvenile Court for twenty-one years I had been assigned to protect young children and infants from abuse and neglect, and now I was being called upon to inflict the ultimate abuse. I knew, of course, that abortion was wrong, but I felt I needed to know more.

Without much effort I found that with *Roe v Wade* the Supreme Court, for the second time in history, had declared a whole class of people not protected by the Constitution. The other time, of course, was 1858 in the *Dred Scott* decision when black people were declared non-persons and thus were not included in the constitutional protection of liberty. I also learned, in regard to the development of the child in the womb, that within three weeks there is a heartbeat, within five weeks there are brain waves, and within eight weeks all the vital organs are in place and functioning. In addition, I found out that the infant can feel pain, which surprised me. Then I read that doctors sometimes perform operations on infants in the womb, and when they do that, they anesthetize that infant because of the pain. And yet, of course, in abortion they don't anesthetize them. They don't want to recognize, I guess, that the child is human, that it can feel pain. My reading led me to realize that the infant is not a part of the mother; oftentimes it has a different blood type, and it has a separate heartbeat and has been destined naturally to live outside of the mother's womb.

Now in regard to the procedures used in abortion, there are approximately seven of those. In the suction aspiration method, the abortionist inserts a plastic hollow tube into the dilated uterus. The tube is connected to a powerful suction apparatus, and the suction tears the baby's body into pieces. The dilation

and curettage method is similar to the suction procedure: a tiny hoe-like instrument is inserted into the uterus, and with this the abortionist cuts the baby into pieces and scrapes him or her into a basin. In the dilation and evacuation method, used after twelve weeks, the abortionist inserts an instrument into the uterus, seizes a leg or other body part, and with a twisting motion tears it from the baby's body. Often the skull must be crushed in order to remove it from the womb. All the other methods, of course, are similar. Ultimately I decided that I could not go along with this law.

It was two years before I was assigned one of these cases. The reason was that most pregnant minors do tell their parents, and in fact many of the parents encourage the abortion. Also, some minors use fake ID's and abortion clinic workers don't question them. Another reason is that the judges are picked at random and do not take their turn, so all the judges' names are in a hat, so to speak, and when a case is filed, they pick one out. One judge could get five cases while another judge gets none. I understood that I was the last judge to get one. In our city there are approximately fifteen district judges and two juvenile judges who can handle this type of case. Anyway, I got a call from the clerk of the District Court one day saying I was assigned one of these cases, and I asked her if there were any way out of it. She said she didn't know but would check on it. In the meantime I called my pastor, Father Robert Gass, and told him the problem and my thoughts about it. He totally agreed with me. When the clerk called back saying the case was mine, I said, "Well, I'm going to resign. I can't take this case."

The problem is, I took an oath to uphold the laws of the State of Nebraska. There is also a canon in the Code of Judicial Ethics that you have to take any case

assigned to you unless there's an excuse named in it, like personal involvement in the case, financial involvement, a relative, or something similar.

I called my wife. We had talked about this for two years, and she agreed with me. She said I should wait a day before turning in my resignation. I did that and by the next morning the word has gotten around. Five or six judges called me and really urged me not to do this.

The reason most of them gave was that it is really the girl's decision. I answered that they can't have the abortion unless I authorize the physician to perform it. One said he had resolved it morally; I didn't ask him how. Another judge, who had been there as long as I had, said he couldn't afford to resign. All through these two years a scriptural phrase kept coming back to me, "What does it profit a man to gain the whole world...?" I prepared and sent the following letter to the Chief Justice of the Supreme Court of Nebraska:

Dear Justice Hastings,

I was assigned a matter today concerning a hearing pursuant to Section 71-6903, which I declined. In reviewing the Abortion Parental Notification Law, I noticed that the definition of abortion is "an act, a procedure, producing the premature expulsion, removal, or termination of human life" (that's right in the definition, in the law) "within the womb of the pregnant woman." If, after a hearing, I find that the minor pregnant woman can give an informed consent, and is mature enough to undergo this procedure without notifying a parent, then I must enter an order authorizing the abortion physician to perform the abortion resulting in the death of the human life.

I simply cannot enter an order authorizing one human life to put to death another totally innocent human life. I am reminded of Lincoln's statement, "No law can give me the right to do what is wrong."

This is the first law I have encountered in twenty-one years in this position that I am unable to enforce. Since I took an oath to uphold the laws of Nebraska and cannot comply, I am resigning my position as a judge of the Separate Juvenile Court.

I had decided long before that if I did resign, I wanted to make it public and try to do something positive for the pro-life movement. So I was not going to do this quietly.

I called a reporter for the *Omaha World Herald*, Mike Kelly, whom I had known years ago. He came up to my office and we spent about an hour together. He took a copy of the law and a copy of my resignation letter with him. I asked him not to have anything printed until the following evening because I wanted the Supreme Court Justice to get my letter before that. The following evening, a Friday evening, I was surprised when I got home to find that my resignation was the front-page headline story. This astonished me because the *Omaha World-Herald* is not pro-life. The next day there were two more articles; one was a discussion of my conversation with Mike Kelly in his regular daily column, and one of the things I said was that I believed that sometime we are going to have to appear before our final Judge and we're going to have to account for what we do. I said that there are a lot of things I wish I didn't have to account for, and I don't really care to add this to the list. He printed everything I said except for one sentence. I had said, "The procedures used in abortion are horrendous." I don't believe he took it out. I believe it was higher up. It occurred to me then, thinking about that, I never see any article in the secular press describing what goes on in abortions. At any rate, that was my resignation.

Many people have wondered what response I received. There are approximately 140 judges in Nebraska who have jurisdiction to hear this type of case. Now I put them on the spot. I knew that, and I didn't like to. A lot of them were friends. I didn't know what to do except this. I heard from two out of 140 judges. They were both out-state. One is not pro-life, I know, and the other one is. He called me and was

really strongly supportive, but that was all the response from any judge anywhere. I did get a letter, which surprised me, from Lou McHardy, the Executive Director of the National Council of Juvenile and Family Court Judges in Reno, Nevada:

Dear Judge Moylan,

A colleague of mine, Jim Toner, directed my attention to the article about you in *Our Sunday Visitor*. I understand that you resigned from the bench rather than issue an order permitting a teenager to obtain an abortion. In my estimation you have responded faithfully to a higher call of morality and decency. Truly you fully deserve the salutation of "Your Honor." Most of us do not have the courage you demonstrated. I commend you and admire you and urge you to call upon me whenever you feel I may be of assistance. Trusting that Our Good Lord will bless you in many ways....

I received over a hundred phone calls and more than two hundred letters, all of them positive. Fifteen to twenty priests that I know mentioned my action in their sermons, and several ministers also did so. Reporters from religious magazines and newspapers and five Christian radio stations from different states called and interviewed me. *Our Sunday Visitor* had a full-page article and an editorial. *National Catholic Register*, *Celebrate Life* (American Life League's publication), *First Things*, and the HLI newsletter all published accounts of my resignation. The editor of *Human Life Review* called last year and asked me to write an article, which I did. It was printed in the fall issue. Recently, in May, an article appeared in *Citizen* magazine published by "Focus on the Family." There have been no interviews for secular magazines or for secular newspapers other than the *Omaha World Herald*. Several bishops were also supportive, including my own bishop, Archbishop Eldon Curtiss. The bishop of the Lincoln, Nebraska diocese, Bishop Bruskiwicz, wrote, "I am sure your action in resigning from the

bench makes a stronger contribution than all of your other wonderful works and acts over the course of your judicial career." Father Val Peter, Director of BoysTown, sent a strong letter of support comparing me to St. Thomas More. I wrote back and said that I thought that was a little bit overdone. I said, He lost his head; I just lost my job. A Jesuit from Washington, Fr. Brian Van Hove, wrote, "It reminds me of all those Dutch physicians who refused to cooperate with the Nazi imposed sterilization laws during the occupation. Our century has not seen much good, but a few solitary witnesses always encourage the faint-hearted."

A sampling of responses from lay people includes a note from a young Omaha man who wrote: "You have inspired me to become more active in the pro-life movement." A lady from Lincoln, Nebraska said, "I have a fourth grader who had to do an assignment at school, and he chose the article in *The World Herald* about you. A lady from Blair, Nebraska wrote that she was having a talk with her thirteen year old daughter on values and how important it is to act, knowing what is right. She picked up the evening paper, saw the headline, read the article regarding my resignation, and quoted it to her daughter as an example of what she was talking about. She said she wanted me to know how much it helped her to get her point across and what an impact it had on her child. A nun from Flint, Michigan wrote, "The Gospel is indeed radical, and God must be pleased." A teacher at a Catholic girls' school, and advisor to their Respect Life Club sent a letter, as did many of the students. One of the girl wrote, "I think it's great that a person in your position has some guts." Another interesting letter came from the founder of "International Cops for Christ" in New York City. He wrote, "I read about the courageous stand you took for the life of the innocent unborn. Thank you for doing

this. It is an inspiration for all pro-lifers to see such resolve." He sent a booklet entitled "Bloodshed Touching Bloodshed" which he had written from the perspective of a law enforcement officer to educate other law enforcement officers about the pro-life issues.

From a high school coach in Wisconsin I read, "I heard your story on WEMI concerning the stand you took. I have been teaching, coaching, and just plain serving in the community for twenty-two years, and I am always looking for role models. As an encouragement and credit to you, I plan to use your example in my senior health class when we get to the point of decision-making by using beliefs. I commend you on your strong stand." Another letter from a young man said, "I was unable to bring myself to commit to praying at one of the abortion mills, but after reading your article I am going to try."

One of the reasons the judges gave in *Roe v Wade* to justify their decision was that these unborn humans have *not yet reached the capability of meaningful life*. It is interesting — or tragic, I suppose, is the right word — that legislation introduced so far to legalize euthanasia states that it may be used when the patient is *no longer capable of meaningful life*. Now the words of the Hippocratic oath, recited by doctors since the fourth century B.C., are: "Thou shalt not give poison, thou shalt not procure abortion." These words, I believe, have now been changed. They had to be. Scientists and biologists agree that the baby in the womb is a human life from the moment of conception. The Declaration of Independence states that we are endowed by our Creator with unalienable rights to life and liberty. As Christians we believe that we are created in the image and likeness of God.

I'd like to close with this comment by Mother Teresa, which was cited in a brief in a case in this country:

America needs no words from me to see how your decision in *Roe v Wade* has deformed a great nation. The so-called right to abortion has pitted mothers against their children, and women against men. It has sown violence and discord at the heart of the most intimate human relationships. It has aggravated the derogation of the father's role in an increasingly fatherless society. It has portrayed the greatest of gifts, a child, as a competitor, an intrusion, and an inconvenience. It has nominally accorded mothers unfettered dominion over the independent lives of the physically dependent lives of their sons and daughters. Human rights are not a privilege conferred by government. They are every human being's entitlement by virtue of his humanity. The right to life does not depend and must not be declared to be contingent on the pleasure of anyone else, not even a parent or a sovereign.