and I think that that is one of the reasons we can give no more information than that.

I also want to be clear that I don't think we have published that this program has satisfied all statistical powers chi-square. We have simply reported the data as you have referred to them. One of the problems, and one of the reasons, Senator, that we had to do lumping--we found out something very early in this program, and it doesn't always reflect either a causal relationship or a causal outcome; that is, so much of this population was mobile and moved. We had people going out and people going in. They were very difficult to track, and that is one of the things that we are trying to attract funding for now so we can track these people as they move. It is a tough--epidemiological studies are difficult, but I brought this program in to bring some services.

Senator Jeffords. I understand that, and all I disagree with is making conclusions from data which doesn't give you the ability to make those conclusions, and then sell it as "the program." I think it is a good program, but as you know and I know, most of your teenage pregnancies are with school dropouts anyway--60 percent. So unless we really get a program that gets the school dropouts into the program, we are not going to be successful.

Let me go on to another area where I have a question,

and that is the Tuskegee syphilis study. I have listened to the FBI and I am confident that you were not there that evening, but I also come from a rural community and it would amaze me, being in a small group of doctors, that if something was that controversial there would not have been discussion about it or something that you would have been aware of the nature of that study.

I would just like your own statements on that because, as I say, if it was that controversial and that exciting--or maybe it wasn't at the time, by the nature of things, that controversial, but I would like to know--it is hard for me and I would like to hear it from you that you didn't really learn anything about it until, I guess, 1972.

Dr. Foster. Senator, I can make it very simple. The reason there was no controversy is because there was no subject, there was no topic. Nothing has offended me more than this. That study became known to everyone in Tuskegee in 1972. It was I who had become president of the Macon County Medical Society. The writings show that it was I who called the meeting to help the CDC identify these men so they could be treated.

I was outraged, quite frankly. I didn't believe it was happening in America a quarter of a century after Nuremberg. I didn't believe it, and if anyone in Tuskegee had known about it, Senator, I think the place would have gone

ballistic. Tuskegee is a place where a repository of all racial lynchings that have ever occurred in this country is kept as we sit here. No one knew about that study until 1972. I was outraged then. If I had found out in 1971 or 1970 or 1969, I would have been equally outraged. It was awful.

Senator Jeffords. Thank you. Now, there have been a couple of comments that have troubled me, and I know that you have also had an opportunity to explain those and that gave an indication of some sort of a racist feeling in yourself against whites in the sense of the comments you made with respect to white right-wing extremists.

Dr. Foster. Thank you.

Senator Jeffords. It is a tongue-twister.

But then there was a second comment which you made which also concerned me. When talking about the treatment of black nominees for the administration, you said there is something fishy there, and I would like you to again for the record explain those comments and make your statement on them.

Dr. Foster. Those are very appropriate questions, obviously. This position is not about race. Race has no part in this. Health applies to all American people. Let me go slow because I slipped ~~one~~ once. The "white right-wing" was--it was a slip, a slip of the tongue, nothing else. We

had a prepared text. It wasn't even there.

Now, the question when I spoke and addressed the black journalists--what was really the substance of my statement was not carried. The "fishy" thing implied to these men that we always had to be vigilant; we had to be vigilant to protect ourselves. What the statement also, if you will review the record, said was, one, minority candidates are at greater risk simply because this administration has a greater number; it has more diversity, so just on chance alone. And the second and most important thing--I said I am unaware of any concerted or orchestrated effort to identify minorities, and I said we must keep our guard up, and that was the end of it.

Senator Jeffords. Well, thank you. I appreciate that. I see my time is expired. Thank you.

Dr. Foster. Thank you, Senator.

The Chairman. Senator Pell, did you wish to--

Senator Pell. Thank you very much, indeed, and I congratulate you and I am very glad you are holding the hearings as fairly and as quickly as you have. I would ask unanimous consent that my statement may appear in the printed record.

The Chairman. Without objection.

[The prepared statement of Senator Pell follows:]

Senator Pell. I know that we are interested in all kinds of aspects of your being and your character and your personality and what sort of job you will do, but I had a couple of questions, really, of background.

One, what decided you to go into the field of medicine and not the field of commerce or the field of science or some other field? What was the motivating force?

Dr. Foster. There probably wasn't a singular issue. I think there were two things. My father graduated from Morehouse College in 1928. He had wanted desperately to go to medical school, but as you know, it was the ~~heart~~ start of the Depression. My mother was expecting her first child, my sister, so my father took a job in Pine Bluff, AR, teaching high school science for $2 a day. I think, knowing that he wanted to become a doctor, perhaps subconsciously I was doing this in a vicarious way ~~to~~ for his fulfillment.

But perhaps another more realistic reason is my father's very best friend that I can remember was a Dr. Clyde A. Lawlah, L-a-w-l-a-h-. Dr. Lawlah was a man of color who finished the University of Chicago in 1925. I used to make house calls with Dr. Lawlah, and I was impressed and I thought that was nice.

And then on a pragmatic sense, there were few options that we had then. I could not become an aeronautical engineer--well, I could, but I couldn't get a job. I mean,

we had to do things that were practical. All of our people needed undertakers; they needed teachers, they needed health care. So I am being very honest and open. I think all of those contributed to my choosing to go into medicine.

Senator Pell. Thank you. Dr. Foster, I have long been interested in the Public Health Service, the Commissioned Corps. They look after the Coast Guard at some of the public hospitals. What are the main responsibilities of the Commissioned Corps?

Dr. Foster. A fine Corps, founded in 1871. We have approximately 6,300 officers, all commissioned. It started out--I read Fitzhugh Mullins' book, Plague in Politics, but it has responsibility for assuring the safety of this Nation in cases of disaster, be they man-made or natural. As I mentioned this morning, we have 54 of our corpsmen in Oklahoma City who are doing the mortuary work. There are 17 who are doing health care and there are 6 in the Dallas office. Their major responsibility is, of course, protecting the public health of this country. They work all around.

We have them in rural areas. They go into underserved areas. Nine of the 54 physicians that I recruited to Meharry when I served as its dean were members of the Commissioned Corps. As the Surgeon General, the one thing that I would assure more than anything--I would not change

anything now because I don't know what to change, but I would certainly try to assure that we would create an atmosphere for the Commissioned Corps that would allow us to retain the very strongest and best doctors in that group.

Senator Pell. To encourage the esprit de corps, it is probably a pretty good idea to wear uniforms. Is that your intention?

Dr. Foster. Well, I don't know, but I have worn a uniform before.

Senator Pell. Some of your predecessors, Dr. Koop and others, have in the past, and I would encourage you in that direction.

Dr. Foster. Thank you, Senator.

Senator Pell. What is your view about some of the alternative therapies, natural healing or items that are not normal medicine--dietary supplements, nonmedical interventions?

Dr. Foster. Madam Chairperson, I didn't quite hear the first--

Senator Pell. My question is what is your attitude with regard to nonmedical interventions--vitamins, dietary supplements, things of that sort?

Senator Kennedy. You had better come up with the right answer on this one. [Laughter.]

Dr. Foster. You put me under a lot of pressure.

Senator Pell. It is not difficult.

Dr. Foster. This isn't the right answer, I am sure, but I think the best source of vitamins is a balanced and a good, nutritious diet. I think that is the best and first source.

The Chairman. I think that is a pretty good answer for a Surgeon General nominee.

Senator Pell. If you are confirmed--and certainly I think you will be and trust you are; I know I look forward to supporting you--and you look down the road and you have had a couple of years in the job, what do you visualize yourself doing in later life?

Dr. Foster. Excellent question. I feel very fortunate to have received an education in medicine and to have been so closely associated with academic medicine all of my life. As you probably know from my background materials, I am a rather prolific writer. I want to continue to teach. I will teach well into my years, as long as my health will allow me to do it, and I would like to continue to do some type of research.

I am doing some very difficult epidemiological research right now looking at birth weight in certain groups, but that is what I would like to do, to continue to teach. And to be very candid, I do want to improve my golf game a little bit. [Laughter.]

Senator Pell. No further questions.

The Chairman. Thank you, Senator Pell.

Senator Coats?

Senator Coats. Dr. Foster, the committee agreed that we would only have opening statements from the chairman and the ranking member, and then other members of the panel would incorporate their opening statements with their initial round of questions. So with your indulgence, I will give my opening statement and then finish it with some questions to you.

Dr. Foster. Yes, sir.

Senator Coats. When Americans choose a doctor, they look for several attributes--candor, credibility, ethical judgment, all attributes that build our confidence in that individual. When choosing a Surgeon General, our Nation's doctor, we should expect the same and accept no less than that.

In at least three areas, the words of Dr. Foster and the public record are disturbingly at odds--on the issue of abortion, on the issue of involuntary sterilization, and on the issue of the Tuskegee syphilis experiments. Each case raises serious questions of candor, credibility, and ethical judgment of the nominee, and I believe deserve thorough examination.

Throughout this entire nominating process, we have been

given conflicting and confusing statements both by Dr. Foster and by this administration. Again and again, we have seen attempts to clarify the record, again, both by Dr. Foster and spokespersons for the administration.

The result of that has been a disturbing pattern of inconsistency. I am particularly concerned because that pattern seems inevitably to lead to the heart of the most serious and divisive ethical and moral medical questions of our time.

Dr. Foster, by his own admission, performed forced sterilizations, a practice ultimately ruled unconstitutional by the Supreme Court and deemed unethical by the Federal Government. He performed abortions and has been an activist for that procedure both late in pregnancy and for sickle-cell-affected, and there are serious questions whether he know of the Tuskegee experiments before he made any public criticism.

The administration claims that Dr. Foster was in the mainstream of these issues. That is highly questionable, but it also begs an important question. The issue is not simply what is permissible, but what is principled. The calling of the Surgeon General is not simply to follow others' lead, but to lead so that others will want to follow.

A physician elevated to Surgeon General must not only

understand what is legally permissible; he should represent the highest ideals of his profession. He must do more than avoid violating the law; he must demonstrate the highest standards of ethical leadership.

I am concerned that on one of the most divisive issues of our times, abortion, this nominee has demonstrated a disregard of facts. On February 2, 1995, the Washington Post reported that Dr. Foster performed only one abortion. Dr. Foster recalled that this abortion was memorable because it involved a woman with AIDS. At the time, the White House informed the chairwoman of this committee of this fact, and I, along with most members, accepted this statement as fact.

The very next day, on February 3, the Department of Health and Human Services issued a statement by Dr. Foster. he said, and I quote, "In that period of three decades, as a private practicing physician, I believe that I performed fewer than a dozen pregnancy terminations. None were in outpatient settings, all were in hospitals and were primarily to save the lives of the women or because the women had been victims of rape or incest."

I then accepted that statement as a correction in factual record, but it was 5 days later when Dr. Foster told "Nightline" that in reviewing the records, he now determined that he was the physician of record for 39 abortions.

On February 6, the official Government transcript of a

1978 Health, Education and Welfare Ethics Advisory Board meeting surfaced. In this transcript, this Dr. Foster is quoted, "I have done a lot of amniocentesis and therapeutic abortions, probably near 700." On the next day, February 7, the White House insisted that Dr. Foster, quote, "wasn't even at the hearing," and that the transcript was, quote, "a fraud, mistaken, released out of context, or doctored."

Later, the Department of Health and Human Services admitted that the official Government transcript did indeed exist, Dr. Foster was a participant at that meeting, and that his quote had not been altered in any way. They contended, and plausibly, I believe, that the official stenographer simply got it wrong.

In a speech to the National Medical Association in 1974, Dr. Foster said that, quote, "Recently, I have begun to use hysterectomy in patients with severe mental retardation." The White House argued that this practice of involuntary sterilization of the mentally retarded for purposes of family planning or hygiene was, quote, "in the mainstream of medicine at the time."

Yet, in May of 1971, the Office of Economic Opportunity drafted guidelines that emphasized that sterilization, quote, "must be strictly voluntary and extend only to the legally competent." In September of 1973, the Department of Health, Education and Welfare published preliminary

regulations that would ban the use of Federal funds for involuntary sterilizations without judicial review.

In December of that year, 1973, the Supreme Court determined that it was unconstitutional to involuntarily sterilize mentally retarded inmates. In February of 1974, the Federal Government published final regulations banning the use of Federal funds to involuntarily sterilize the mentally incompetent, unless an independent review committee approves and a, quote, "court of competent jurisdiction has determined that the proposed sterilization is in the best interest of the patient." In March of 1974, the Supreme Court determined that it was unconstitutional to sterilize a minor without parental consent--all this prior to Dr. Foster's statement and in direct contradiction to the White House characterization of this practice as mainstream medicine.

Dr. Foster claims he did not know any details of the infamous Tuskegee syphilis study prior to 1972. He asserts that he was first informed by the media of that study in July of that year. However, I am disturbed at the numerous official Government documents and statements by witnesses that the committee's investigation has uncovered which raise questions about Dr. Foster's assertions.

These documents suggest that two institutions of which Dr. Foster was a member knew of the Tuskegee experiments.

Dr. Foster was chief of obstetrics at the Tuskegee Institute while the Public Health Service was urging cooperation from the hospital. Official documents suggest that the Institute and its physicians were well aware of the syphilis study.

In February of this year, Dr. Foster denied that he was an officer of his county's medical society. Documents, however, show that he was the vice president of the small 10-member medical society in 1969 and became its president in 1970. Official Public Health Service documents and at least one witness indicate that the Public Health Service met with the society membership and gave each member of the society detailed information about the study, including a list of surviving participants of the study. Dr. Foster has insisted that he did not attend the meeting and had never heard of the study before 1972.

It is a fact, in 1970, that Dr. Foster became president of the Macon County Medical Society. A State health official has given a deposition claiming at that point that he informed Dr. Foster of the Tuskegee experiments, and I quote, "I had discussed this matter with him on a subsequent time in connection with a comprehensive health planning meeting, as I recall now, and he says," referring to Dr. Foster, "well, we think we ought to treat them." That was the proper sentiment, I would suggest, from Dr. Foster, but it was a sentiment allegedly expressed well before Dr.

Foster claims to have had any knowledge of the matter. In fact, it was over a year before Dr. Foster made any public criticism of the Tuskegee scandal.

This nomination has turned into something difficult and disturbing, and that is unfortunate, but it is Dr. Foster and the Clinton administration who are directly responsible for that development. On issues that engage the moral conscience of America, issues we treat with profound seriousness, their words and their actions are the actions and words that have been inconsistent and misleading.

More than that, they want to treat these concerns as something to be lightly dismissed, not honestly explained, but explained away. The office of Surgeon General, as we have seen, has the remarkable ability to unite our Nation on serious health issues or to splinter our Nation through destructive arguments.

Following the last Surgeon General, it is my strong opinion that we ought to require someone who will restore confidence in that office and unify our people around a set of urgent health concerns. Both those tasks are impossible without the candor that leads to confidence and the ethical sensitivity that calls American medicine to its conscience.

Dr. Foster, I know there is not much time left here, and I hope and I trust that we will have sufficient time to explore these issues that I have raised, and you deserve the

opportunity to respond to each and every one of those. At this point, however, let me follow through on one of these points.

At one point, the White House said you performed one abortion. You modified that to fewer than a dozen, then on "Nightline" to 39. There was the discussion on "Nightline" also of supervising the Upjohn study with the chemical abortions. That was an additional, I believe, 59--resulted in an additional 59 abortions.

All of these, however, relate to abortions performed from 1973 forward. You indicated this morning that you, in working at the institute, were doctor for literally thousands of female patients, the only doctor for a radius of 50 miles, I believe, if I recall that correctly, to whom they could turn, and that is an admirable record of service.

My question is did you perform any abortions prior to those indicated after 1973 when you were a doctor at the institute treating those thousands of women, I believe, from 1966 to 1973?

Dr. Foster. I think you mean before 1973. You said after.

Senator Coats. If I did, I apologize.

Dr. Foster. You did; you said after 1973.

Senator Coats. Did you perform any abortions before 1973 on any of the women that you treated in that roughly 7-

, 8-year period of time?

Dr. Foster. Senator Coats, we did not provide abortion services at Tuskegee. I went to Tuskegee to establish something far more fundamentally needed, prenatal care and access to treatment. The only occasion where pregnancy termination was considered would be in a case of a life-threatening emergency.

. There was a woman who had a medical condition called Meigs MEGS syndrome. Meigs MEGS syndrome is characterized by pregnancy, solid ovarian tumors, ascites, which is a cumulation of fluid in the abdominal cavity which restricts movement of the diaphragm, which restricts breathing, and, most dangerous, pulmonary edema, which is swelling of the lung lining.

The patients die unless they are surgically treated. I performed the necessary surgery, a total abdominal hysterectomy with bilateral salpingo-oophorectomy, which means removal of the uterus, the tubes, the ovaries, and the tumors, and another organ called the omentum was partially resected, which is an organ that has to do with fluid formation. The patient survived. The pathology report was returned. There was an early pregnancy in the uterus. That is the extent. I recall no others.

Senator Coats. Just so I understand the answer, you are that in order to address the question of the life of the

mother, concern about the life of the mother on the basis of how you medically described that, you performed one abortion during that period of time prior to 1973?

Dr. Foster. Yes, sir. That is all I recall. We didn't provide abortion services.

Senator Coats. Did you provide abortion referral?

Dr. Foster. No.

Senator Coats. I will accept your answer. Thank you. I wish I had time to give you the opportunity to examine the other questions I have raised. I assume they will be raised by other members of the panel. If they are not, I assure you I will give you the opportunity to address those when my times comes back around.

Dr. Foster. I guess I will say thank you.

The Chairman. Thank you, Senator Coats.

Senator Simon?

Senator Simon. Madam Chair, it does seem to me, in fairness to the witness, when charges are made, a whole series of charges and I understand Senator Coats' right to do that. But then he asked one specific question, and I think the witness is entitled to respond to these other charges before we proceed with the questions.

Senator Coats. Well, Madam Chairman, I would be more than happy to give Dr. Foster all the time--it is not in my power to give the time.

Senator Mikulski. Madam Chair, I intend to raise some of those same issues.

Senator Simon. That is fine, Barbara. But I think he is entitled to respond to the question of sterilization. There is one question about hundreds of abortions at some kind of an executive meeting. I think the--

The Chairman. If I may, Dr. Foster, I would just say I know that is going to come further. I think then if it is not answered, this afternoon we will see in a wrap-up session. But it is your time now, Senator Simon, to ask questions.

Senator Simon. Well, let me just say respectfully I differ with the Chair in her response here. I think it is not fair to the witness. But I am going to yield my time right now to Senator Mikulski, and then I will take questioning after Senator Mikulski.

The Chairman. Senator Mikulski?

Senator Mikulski. First of all, Senator Kassebaum, I would like to thank you for the atmosphere in which you are conducting this hearing. I believe that any nomination deserves a hearing to be conducted in an atmosphere of civility and dignity, and I believe you have set that tone, and I believe all of us are most grateful for that.

I would ask unanimous consent that my opening statement be included in the record.

The Chairman. Without objection.

Senator Mikulski. And I would hope that we would proceed along the lines of conducting a fair hearing, as we have embarked, and also ultimately have a vote on the Senate floor.

Today, when we look at Dr. Foster and his qualifications, know that I have three criteria:

Number one, is the nominee competent? Does he have expertise in clinical practice? Is he experienced in public health and in science? Does he support the laws of the United States of America and the Constitution of the United States of America?

And then, two, does he have the communication skills which I believe are a hallmark of a Surgeon General to be able to educate the public on the most pressing issues facing America in the public health area?

Dr. Foster, I believe you have those criteria. Also, this should have been one of the happiest days of your life to be only three generations removed from slavery, to then come before the United States Senate to be nominated for the Surgeon General. And I would hope at the conclusion of these hearings and when the vote is taken that that vote will occur.

Your people came to this country in chains, and you have devoted your life to breaking the chains of poverty and

disease and those things that shackle the opportunity for people. And I am glad now in this hearing that we will clear the toxic atmosphere that has surrounded your nomination.

Therefore, I would like to raise some questions in two areas: one, those that have been used against you to disqualify you, and then other questions that I would like to raise that I believe will qualify you particularly in the area of women's health.

Questions were raised earlier about the credibility, your credibility. You talked in your opening statement about the confusion over the White House statement of one abortion, 12 abortions in your initial statement, the 39 abortions that you said on "Nightline."

Dr. Foster, you are free to elaborate on that, but I think one of the things that has raised eyebrows was the 1978 Ethics Advisory Board in which there is a statement in the record that says, a quote attributed to you, "I have done a lot of amniocenteses and therapeutic abortions, nearly 700."

Would you like to clarify, number one, did you make that statement? Was that a number that you gave and the distinction that you make between amniocentesis and a therapeutic abortion?

Dr. Foster. Senator Mikulski, I did not say it and I

did not do it. I did not say it and I did not do it.

I spent an afternoon--it has been almost 4 hours. I never saw that transcript until 20-something years later. In the transcript, it was stated a couple of times that they had hired transcribers, and they were having difficulty hearing.

My honest feeling is the word "I" should have been "they," and that makes all the sense in the world. It was Drew Hospital in Los Angeles that was applying for the grant.

Senator Mikulski. So you were reporting on Drew Hospital?

Dr. Foster. No, I did not--no, no. I do not know anything about that statement, but after reading the transcript over, it would have made sense if it said "they"--and I may have said it--"they have done 700."

The other things that I think is very important, Senator Mikulski, the chairman of that Ethics Advisory Board hearing does not recall the statement himself, and he said had it been made, it would have engendered quite a bit of controversy. I never said it, and I never did it.

Senator Mikulski. Dr. Foster, have you ever done an illegal abortion?

Dr. Foster. Never.

Senator Mikulski. Dr. Foster, there are those who say

you must lead, which I believe that you have and you will continue to do, but there are those who say that you have been cavalier and permissive in this area. Have you ever done an abortion for sex selection?

Dr. Foster. No.

Senator Mikulski. Have you ever done an abortion in the third trimester of pregnancy that was not medically necessary?

Dr. Foster. No.

Senator Mikulski. Dr. Foster, do you think also that abortion for a teenage girl requires parental consent or parental involvement?

Dr. Foster. I do not. I do not. And that is not atypical. I just want to be able to educate. My predecessors, hopefully predecessors, Surgeon General Koop, Surgeon General--no, that was the position also of the Bush administration.

Senator Mikulski. I want to be clear. Do you believe that a teenage girl should have an abortion without parental consent or parental involvement or some type of judicial review?

Dr. Foster. Let me tell you what we do. We try always to involve the parents and families in this kind of decision whenever we can. But there are circumstances--and I think the law ~~legality~~ recognizes that there are situations of abuse,

mc
where parental consent is not justified

where parental consent is not justified

sexual abuse, incest, and there have to be some reasons.

So we encourage it, but, no, I do not require it.

Senator Mikulski. So not to put words in your mouth, but you believe, where possible, parents should be involved. But where it would result in the abuse of the young woman involved--

Dr. Foster. Precisely.

Senator Mikulski. Thank you. Well, hopefully this clarifies some of the areas around the issue of abortion, though, as Senator Kassebaum and Dr. Frist have said, this is not about abortion. This is about credibility. And you believe that you have answered with candor; is that correct?

Dr. Foster. Absolute candor.

Senator Mikulski. Now, Dr. Foster, I would like to go into the area of women's health and as Surgeon General of the United States. Women are dying. Women die of breast cancer. They die of cervical cancer. But I am also distressed that the two top killers of women are cardiovascular disease and also lung cancer, having devastating effects on the lives of families, and also these are killers for men as well.

What leadership would you take, number one, in improving the health of women in the United States? And how would you address these two killers of both women and men as well?

Dr. Foster. Let me answer three different questions. First I will speak to lung cancer.

I never thought I would live long enough as a doctor to see lung cancer kill more women in America than breast cancer. But it is a fact. And it is preventable. We must remain ever vigilant to educate people of the hazards and dangers of smoking. We must do that. That is something we can do.

As most of you know, in 1964 when Surgeon General Luther Terry showed the causal relationship between lung cancer and smoking, smoking in America was at a 40 percent rate. It is now down to 20 percent. But what is so disturbing is it is increasing among women and young people. That is where the educational focus has to be kept.

Breast cancer, I said a few things about it this morning. The very first thing we should do is to educate about self breast examination. Almost 50 percent of breast tumors are found by the patient.

Two, mammography. We know that if mammography is accurately applied, we can reduce death from cancer by ~~50~~ more than 30 percent. I know there is a lot of controversy, when should you have mammography. I can tell you one thing. There is no controversy about every woman 50 years and older should have it done annually along with her own monthly self breast examinations. That is a must. We have ~~186,000~~ 184,000 new cases of

breast cancer in this country every year, and it is killing 46,000 of our women. We can cut that in half.

But I was so glad in preparing for this, in spite of my sabbatical, to read what is now being done between the NIH, the Department of Defense, as well as the CIA. We are using subtraction xerography to compare films and to give us much better resolution on lesions within the breast. In other words, it is a medical technology that is evolving from a military base. But that is nothing new.

You all know about ultrasound or SONAR. SONAR resulted from the work of the British in World War II to protect themselves from the German submarines.

Senator Mikulski. Well, Doctor, but as Surgeon General, one is only the availability of technology, but also, as you know, it is making use of access. Could you give us what your thoughts would be on how to promote the utilization of what is available by women and also what kinds of techniques and so on would you use to also educate physicians? Because often there is the belief that physicians minimize those symptoms when they are presented by women about their own situation.

For example, in the treatment of heart disease, very often the symptoms are just minimized, and they get less treatment, and I am sure you are familiar with those studies.

Dr. Foster. I bring, I think, a good quality to help address this. I served as vice chairman of the Education Commission for the American College of Obstetricians and Gynecologists. We have done very well, the 35,000 obstetricians, we think, in doing lots of educational programs. It has to be done on a wider basis. I think we must continue the efforts already started by Mrs. Clinton's attack on breast cancer and Secretary Shalala's ~~1983~~ 1993 attack to bring more health care to under-reached areas.

Lastly, we have to coordinate our efforts much better with CDC. I think all of you know under Dr. David Satcher there is a new effort in community outreach.

Senator Mikulski, we have to do more at the community level. That has to be the focus. We have to get the right people to get the message out. That is what we have done locally. We can communicate this, but it has to be done at the local level.

Senator Mikulski. I see my time is up.

[The prepared statement of Senator Mikulski follows:]

The Chairman. Thank you, Senator Mikulski.

Senator Gregg?

Dr. Foster. Excuse me. I did not get a chance to define for anyone the acronym "SONAR," so I thought I should. It is sub-oceanic navigation and ranging.

Thank you.

The Chairman. Senator Gregg?

Senator Gregg. Thank you, Madam Chairman.

Dr. Foster, just to clarify a couple quick points before I ask you some more extensive questions, this package of pamphlets which was handed out and waved by Senator Dodd, the top one of which is entitled "Ten Ways to Show Love and Affection Without Having Sex," which I understand your program gives out, when was this packet produced?

Dr. Foster. I do not know the exact date, sir.

Senator Gregg. Was it before or after your nomination to the Surgeon General's position?

Dr. Foster. I believe it was before, but I am not sure.

Senator Gregg. Well, I notice it is copyrighted 1995, and you were nominated February 2nd, if I am correct.

Dr. Foster. That is correct.

Senator Gregg. So you think it was produced maybe in January?

Dr. Foster. It may have been. I have been away for a

year on sabbatical. That is why I answered I am not sure of the exact date. I will find out for you, though.

Senator Gregg. Well, I would appreciate that, because the committee asked for all documentation relative to the program, and we didn't receive this.

Dr. Foster. I apologize for that, sir.

Senator Gregg. What I am presuming is that this was brought into the program fairly recently, possibly after you left the program, possibly even after you were nominated as Surgeon General. Could that be the case maybe?

Dr. Foster. I think it is a possibility.

Senator Gregg. Maybe you can help me with something, because I think you are a very sincere person and I have respected your answers and appreciated your input. But there have been a number of questions raised, and they have been raised more by the administration, I think, than by you, and that point has been made here.

But one of them is the stylistic approach to dealing with those who have raised questions about your nomination and about other actions which the administration has taken. That is this terminology "right-wing extremist."

In fact, Vice President Gore used that exact same term to describe anybody who opposed his environmental programs just a couple weeks ago. The President appears to be using the same terms, although not necessarily those precise terms

but certainly that flavor of dialogue, in describing talk radio, some types of talk radio.

I am sure your use of this term was not suggested by anybody in the administration; however, you seem to be a forerunner, a foreteller, of what the administration's stylistic approach to opposition is.

I guess maybe you could tell me when you use this term "right-wing extremist," which, as I understand it, was not part of the text of your talk to your church--you used the term "white right-wing extremist," and you acknowledged that the term "white" was an error of speech. But when you used the term "right-wing extremist," can you tell us specifically who it is that you define as the right-wing extremists that in your talk you said were posing the latest attacks upon you? Who are they?

Al Gore has told us they are the guys who do not like his environmental programs. The President has told us it is talk radio. Who is it for you?

Dr. Foster. I will tell you precisely who I had in mind, Senator. It is those people who would break laws, use force, threaten, burn, bomb, and kill people when people were trying to express a constitutional right of a woman to choose. Those are the people I call extremist, people who would use those tactics.

Senator Gregg. Then you are not saying that everybody

who opposes your nomination--obviously you wouldn't--falls into that category, but you are saying--you are sort of coloring them, all the people who oppose your nomination, with that reflection, aren't you?

Dr. Foster. Well, my definition, those who fall in that category are the white--right-wing extremists, those who would do those things. That is who I am talking about.

Senator Gregg. Now, you used the term "white" again.

Dr. Foster. "Right."

Senator Gregg. Right-wing extremists. Well, okay. But I guess my concern is that this hyperbolization of people who oppose you into this category--in other words, now just about anybody who opposes you is suddenly a right-wing extremist. At least that is, I think, the sense that might have been left to people listening, and I watched a video of your talk to the church. It was essentially you got a feeling that anybody who opposed you is a right-wing extremist. You certainly got a feeling from the Vice President that anybody who opposes his environmental policies is a right-wing extremist. And the President has been doing a pretty good job on his opponents, too, in that category.

I guess my concern is this. I cannot understand why we cannot have a dialogue on this topic of your nomination, the environment, or whether or not Rush Limbaugh think the

President is doing a decent job without having to have what I would call this character assassination which uses this broad brush of attack. And you are coming in as the Surgeon General into a job which requires, in my view, an assimilation and a bringing together of people around issues of health, improvement of national health, and language like that is sort of inflammatory, isn't it?

Dr. Foster. No, sir. I have had many endorsements from people who state they oppose my position but they support me. The extremists, in my judgment, are those people who would use illegal, unlawful ways to obstruct people.

Senator Gregg. Yes, but in the context that you used the language--and I do not want to beat this to death--that wasn't what you were referring to. You were referring to people who are opposing your nomination.

Dr. Foster. No, sir--

Senator Gregg. They were not necessarily physically out attacking or involved in violence around an abortion clinic at that time. You were referring to people, according to this language, who just happened to be in opposition to your nomination. Let me read you the quote. "I ask your help and prayers again to fight the latest attacks from the white right-wing extremists that are trying to use my nomination to achieve their radical goal."

I guess I think that is inflammatory language, and I take it you do not feel it is and you stand by it, with the exception of the word "white." And I guess my concern is that the issue here is how we get a Surgeon General who is going to bring together folks rather than be a divider of folks. And that doesn't appear to be a stylistic approach that accomplishes that.

I notice that you said in response, I think, to Senator Frist that there was an accreditation document produced, the Official American College Graduate Medical Education Report. That hasn't been made available to the committee, as I understand it. They do not want to release it for what they claim are confidential reasons.

I was wondering if it would be possible to get a copy of that report, if you feel that we should have a copy of t report.

Dr. Foster. I do not know if it is available or not. Which document? I am not even clear on the document you are making reference to, sir.

Senator Gregg. It is the accreditation report for the college, the American College of Graduate Medical Education Report.

Dr. Foster. That is not a document that we have, but we would have no objection to your having it.

Senator Gregg. You have also stated that the Secretary

of Health has said you will play a role in policy, a policy role, which I think is reasonable. Can you tell us if they have discussed specific areas of policy where you will be working?

Dr. Foster. Two things. No, it was not the Secretary. It was the Assistant Secretary. And, no, we have not discussed any specifics whatsoever.

Senator Gregg. Where would you think that you might be working in policy issues?

Dr. Foster. Teenage pregnancy, smoking cessation, particularly among children, and women's health issues. But I would also be working with policy issues, I think, in geriatrics, cardiac disease, organ transplantation. I think these are all kinds of messages that need to be communicated to the public.

that need to be communicated to the public

One of the most important policy issues, Senator, that I am interested in is health promotion and disease prevention, particularly among American males, earlier diagnosis. We have some indirect evidence that males do not do quite as well as females in some conditions because of delay in diagnosis. That is one of the educational roles that I see.

Senator Gregg. You mentioned when we were discussing this issue of teenage pregnancy--I asked you how you would handle the fact that so few of these girls who become pregnant in very young years have the male anywhere near

them at the time that they have their child. I would be interested in getting your explanation of any initiatives that you plan to carry forward in the area of trying to bring the male more into the role of being a parent.

Dr. Foster. As fledgling as they may be, I think what we saw here the other day is a testament to that. We have to break the cycle someplace, Senator Gregg. We are trying to break it with the young people that we are treating. We are very proud of the fact that ~~56~~ 54 percent of the people in our program are males.

I was absolutely thrilled to hear a young African American male say on live national television that he was proud that we had taught him that abstinence was "cool."

Senator Gregg. How do you expect to expand that nationwide, if you have a concept of that in your role as Surgeon General?

Dr. Foster. We have an excellent concept. ~~It is a top-down~~. As I mentioned in my opening statement, I spent 5 years running a multimillion-dollar program for the Robert Wood Johnson Foundation. It was a program to consolidate health services for high-risk young people. We treated about ~~330,000~~ 306,000 people.

After that program ended, I looked for the gaps. I found three very salient findings. Number one, half of the youngsters were not even in high school by the time they

reached senior years. So you have missed half your population. Number two, schools were closed at very critical times. The work of Kantor and Zelick shows that most kids get pregnant in the afternoon, either the friend's house, their house, or the friend of a friend. They are unchaperoned on weekends and summers. Thirdly, it was virtually impossible to get parental participation in those programs.

So I said, Voila, I created a term, a residential venue. Why not put these services not in hospitals, clinics, schools, doctors' offices, let's put them right in the middle of the housing projects where these people live? Now, grandmother can look out the door and walk across to a rites-of-passage activity. They can participate. It becomes a part of the fabric of the community. We have parent empowerment programs. That is how you break it. Those young men that are going to college are far less likely to be irresponsible fathers.

I do not have a study that can prove it, but it just makes sense.

Senator Gregg. Thank you.

The Chairman. Thank you, Senator Gregg.

Senator Simon?

Senator Dodd. Would my colleague yield just a minute?

Senator Simon. Thank you, Madam Chair. I will yield

to my colleague, Senator Dodd, for 30 seconds.

Senator Dodd. I just pointed out earlier, I raised the issue of these brochures that had gone out on abstinence and asked you if you are familiar with them, Doctor. You said you were. Obviously, in order to be familiar with them, they had to be published prior to this year. This is the latest batch, 1995. But they are put together each year, and they go back, we think, to 1992, maybe 1993, but the suggestion that these were just published after your nomination--

Dr. Foster. I did not want to mislead, so I said what I honestly know.

Senator Gregg. Could the Senator explain to us why the committee wasn't given a copy--

Senator Simon. Let me reclaim my time here, Madam Chair. Otherwise--

The Chairman. Senator Simon?

Senator Simon. Senator Gregg made the point that everyone who is opposed to you is not a right-wing extremist, and I agree with that. I also believe that anyone who is opposed to you is wrong. And I say that on the basis of having spent over the weekend a good deal of time going through what you have written over the last 2-and-a-half decades.

I have to say I have not decided to subscribe to the

Journal of Obstetrics and Gynecology for light reading. But I came away with a feeling here is someone of unusual competence, who has a real sense of public service. And in terms of the things that have been raised against you--in 1980 you had a chapter in a book, and your chapter is titled "Ambulatory Gynecological Surgery." 1980. You said, "If the patient is judged to be incapable of comprehending and, thus, not able to provide informed consent, she must not be sterilized." 1980.

Did you have any idea you were ever going to be nominated for Surgeon General in 1980?

Dr. Foster. I did not even have that 3 months ago. No, sir, I did not.

Senator Simon. And I point this out simply to suggest this is not a nomination conversion, and we have had a lot of those around Washington from time to time. This is a position that you have taken for some time.

In 1984, 11 years ago, you testified before a House committee on behalf of the National Medical Association, in which you had eight recommendations for how to deal with teenage pregnancies. Not one of the eight recommendations is abortion. it is a whole series--and I ask unanimous consent to put that in the record at this point.

The Chairman. Without objection.

[The recommendations follow:]

/ COMMITTEE INSERT

Senator Simon. Your "I Have a Future" program, you are able to get young people to complete school. For example, of the 26 seniors who participated in your program, 24 graduated. The evidence is overwhelming. There is a direct relationship between school dropout and pregnancy, whether it is a girl or a boy. And if people are opposed to abortions, one area of abortion we really can do something about is teenage abortions. One million teenage pregnancies, 400,000 of which end up in abortions.

And so people who are opposed to abortion instead of picketing outside against you, I think they ought to say--and maybe that gives them some emotional satisfaction. But if they want more than emotional satisfaction and want to really get something done, here is a nominee who wants to do something constructive to reduce teenage pregnancies and, therefore, reduce abortions.

I have a question in regard to the letter that Dr. Greene wrote from Meharry that was mentioned by Senator Dodd and others. It says in here, "Although within the active participate group only two pregnancies occurred, as compared to a total of 43 pregnancies that occurred in the other two groups," what kind of numbers are we talking about? In other words, two out of how many, 43 out of how many?

Dr. Foster. The comparison group, as I recall, was about 240 patients, participants. But the point we really

want to make with this study--I felt a little bit, as someone was saying, we were over-selling the program. We were simply reporting what we had done. We realized, as I said, much earlier that this is going to take a multicentered, national, prospective study. These are preliminary data.

The indecisiveness came, we did not recognize that the population would be nearly as transient as it was, so it made it very difficult. But we think we have ways to address this now.

Senator Simon. But despite some uncertainty about numbers, clearly there was, in comparison, a sharp decline in the number of pregnancies. Is that correct?

Dr. Foster. Yes, sir, and an increased number of kids going to school. I attempted to get for this committee the comparative college participation rates on the demographically similar youngsters in other places. I am going to get it. The person I wanted to get it from was in Boston. I called him the day before yesterday. But those numbers pale compare to what we have done with this nucleus of kids.

Senator Simon. There is a publication called "Urban Health," and in 1977 you said in there, "I do not believe there is an experience more significant or rewarding than reproducing one's own kind." Those are not the words of

somebody who is out eager to perform abortions, as you have been falsely portrayed. And of the 39 that you mentioned that you have been able to document, many of these were actually you were involved or maybe your name was used, and maybe it was an intern or a resident. Can you describe a little more what we are talking about on those 39?

Dr. Foster. Yes. In review of those 39 records, which I was the physician of record, three-fourths of those records, there was a resident involved, and there is great likelihood that the resident did the procedure. We were teaching. But on a fourth of those, there was no resident. So the correct presumption can be made that I did the procedures.

Senator Simon. I would add one other area, and this is something that Senator Frist mentioned earlier. We have to look at the whole huge area of responsibilities that you have. One of the things that impresses me as I go through this is that you have been willing to say we in the medical profession have to make some changes. And you are willing to lead and occasionally step on toes.

Here you say, "There exist other barriers which are only indirectly financially related. Hospital administrators often pressure surgeons to utilize hospital beds." Then you say, "In many areas, hospitals are physician-owned and operated and, hence, subsidized by

them."

Are there ways that we can reduce costs in terms of hospital utilization? We have this relatively new procedure where we pay the prospective payment. But are there practical ways we can reduce costs as we look at Medicare and Medicaid and other costs to the Federal Government?

Dr. Foster. We have already begun to do that, as you know, through the means which you just mentioned, prospective payment through DRGs, having fixed rates for procedures. We have to do a balancing act, of course. We have to make sure that the safety and quality of care is not compromised. But there are also market forces at work which are bringing this about. Even our new technologies, our endoscopic procedures now have reduced the hospital length sharply. Arthroscopy in knee surgery, laparoscopy in the kind of work I do, thoroscopy, colonoscopy, all of these have reduced invasive ways. So we must continue our technology because ultimately it can bring the costs down.

There have been other ways that have been tried, which I thought were good ideas, but I think there may have been other reasons. But in many rural areas that have limited access to facilities, there are veterans' hospitals that are underutilized, and States such as Tennessee and Washington and others get waivers that there will probably be even some decreased use of Veterans' Administration hospitals. And I

think that will have to be revisited as a way to effect cost containment.

Senator Simon. I will get this last question in before that light turns red here. You mentioned research. Research is obviously not your primary responsibility. But you will have, obviously, a chance to discuss what is going on with the head of NIH. And have you reflected on what your role might be here?

For example, in some areas we are doing a great deal. In the area of mental health relative to the costs to the Nation, our investment in research is rather modest. Have you reflected at all on this whole research area and how you might be a voice for the Nation in that field?

Dr. Foster. Yes. One of the things I really want to put forth, the best example is last week when I had the great opportunity to accompany the First Lady to kick off the national immunization initiative. That is one of the first things we can do.

We have used NIH funding and other money to create remarkable vaccines, and that is wonderful. That is absolutely wonderful. But as everyone understands, research is not a goal; it is a process. When we have some cities with 50 percent of the children incompletely immunized at age 2, we have another problem that I can speak to, and that is getting to utilize those things that have been created.

It is like business. You do not put money in R and D, create a product, and have no distribution system for it. And that is what is lacking. And in the role of Surgeon General, I think I can help effect that distribution system.

Senator Simon. Thank you, Dr. Foster. Thank you, Madam Chairman.

The Chairman. Thank you, Senator Simon.

Senator DeWine?

Senator DeWine. Thank you, Madam Chairman.

Dr. Foster, good to see you again.

Dr. Foster. Thank you, sir.

Senator DeWine. I want to thank you for coming into my office several weeks ago and talking to me and several of my assistants. What I would like to do is to explore one of the issues that we discussed at that time, and let me go through it and then I want to ask a question, and I will give you ample time, I am sure, to be able to answer the question.

Doctor, the issue I want to talk about is the medical procedure that you performed in regard to four young women in Alabama. You removed the uteruses of four young mentally retarded women. These procedures were performed for hygienic reasons, namely, to help these young women with their personal hygiene. They had an IQ in the range of 60 to 70. You had written consent of their parents or

guardians.

You referenced these procedures in this article that you wrote in the Southern Medical Journal, and it, Doctor, bears the date, as you know, of January 1976, but my understanding is that this was actually a paper that was delivered sometime in mid-1974.

In this article you state the following: "Recently I have begun to use hysterectomy in patients with severe mental retardation. Hysterectomy can be done either for sterilization or to eliminate the menses, which is of significant hygienic benefit in these several handicapped individuals."

Now, Doctor, in 1970, 4 years before your paper, the American College of Obstetricians and Gynecologists promulgated a policy on surgical sterilization in which they said the following, in part: "If an operation to accomplish sterilization is recommended by the physician for medical indications, the recorded opinion of a knowledgeable consultant should be obtained."

In 1972, 2 years before that paper of yours, the State of Alabama was under Federal court orders that prohibited medical treatment for the mentally ill and mentally retarded without express and informed consent. This was the famous Wyatt case that was decided in the early part of 1972. In 1973, a year before your paper, there was a tremendous

uproar over a very notorious involuntary sterilization of two young girls in your State, the State of Alabama. This ultimately led Senator Kennedy, actually within a fairly short period of time, to hold hearings in this very committee.

This was a horrible story, horrible thing that had happened, and I do not in any way cite this, Doctor, to make it comparable to anything you have done, but only to point out in both the Wyatt case and in the controversy in the summer of 1973 surrounding these two little children that the issue of informed consent, the whole issue of consent, was--had to have been very much in the minds of people in Alabama, people across this country, and certainly had to be in the minds of people in the medical community.

The Department of Health, Education, and Welfare issued guidelines as a result of this, and let me just read a portion of these guidelines. The guidelines limited Federal funding for sterilization of a minor or legally incompetent individual unless a review committee had reviewed and approved of the sterilization. The review committee was comprised of five individuals appointed by officials associated with the program and was responsible for the following:

"One, reviewing medical, social, and psychological information regarding the patient, including the age,

alternatives in family planning, and the adequacy of consent;"

"Two, determining the sufficiency of consent;"

"Three, determining whether the proposed sterilization was in the best interest of the patient;"

"And, four, requiring a court of competent jurisdiction to review a committee recommendation to permit sterilization if an individual was legally incompetent."

Now, Doctor, let me tell you what bothers me--and I have cited the last three examples to, I think, give us an indication of what the climate was and what the concerns were that were being expressed during this general period of time.

This is what bothers me. During a period of very heightened sensitivity about this very, very tough and very, very difficult issue, you did not get an independent evaluation of the capabilities of these three women; you did not, to my knowledge, determine the sufficiency of the consent. There was no psychological testing, no guardian ad litem, no court order, no independent review, no independent review by a court or an independent committee, nor no independent consultant.

I just ask you, Doctor, in light of what was going on in the rest of the country, but specifically what was going on in Alabama in regard to these different decisions, how do

you explain the circumstances, at least as I understand them, of what happened in regard to these four young women?

Dr. Foster. Senator, I have a copy of the paper. The purpose of this paper is stated in the first sentence: "Obstetricians and gynecologists must guard vigilantly against the injudicious and indiscriminate removal of a normal uterus." That was the purpose, so physicians would not--this was to make the procedure better.

What you did not point out, sir, this was 485 cases over a 10-year period beginning in 19--

Senator DeWine. Excuse me, Doctor, and interrupt me if I am mistaken. My question, I only referenced your article, and you certainly have every right to quote the article, as I did, as you wrote it. But my question was about four cases, because it is my understanding these are the only four cases that you performed this procedure for the reasons that you gave. And what I would like to do is focus on those four and tell us how that fits in, what you did in those cases, how that fits in with the overall--what you should have done.

Dr. Foster. May I?

Senator DeWine. Sure.

Dr. Foster. This was a study done for the reasons I just mentioned. It was over a 10-year period. It was a study that even started before I went to Tuskegee. This was

a records review. There were 485 cases. There were four women; they were not institutionalized, as someone has said. There was fully informed consent. They were a part of the cases that I reported. There was no reason--there was nothing to hide. I put this in the peer review literature for my peers to see.

Senator DeWine. Doctor, you said, though, "Recently I have begun," and those are your terms. And so I would like you to reference those four cases, and if you could just tell us what did you do to ascertain informed consent. You did not follow some of the guidelines that were clearly coming out during that period of time--or did you? If you did, tell us. What did you do in those cases? That is what I am trying to ascertain, give you the opportunity to tell us about those four.

Dr. Foster. Senator, I can tell you that that was the standard of care that was provided. There was fully informed consent. I was very ~~emboldened~~ pleased when one of this Nation's leading ethicists, Dr. Arthur Kaplan, reacted to this. He stated not only was what I did in keeping with the current times, but actually my article was enlightened.

I am not even sure if I did all four cases. This was a literature review. But I do not deny that I did them all.

Senator DeWine. Well, do you recall the four?

Dr. Foster. I do not recall four. I recall--

Senator DeWine. Do you recall any of them?

Dr. Foster. Yes. I recall two very vividly. One woman had a terrible time. She had come in with all kinds of sores on her skin because she could not attend to her physical body functions at the time of menses. She got bone infections, osteomyelitis. Her parents brought her in, and I did the procedure, which was an accepted procedure.

Senator DeWine. And this was with the consent of the parents?

Dr. Foster. They brought her in, yes.

Senator DeWine. And I believe you told me that you could not communicate with the woman, the patient?

Dr. Foster. One I could not; that is correct.

Senator DeWine. You could not communicate with her?

Dr. Foster. That is correct.

Senator DeWine. Doctor, you told me that the level of mental retardation was 60 to 70. This, by the literature I have consulted, comes under the category of mild mental retardation, which is 55 to 69. This is what indication I have that a person could be able to do with that kind of IQ, functions independently, can use public transportation, can drive, capable of regular employment in unskilled or semi-skilled jobs, can fulfill all adult social role, have friends, marry, become parents; academic skills at 3rd to 6th grade level.

How does that description, based on your recollection of the IQ of the individuals involved, how does that square with doing nothing other than getting the written consent of the parents? Is that appropriate?

Dr. Foster. Is getting written consent--I am--

Senator DeWine. Yes. I want to make sure I understand. All you did was get the written consent of the parents. Is that correct?

Dr. Foster. Informed consent, right. They brought her for the purpose of me doing something about it.

Senator DeWine. So you informed the parents?

Dr. Foster. Yes.

Senator DeWine. Did you have any independent review of this?

Dr. Foster. This young woman did not function at the level you just described.

Senator DeWine. Okay. All right. Now, you described in my office 60 to 70. You told me that, didn't you?

Dr. Foster. I do not recall.

Senator DeWine. Well, that is what our notes clearly show.

Dr. Foster. Okay. I believe it.

Senator DeWine. All right. But this woman did not function at that level; is that your testimony?

Dr. Foster. That is correct.

Senator DeWine. So she was not capable herself of giving the informed consent. Is that correct?

Dr. Foster. That was my presumption.

Senator DeWine. I know my time is up, Madam Chairman. Just before we leave this--and we will have a chance to come back again probably tomorrow, Doctor, on this. But I want to make sure I understand. You did not seek outside consultation. You did not get a committee. You did not have a court order. You did not have anything other than, as you have described it, the informed consent of the child's parents.

Dr. Foster. What we did do, Senator--and I can assure this--we conformed with the requirements of the JCAH, the Joint Commission on Accreditation of Hospitals.

Senator DeWine. Do you recall what you did?

Dr. Foster. No more than what I just told you. It would be conjecture.

Senator DeWine. I see my time is up. Thank you, Doctor, very much.

The Chairman. Thank you, Senator DeWine.

We will now take a 10-minute, but we will complete the questioning, and I would assume that it will be finished by no later than 5:30. We will take a 10-minute recess.

[Recess.]

The Chairman. The hearing will please come to order.

Dr. Foster is here. I am not sure where the committee is. The member of the committee that counts right now is Senator Harkin. It is his turn to ask questions. Senator Harkin?

Senator Harkin. Thank you, Madam Chair.

Dr. Foster, I want to join with the rest of my colleagues in welcoming you and to commend you for your lifetime of service and leadership for our country, for your leadership in your profession. I am glad we finally have this opportunity to hear from you and not from other voices around the country that I think have taken your record and distorted it and have tried to use you to push their own political agenda or in some way to inflict some damage on the President of the United States.

I look forward to talking in greater detail about the issues of teen pregnancy and all the other things that you have been working on. I am very interested in that. But I must say that I must respond to some statements that were made earlier by my friend--and I call him that, and he is my friend, and he is a good guy--Senator Gregg from New Hampshire, who talked about the inflammatory language, about right-wing extremists.

Well, there is a lot of inflammatory language to go around, Dr. Foster, and I do not know that we want to get into that, but I feel constrained to reply, because I do not

think that those kinds of things ought to go by the wayside.

I would just state that Mr. Gingrich, the leader of his party, the Speaker of the House, in 1990 in his political action committee called GOPAC, he had a list of names that he said could be used to define our opponents, like "sick," "pathetic," "twisted," "corrupt," "grotesque," "traitors," et cetera. That is kind of inflammatory language. That was in 1990.

November 5, 1994, an AP wire story concerning the Susan Smith episode when Susan Smith drowned her two children in South Carolina, Mr. Gingrich responded by saying, "It shows how sick society is, and we need to change. The only way to change this kind of behavior is to vote Republican." That is kind of inflammatory language.

In August of 1992, Mr. Gingrich said the Democrats had adopted "the Woody Allen plank." How about that for inflammatory language?

On August 25, 1991, in the L.A. Times Magazine, Mr. Gingrich called Kitty Dukakis "a drug addict."

On October 14, 1994, in the Washington Post, Mr. Gingrich said, and I quote, "Bill Clinton should be portrayed as the enemy of normal Americans." I think there is too much inflammatory language going around. I think that kind of inflammatory language ought to be put to rest also.

So, again, Dr. Foster, I want to commend you on what I believe has been an exemplary life. You have shown what the American dream is all about when you spoke about it so eloquently in your opening comments. And I believe you are going to be an outstanding Surgeon General.

First of all, Dr. Foster, on October 23, 24, and 25, in Iowa, there is going to be the first national conference on the prevention of violence sponsored by the Centers for Disease Control and Prevention, and I would like to take this opportunity to invite you as the new Surgeon General to please attend that conference in Iowa.

Dr. Foster. I accept, Senator. [Laughter.]

Senator Harkin. But I have another issue. Everyone has talked about teen pregnancy, and that is an important issue, and so are the issues that other people care about. But you mentioned briefly just a little bit ago in response to a question by Senator Mikulski the issue of smoking and tobacco.

For years, I have made this a cause of mine. I have been saying that we have to get young people away from smoking. How can we prevent over 430,000 deaths that occur each year? The tobacco industry, Dr. Foster, spends $5 billion a year in advertising and promoting their products, and they target our kids. "Old Joe Camel" has been very successful. According to a study published in the Journal

of the American Medical Association, just as my 6-year-olds can identify "Old Joe Camel" as they can Mickey Mouse.

Every day another 3,000 of America's children get hooked on smoking. The industry has started clubs in which you can smoke your way to all sorts of gifts, like beachwear and clothing and sports gear. Here are some of the booklets that are put out now. Here, here is the "Marlboro Gear." You can get all these wonderful gifts. All you have to do is just keep smoking more cigarettes. You can just get all kinds of things.

Here is one of my favorites. Here is "Joe Camel" having a lot of fun with all these young people. They are at a party, and they are having all this wonderful fun. They are in what looks like a night club. It is a wonderful ad. And they are shooting pool, and they are dancing, and they are talking, and everyone is lit up with a cigarette--but there is no smoke in the place.

I have often said that maybe they have got the secret now to the Clean Air Act or something. I do not know.

But it is all targeted to young people. A recent study by Consumers Report indicates that 11 percent of children between the ages of 12 and 17 owned at least one of these promotional items, like "Old Joe Camel" here with his cigarettes. That is how they are hooking our young people.

Dr. Foster, I have done a lot of work with Dr. Koop in

the past and still continue to do so on this issue. I ask you as the next Surgeon General, How can the public health community combat this? How can you as the Surgeon General help counter the tobacco industry's message that smoking makes you attractive and sexy and lets you have a good time and is what all young people ought to be doing? What is the role of the Surgeon General on this issue?

Dr. Foster. The role of the Surgeon General first and foremost is to educate the American public about the hazards of smoking. That has to be done in a very strident way.

Dr. Louis Sullivan had some success in preventing two cigarettes targeted for specific groups from hitting the market: Uptown and Dakota.

Senator Harkin. Exactly.

Dr. Foster. And we will have to work with you. I can provide the information. I can give you the medical facts. I can make suggestions about how we get our message out. But we have to do something, in my judgment, at your level to protect our children.

We were able to get cigarette ads off the television sets. I think we have got to do something about "Joe Camel."

Senator Harkin. Well, as you know, the Surgeon General's position is a bully pulpit. And people do pay attention to what the Surgeon General says. And you are

right. Lou Sullivan did a great thing in getting those cigarettes stopped from being marketed in certain areas.

I would hope that in your capacity that you would focus a great deal of attention on this, because, as I said, 3,000 kids every day are getting hooked on smoking.

Dr. Foster. Right.

Senator Harkin. Three thousand a day. And so I am hopeful that you would really look at that.

Now, I wanted to say that more to get your attention on that issue and to let you know that I look forward to working with you on that and to do whatever we can to start reducing the incidence of youth smoking and to deglamorize it. And whatever innovative suggestions you have, I would look forward to working with you on them.

Dr. Foster. Sir, I will certainly include smokeless tobacco, which is another problem.

Senator Harkin. Absolutely. Smokeless tobacco also. Thank you, Doctor.

Dr. Foster, I know that Senator Dodd had a couple of follow-up questions, and I will yield to him at this time for a couple of minutes.

Senator ~~Harkin~~ DODD. Well, I thank my colleague from Iowa. I just wanted to follow up, if I could, on my colleague from Ohio's line of questioning with regard to the allegations that have been made surrounding the issue of the

sterilization of mentally retarded patients.

Just for the purposes of the record, first of all, the ARC, which is one of the leading national organizations on mental retardation, has commented on this issue already, and I would just share with my colleagues their comments. They acknowledge that when Dr. Foster performed the procedures on women with severe mental retardation, he was adhering to the medical practices that were accepted at the time. Their letter goes on at some length, as well as the comments from Dr. James Todd, the president of the American Medical Association, again, commenting on these allegations, performing hysterectomies on severely retarded women for pregnancy prevention or to eliminate the menses for hygienic purposes. It was thought to be the state of medicine back then.

There are a number of heads of various departments at the University of Pennsylvania, UCLA. I will not go on at length, but in terms of the numbers of people all of whom commented that while today there is an entirely different reaction, as I think indicated by the journals and the written comments of the nominee, that reaching back in time and making decisions today about conclusions we would reach which were entirely different at the time I think is an appropriate way to look at these issues.

I would point out, as my colleague from Ohio has, that

there were some regulations that HHS had promulgated and issued, in fact, at the time. Those were involving Federal funds. That may be a distinction without a difference in the minds of some people, but the National Science Foundation, in fact, gave a grant at that time to the Hastings Center, a bioethics research institute, to convene a group of scholars and advocated to help sort out the moral contradictions in this area. Apparently--and I am really quoting, and maybe Dr. Frist can comment. But there was some debate about a lot of this going on at the time. So while this is not talking in 1995 terms, you are hearing 1995, but we are talking about procedures of a quarter of a century ago when apparently there was some significant debate as to how that ought to proceed.

I thought it might be helpful just for the purposes of the record of laying out in the context of the time that these decisions were made. I do not know if you have any further comment you want to make on that, Dr. Foster, but I think comments from the ARC, the AM, leading department heads in the particular field of medicine we are talking about, human reproduction and obstetrics and gynecology, at a number of leading universities today, all of which have looked at the fact situation here, all of whom have drawn the same conclusions about this.

So it seems to me we ought to place it in a proper

context here and give you an opportunity to comment today, Doctor, on what your conclusions would be, I suppose, regarding these procedures in 1995 terms.

Dr. Foster. Just two things. I will do the shorter and easier one first. I published in 1980 that that approach was no longer appropriate. You must remember some of these studies were done 33 years ago.

But let me ask you, picture yourselves in the situation I was in. A hospital, thousands of patients, no money, no insurance, I am the only obstetrician. A woman comes in with her child who is severely retarded, ulcers all over the buttocks, osteomyelitis. She could die from it. That was the thing for a humane doctor to do. I wondered what was I expected to do under those situations. Nothing? Well, there is no point in me being in Tuskegee.

Senator Dodd. I thank you for your comment. I thank my colleague from Iowa for clarifying for me.

The Chairman. Thank you.

Senator Ashcroft?

Senator Ashcroft. Thank you, Madam Chairman.

Dr. Foster, it is nice to see you again. I thank you for coming to meet with me in my office. Before I ask a few questions, I would like to open with a statement.

First of all, I would like to address a question which has been raised by one of my colleagues here about why we

would spend so much time and energy and have such a deep concern about an office the budget of which was only a limited amount of money. I think it was $1 million. Or why we would spend 3 months?

First of all, I think this is a very important responsibility. It is a responsibility of leadership. It is a responsibility that will have a substantial impact upon the young people all across this country. I believe that our former Surgeon General did far more than $1 million worth of damage to the young people of America in her time as Surgeon General on a regular basis. And her ability to divide America is certainly not what we need in the office, and it behooves to spend as much time as is necessary to make good judgments. And so I thank you for your willingness to spend the necessary time and to be patient about answering questions.

Secondly, it has taken us 3 months, but I am little bit distressed to think that there are those complaining about the fact that it has taken us 3 months when we have spent those months trying to get information and material, and some of the information and material only arrives during the hearing. I find that to be troublesome, and it makes it very difficult for both the staff of the committee and for committee members to make good judgments based on material when we cannot get material for a time, say, as long as 3

months, and then when corrections are being made in the middle of the hearing because no one has had a chance to ask questions about the material in advance.

I believe that the Surgeon General's voice is one of enormous moral authority and that the person who fills the position has the capacity to move us as a nation to a better place by addressing some of our most serious challenges. The position's power lies not in legislative authority. I will concede that. Nor does it lie in its ability to deploy vast budgets. But it does lie in its ability to influence both the tone and the content of our national debate. History has shown this to be true during the 1960s, Luther Terry; during the 1980s, C. Everett Koop. These individuals focused much-needed attention on some of the social ills and helped turn us toward a way to save lives of untold Americans.

Unfortunately, as a result of the last person to hold this office, there is a crisis of confidence in the office. The office is not highly regarded. It was a crisis precipitated and exacerbated by the continuing actions of the last Surgeon General of the Clinton administration. And during her tenure, Joycelyn Elders did more to discredit the office than anyone in history. Divisive statements on drugs, abortion, statements against people who have belief in religion, statements about sex, discredited the office

and undermined the administration's leadership.

The question now is whether or not the office can be rehabilitated, and today there are voices as diverse as those of Senator Joe Biden and Representative Bob Dornan--you have an Eastern liberal and a Western conservative--both raising questions about the office. Maybe they are right.

While this discredited office now needs some really impeccable effort, credentials and individual, it seems that the Clinton administration is attempting to use the nomination to shore up constituencies for the 1996 election. Instead of confronting the many deep and legitimate concerns surrounding the nomination, the President has tried to use the debate to promote a division surrounding Dr. Foster to appeal to those parts of his political base which might need shoring up. This could be a victory for the President, but the consequences for the country would be more division, and we do not need more division.

There are vital issues now facing the country that desperately need to be discussed, issues which need a united country to tackle and a credible Surgeon General to lead--youth violence, drug use, teen pregnancy.

And we have a population culture that increasingly glorifies both the vulgar and the brutal. The Surgeon General has the moral pulpit to be able to speak to these concerns, to raise the standard of our debate, to bring

much-needed sunlight to these social pathologies.

I think that that is really the challenge that faces us. The entertainment industry in Washington makes billions of dollars by appealing to the worst instincts of the people, and the casualties are found in our Nation's children. I do not think that there is a lot that the Congress can or should do legislatively, but there is much that outspoken leadership can do, and I would be interested in finding out the kinds of things that can happen.

But I am troubled about the way in which this committee has been treated regarding statistics. Since the announcement of this nomination, there was at the beginning great statement about how "I Have a Future" is a successful model. So members of the committee staff and those of us on the committee tried to get information. We could not get information. Finally, we did have the statements of Lorraine Williams Greene, who said: "This results-oriented program has an impressive track record"--a record. But we could not get the record.

A short time later, the committee staff asked Ms. Greene for copies of grant proposals, and they were told that that kind of information was not public.

In April, the committee tried a different tactic and asked the Meharry Medical College grants office for documents on their grant requests that they use for

foundations. Then, Friday afternoon, just 4 days before the hearing, the committee staff received some statistical information.

I have a question about this. At a time when credibility is very important to this office, why was the committee denied materials for 4 months that it has sought and that were necessary to evaluate statements that were made concerning the accuracy and credibility of the touting of the programs?

Why did it take us 4 months to get the information?

Dr. Foster. Senator Ashcroft, thank you for your comments. I do not know which material you made reference to or when it was requested, but I can assure you categorically there was no overt effort on my part to obfuscate your efforts in any sort of way. I have tried to be as forthcoming as I could.

I do agree with many of the things that you said, but I should share my opinion with you on this. I do not believe there is an easy way to solve a difficult problem. I do not think the problems concerning this country today can be--

Senator Ashcroft. My question--

Dr. Foster. I am sorry.

Senator Ashcroft. This is the Meharry Medical College. We finally were able to get, not from the "I Have a Future" program, but from the Meharry Medical College, this data

which has been the matter of discussion today. It is a flawed letter, and we might have been misled by it had you not been able to correct some of it today.

Is this the way that we will be receiving statistics from the Surgeon General's office in the event that you are the Surgeon General? Will we just get general conclusions, and if we ask for a substantiation, get obfuscation?

Dr. Foster. Absolutely not. You will get forthrightness, accuracy, and records that have been verified.

Senator Ashcroft. I am particularly distressed about what has happened in this office in the past. Your predecessor said, "I tell every girl that when she goes out on a date to put a condom in her purse."

Would you agree or disagree with that kind of leadership from the office?

Dr. Foster. Abstinence is the first message for anyone who comes into our program.

Senator Ashcroft. Would you tell every girl when she goes out to put a condom in her purse?

Dr. Foster. No, absolutely not, no; no, sir.

Senator Ashcroft. Your predecessor stated that drugs should be legalized, and she said, "When we say 'legalize,' I am talking about controlling. We could have doctors or clinics set up where addicts could get their drugs free or

pay a dollar or so for drugs."

Do you agree or disagree with your predecessor on the legalization of drugs?

Dr. Foster. I absolutely disagree. Illegal drugs should remain illegal.

Senator Ashcroft. Your predecessor said, "I would hope that we would provide prostitutes Norplant so that they could use sex, if they must, to buy their drugs."

Would you disagree or agree with your predecessor on that issue?

Dr. Foster. That is not the way you help prostitutes.

Senator Ashcroft. You indicated on the "Nightline" show of February 8th, which I watched, that you abhor abortions. President Clinton has submitted several budgets recommending the repeal of the Hyde Amendment. If Congress went along with the President's recommendation, the Federal Government would pay for elective abortion on request.

Do you agree that the Federal Government should pay for elective abortions?

Dr. Foster. I believe that the Federal Government should pay for the abortions that it now pays for. Those are abortions in the face of life or health of the mother, incest, and rape. That is what I support.

I do not as yet have a position regarding the second part of your question.

Senator Ashcroft. Well, the President has endorsed the enactment of a so-called Freedom of Choice Act, which would invalidate nearly all State limits on abortion, including types of regulations upheld by the Supreme Court, such as a mandated 24-hour waiting period in some States.

Do you agree with President Clinton's policy that there should be no ability of a State to mandate as much as a 24-hour waiting period?

Dr. Foster. I do. I have been a physician for 38 years, Senator Ashcroft. I have never seen any woman or child ever come to me without having agonized over the question of being pregnant who is seeking an abortion.

Further, I think there can be medical damage by the delay. There is nothing to be benefitted by making someone wait.

Senator Ashcroft. So a 24-hour waiting period is a medically bad potential, even--

Dr. Foster. It can absolutely be, yes, sir.

Senator Ashcroft. Recently, some attention has focused on certain doctors in the United States who use sonograms to determine the sex of a fetus and then provide the parents the option of aborting a child if that is not what they wanted.

Do you believe that this is a legitimate medical procedure and an appropriate activity?

Dr. Foster. I have never had a patient ever come to me seeking the amniocentesis for the determination of sex. I find that very unusual. We normally find out about the sex of an infant as an incidental finding in testing for Down's Syndrome, Tay-Sachs, sickle cell.

I tell you what--I think a physician might be at risk doing an amniocentesis only for the purpose of--

T8 Senator Ashcroft. My question was for sonograms, sir. I did not raise the question of amniocentesis.

Dr. Foster. I realize that, sir. I--

Senator Ashcroft. So I would prefer if you would just answer the question.

Dr. Foster. Well, I was trying--the answer is no, I have never had anyone come to me--I would not do it.

Senator Ashcroft. Thank you, Madam Chairman.

The Chairman. Thank you, Senator Ashcroft.

Senator Wellstone?

Senator Wellstone. Thank you, Madam Chair.

Senator Kennedy. Madam Chairman, just for the point of the information of the members, and I am sure for Dr. Foster, what is the intention of the chair as to the way we will proceed? I know these Senators have waited, and I would hope they would have a chance to inquire, but just as a point of information for the nominee, what is the plan of the chair?

The Chairman. As I announced, Senator Kennedy, when we took the 10-minute break, we will complete questioning on the part of all Senators here today. We will come back at 9:30 tomorrow, because there are Senators who have requested a second round, so for those who would like to ask additional questions, we will convene here tomorrow at 9:30.

Senator Kennedy. I thank the chair.

The Chairman. And I think there are just two more Senators who have questions to ask.

Senator Kennedy. Thank you.

Senator Wellstone. And Madam Chair and Dr. Foster, given the fact that we will have an opportunity tomorrow to have further questions and probably an exchange among members of the committee around those questions, I think I can be very brief, to help move this along.

I would imagine, Dr. Foster, that you must be getting near the point where you are tired, at the very minimum.

Madam Chair, let me first of all ask unanimous consent that my complete statement be included in the record.

The Chairman. It will be so done.

[The prepared statement of Senator Wellstone follows;]

/ COMMITTEE INSERT

Senator Wellstone. Second, not to engage in a debate with my colleague from Missouri, whom I get along with just fine, but I think that earlier we talked about the dangers of hyperbolization of opposition, rhetoric, or whatever the terminology was, and just to make it clear, I really think--and this will be maybe more in my unrehearsed statement--that the nomination of Dr. Foster for this very important position has precious little to do with, quote, "solidifying the base," whatever that means, with whatever segments of the population the Senator is talking about, and has much more to do with the qualifications of this man who is appearing before this committee, which is what I think we ought to be focusing on.

And I agree with my colleague about the importance of this position, especially as a voice, as a moral voice, a moral authority.

And I also, I think, agree with my colleague from Missouri in some of his condemnation of what he thinks is really wrong in the country right now, in terms of a certain lack of values. I agree; I absolutely agree.

What impresses me, Dr. Foster, about you--and I have actually waited until this committee hearing before making any final decision, and you certainly will have my support--I have tried to be consistent and have said that I think there has just been too much attack, and you never really

had the opportunity to be here before this committee, and you have today, and we have heard your voice, and you have responded to questions, and there will be more tomorrow. But what impresses me about you, sir--and I think this is important to say--is that at the time when you could have--and I was a teacher or a professor--just ended an illustrious career, continuing to do your teaching and your research and your work as a doctor, that instead, you have chosen this path of yet more public service.

I am impressed with that, and I think we need models of men and women who are committed to public service, first of all.

Second of all, what impresses me about you, Dr. Foster, which I think goes to the heart of your qualifications, beyond your scholarship, beyond your keen intellect, beyond your considerable academic ability, is the fact, sir, that your whole life has essentially represented service to community. You have been down in the trenches when it comes to serving those citizens who live in underserved communities, when it comes to serving the poorest and most vulnerable citizens, and when it comes to really trying to deal with some of these really thorny, tough problems.

You have identified as your priorities the problem of teen pregnancy. Why do children have children--that is a complicated and a very important question. You have focused

on the violence in children's lives. You have focused on the violence within families. You have focused on what Dr. Koop was such a great leader on--the whole problem of HIV infection and AIDS. And you have focused on a whole set of issues that are critical to the concerns and circumstances of the lives of children. And I think, sir, that that makes you eminently qualified to be the people's doctor, which is really what the Surgeon General is all about.

I also just want to say--and I do not even know whether it is going to wind up a question; I am just going to respond to a few things, and you have had to respond to so many questions--I really think that when we have been speaking about the "I Have a Future" program, it occurs to me that--and this goes back to Senator Jeffords' question earlier--I think there is a distinction between how many stick with the program--and that is a tough question--versus, for those who did stick with the program, did it work. That is the distinction. And for those who did stick with this program, it clearly worked, and it was all about building self-esteem.

Nobody said that any program is perfect, but I would ask the question: Does anybody else have a better model in the United States of America that they can point to right now? Let us not judge this by some impossible standard. Let us judge it by the reality of the lives of the young

people whom we are working with. And yes, not every young person was willing to stick with it, and yes, we have to do better--but among those who did stick with it, you have done a really impressive job. And I do not know, maybe my colleagues can point to other models that have been more successful--I do not think so. I do not think so.

So let me just simply say that there is much in your record, I think, to celebrate, and I just simply want to make it crystal clear that you will have my full support.

I will end this way, and it will not be a question. The most moving part of your testimony for me was when you talked about your own family. And I really believe that you understand the importance of families and how can we get families back into dealing with these questions and building community. How can we involve families? How can we nurture families? How can we repair families? How can we help build families? It seems to me that that is a priority question, and how in God's name can we begin to end some of the violence in the lives of children in our country. I think you will be a great Surgeon General in speaking out on those questions.

If you want to respond to my statement, please do so. It was spontaneous.

Dr. Foster. Okay. Two brief responses. I want to apologize to Senator Ashcroft. I forget I am not talking to

doctors. Senator Ashcroft, I am not aware of doctors doing sex selection based on ultrasound alone. Ultrasound precedes amniocentesis. So I am not aware that people are doing that. I just wanted to make that clear that I was not contradicting you.

The other thing I want to say about the "I Have a Future" program--I do not know what the answer is, but I do know something that is good when I see it. By bringing in families and being able to keep males in the program, I think we might be onto trying to help break this very vicious cycle in a very, very difficult problem.

To me, keeping families involved--we have served as surrogate families for these youngsters. They have said it. They have places they can go. We can share with them values that I think are good values--abstinence--those are the values I grew up with. I want to be a surrogate parent.

Now, the young man who spoke yesterday, who is now in college, who grew up in this housing project where 92 percent of the families earn less than $10,000 a year, is much more likely to have values than someone else. He says we saved him. Well, one thing is for sure--if we had not been in that community, we would not have had that influence irrespective of where it might come out.

Senator Wellstone. Madam Chair, I yield the rest of my time.

The Chairman. Thank you, Senator Wellstone.

Senator Abraham?

Senator Abraham. Thank you very much.

I told you I would be last. We met last week, and I promised Dr. Foster that when they got to me, it would be the end of the day, and I would have the last question, and everybody in the audience would be asking when is this guy going to end. So I will do my best to be brief.

I have, however, a desire to return to an area that some say we should not talk about, and some I think have in various ways confused, and that is the topic of abortion. I do not think the views of a nominee for Surgeon General on the issue, whether they are pro-choice or pro-life are the focus here; at least to me, they are not. What I think is the issue, really, in your case, is two things.

The starting point is the acknowledgment that in your career, you have performed abortions, and in that sense, the questions that were raised over what were obviously confusing numbers that we have received and which you alluded to in your statements.

It is my understanding based on your statement today, and at least the most recent reports were that the number that we are focused on is the number 39; is that correct?

Dr. Foster. Yes, sir.

Senator Abraham. Okay. Which is the amount--

Dr. Foster. Those were all of the records that I had for patients from 1973--from the day I went to Meharry until now, I was shown to be the physician of record on 39 cases, yes, sir.

Senator Abraham. And that would be at the Meharry Medical Center?

Dr. Foster. At Meharry, that is correct.

Senator Abraham. There are two other questions, basically, that were prompted in my mind as I thought about that. Number one, are there any other facilities besides Meharry that you have not checked, whether that be other hospitals or clinics, where you might have participated either as the attending physician or as an assisting physician where an abortion might have been performed?

Dr. Foster. There were none in any of those facilities.

Senator Abraham. Okay--in any other place?

Dr. Foster. In any other place.

Senator Abraham. Okay. And before 1973, before the Meharry, I think you have already testified that there was one case.

Dr. Foster. The one case that was extensively surgically involved.

Senator Abraham. One case, okay.

The second sort of series of questions that pertains to

this really goes to one of the things that has troubled me about the nomination, and it does not trouble me about you personally at all, but it does trouble me about the direction we are heading.

Senator Ashcroft alluded to the lack of confidence that grew up during the last couple of years under your predecessor nominee, Joycelyn Elders, and the concern about, I guess, the credibility of the office.

Obviously, Americans are divided on the issue of abortion. They recognize, I think, that whoever holds this position is going to have a view, and at least to a substantial number of people, it will not be the view they hold.

When, however, the person is someone who has actually performed abortions, at least as I talked to my constituents, there is a different sentiment. It is a greater degree of concern, at least from those people who find abortion to be unacceptable to them on a moral, personal level.

The question I have is this. We need the Surgeon General, as we have said today, to be sort of America's doctor, the person that you feel comfortable going to for medical advice. But if you are very uncomfortable with the doctor because of the practice that they have engaged in, how do you get past that threshold? I would like you to

comment on that.

What do you say to people who say, Look, I do not have anything against Dr. Henry Foster, and somebody else could choose him for their doctor, but for me, I would prefer someone who has not previously engaged in these practices, and therefore, to me, their credibility on other issues as well as those related to family planning and so on are ones I just do not feel comfortable focusing on?

Dr. Foster. I think the thing that makes democracy so good is that people have choices. I think we do not impose values on others based on our own underpinnings. I think to criminalize a woman's right to choice is not in the best interest of America.

But we differ all the time--when I said I abhor abortions, I mean that. I abhor war, but I am not a conscientious objector. I am human. I do the very best I can.

The Supreme Court does not require any doctor to perform a procedure nor any patient to have one. It is choice, Senator, choice.

Senator Abraham. I understand that, Dr. Foster, and I appreciate the fact that probably any nominee this administration might offer for this position would share the President's views on this issue. There is a difference, though, between believing in the choice position on abortion

and actually having performed abortions, in terms of the way some people in the public are going to respond to the proclamations and pronouncements of this position, and that is where I am asking you to comment.

How is your credibility with that part of the American citizenry going to be enhanced?

Dr. Foster. Well, I will just say two things, and I will try to give an answer. I do not know what the answer to success is, but I certainly know what the key to failure is, and that is trying to please everybody. It cannot be done. I have never been able to do it. I will tell them what I did. Yes--I do not deny it--I have saved women's lives. Sometimes I am forced with the choice between saving this mother, sacrificing her fetus, and she can go back and take care of her six kids. If I do not do that, both of them die. I am not going to do that. I will quit--I am old enough now to quit medicine if I have got to do that. I am not going to let a patient come to me and die who looks me in the eye and says, "Doctor, I want to live," and I can save her life. I think it would be a discredit.

But you see, the good part is the way we have--no one is making anyone who is against abortion have an abortion. It is a choice. That is what confuses me.

Senator Abraham. And as I said, you are entitled to this position, and the President will, I am sure, nominate

for this job if he had three other choices someone of the same--I am just trying to get at how you are going to address those people who maybe--and we can move on. I just wanted to know if you had thought that through.

Dr. Foster. All right.

Senator Abraham. Let me change to another topic because I only have a couple of minutes left. In the past, obviously, we have heard a lot about and you have been asked questions as to whether you agree or disagree with statements made by your predecessor. But on a substantive level, what would be the two or three immediate changes in the operation of the Surgeon General's office that you would undertake?

Dr. Foster. The main thing I would do is first set priorities. That is the first thing.

Senator Abraham. So do you think there are not any right now, or--I am asking about changes--

Dr. Foster. Oh, no. I mentioned it earlier, but in the essence of time, one of the major things I would do--there are a lot of things--would be to continue the impetus on the women's health initiatives, the program that the Secretary did in 1993 for breast cancer.

Let me tell you the other thing that is haunting us all, and we have got to keep pushing, and it is also divisive. That is the issue of HIV and AIDS. We have got

to do something about that condition. Two hundred forty-five thousand Americans have died from the disease. There are 81,000 new cases every year. There are 41,000 deaths every year. There are 110 deaths per day, of Americans, in their prime, stricken. And this disease is increasing in the heterosexual population, in women, and in non-white gay males.

We have got to do something. And do you know why the Surgeon General's office is so important there? There is no cure for AIDS. It is education, education. We have got to continue to educate.

Now, that is the best thing about the program, "I Have a Future," with abstinence. The one good thing is that more than 50 percent of those kids in the study, as flawed as it may be, those who stayed with us have not had sex, and as a consequence, they will not get AIDS, they will not get pregnant, they will not get sexually-transmitted diseases. And as I said earlier, recent data now show that people who delay becoming sexually active have far less involvement with drugs and tobacco. I think that that is the way to go. That is a major priority for this country. Everything is important.

Senator Abraham. As I said, I was just trying to get a sense of--those are initiatives we are hopefully trying to move forward--are there areas that you are concerned about

that you would change in terms of the direction f the health policies and pronouncements?

Dr. Foster. Let me tell you, I am ~~emboldened~~ encouraged about what I have recently seen, with David Satcher having gone to the CDC, with Bill Paul now in the Office of AIDS Research. I have met with Lee P. Brown, who is fighting drugs. I see a coordination coming and a more resourceful use of funding, and I am encouraged. I think we need to see what that is going to do before I start making or recommending changes.

I have been on sabbatical all year. I have been looking--but this is what we need to do--stay on the areas that look good. I like the community outreach that is coming out of the CDC.

The last reason--CDC and David Satcher have shown a good way now to do some ~~overlap,~~ to be efficient, so with resistant tuberculosis, sexually-transmitted disease and HIV, now we can coordinate those efforts and become more efficient.

Senator Abraham. One of the past practices of the Surgeon General has been to on occasion assume responsibility for substantive policy areas in the health division of HHS. Have you given thought to any particular areas along those lines that you might ask to oversee?

Dr. Foster. No, sir, I have not.

Senator Abraham. Let me turn to another area. I

gather while I was out earlier today, you were asked the question with respect to parental roles in various areas involving children and their sexual behavior and so on. I was not here for that, so maybe some of this will be turf that you have covered already, but I would like you, just for me at least, to explain your position with respect to parental notification prior to an abortion in the case of a minor female.

Dr. Foster. First, I think every doctor, every health care provider, must do everything within their power to assure that families are involved. That is axiomatic. And I am happy to say that in my own practice, it is a rarity when this is not the case.

However, Senator Abraham, there are situations where there is abuse, physical abuse, drug abuse, incest, rape. In those kinds of homes, you cannot do it; you are letting the fox guard the henhouse. That is why a lot of States have not adopted this. There have to be ways to protect those situations.

Senator Abraham. Well, would you support a prohibition on abortions which did not have such consent if a bypass mechanism existed to cover these unique circumstances?

Dr. Foster. If I am assured that the families are being involved, yes.

Senator Abraham. I guess my time is up for today, Dr.

Foster. Thank you.

Dr. Foster. Thank you, Senator Abraham.

The Chairman. Thank you very much, Senator Abraham.

Senator Kennedy has asked for a brief period of time; he wants to put some documents in the record.

Senator Kennedy. Thank you. I will just take a moment or two, Madam Chairman.

On the whole issue of informed consent and sterilization, which we have talked about, the history will show that it was really this committee that established the whole concept of informed consent. That was in 1974, and it was on the basis of the hearings on the sterilization of the Ralph girls, the use of depoprovera in State institutions in Tennessee, the syphilitic study, and also the testing done on CIA agents, and the tragedy that took place when one of the agents was given various hallucinogenic drugs out here in Maryland and eventually threw himself out of a building. At the end of that, a bioethics panel was established in 1974 that promulgated rules and regulations dealing with bioethics. There was no enforcement mechanism; it just published those in the registry, and they were all accepted.

That is basically how we came to the concept of written informed consent. And then in 1976, after President Carter was elected, Secretary Califano established a panel within the Department in which our distinguished nominee was

requested.

So actually, the concept of written informed consent, or informed consent, was something that came, really, in the wake of the tragedies--the measures at Tuskegee, the depoprovera and the sterilization of the Ralph girls, and the CIA testing, just for the history.

I would like to include in the record, Madam Chairman, a summary of the birth records from John Andrew Hospital and an affidavit from Minnie Jamison, which shows that on May 19th, 1969, from 7 until 9, Dr. Foster was delivering Mrs. Jamison's baby by Caesarean section. It was at that time, approximately, as I understand it, 6 or 7 o'clock, that that meeting in terms of the notification of the medical professionals in Macon County were gathering and allegedly spoken to about the whole question of the Tuskegee issue. I will just put that into the record, and we will have a chance to come back and revisit that and its relevancy, but it is important.

[Documents follow:]

/ COMMITTEE INSERT

The Chairman. I will just mention to my colleagues--I know there has been a question on availability of information and documentation--I think any of us who have listened to Dr. Foster today have to be impressed with his forthcoming nature. There has been reference to availability of certain information and how and when it was available.

I think that I for one do not want to have Dr. Foster assume more responsibility than he should in terms of availability of information. I know that the chair has referenced the difficulty that the committee had in getting accurate information at one time, and then indicated that recently there had been good cooperation. There was certain information that was just made available last Friday, and it is interesting as to why this information was not available. We had questions of Dr. Foster about that request for funding on the basis of "I Have a Future" information, and the response to the letter that has been referred to that has done the review of the program, I will include in the record. In that letter from the Carnegie Foundation, they reviewed it, and this is what they said on the basis of the program we referred to earlier--I will include the whole letter, but it says: "In spite of the problems, outside evaluators considered the IHAF project a valuable model from which much could be learned about effective interventions

for inner-city youth."

It continued: "The IHAF program combines many of the elements that researchers and practitioners have found in successful intervention programs for high-risk youth. The project has been cited as an exemplary program by the Tennessee legislature and the American Medical Association, as well as the Points of Light Foundation."

But there is a reference on page 38: "In spite of the problems, outside evaluators considered this IHAF project valuable information."

If you were withholding information, Dr. Foster, it does not seem to me that that kind of evaluation by the Carnegie Foundation, which has a well-known and well-deserved reputation in terms of focus and attention on children, would be the kind of document that you might withhold.

I would like to put it in the record. I do not want to draw any other conclusions, Madam Chairman. I just want to say from our side that we believe that all the information should have been available, whatever that information is. It is my understanding that Dr. Foster wants all information made available.

We would join with the chair, if there is other information that we do not have and that we are able to get it within whatever time--but we do want the record to at

least reflect that the nominee has been forthcoming in terms of whatever requests have been made of him, and we thank him for that kind of cooperation.

[Letter follows:]

/ COMMITTEE INSERT

The Chairman. Thank you, Senator Kennedy.

I would just like to state for the record, there was also--if we are going to get into a complete record of what Carnegie said--I believe they did lay out some requirements they felt needed to be addressed in the program, and while they extended the funding, they did have concerns.

So if we are going to get into the question of getting all the correspondence on this, I think we should.

And I would also state, Senator Kennedy, that I have certainly been appreciative of getting the material--and not so much Dr. Foster, but we had asked for a long time about some really in-depth material for the "I Have a Future" program just to understand the program. It was not until we were looking at your CV--which is a lengthy one, with all that you have done--that we saw a list of the grants and contract awards. We then started making inquiries everywhere, with the institution, including Meharry and NIH, where these grants and awards had come from--this was from staff work, because we were not getting anything from the White House in following through with this. That is how we then got the material on the "I Have a Future" program.

It is not to try to get something that would place you in a difficult position, Dr. Foster, but I think it is something that we have a responsibility for as a committee just to discuss with you because, as you have said and as

President Clinton has said, we want to make teenage pregnancy the leading agenda for the Surgeon General. And it is because of that that I would hope that even with further exploration, perhaps we can get from you tomorrow some ways that you feel that program could be improved, because there are other programs. Senator Wellstone asked were there any other programs in the country. Well, yes, I know of one in Topeka, KS that I think has better statistics. But not to get into statistics, and that is not the point--the point is ways that it could be improved and ways that you see, as Surgeon General, that you would want to address the issue.

Senator Kennedy. Could I just finally mention one point? In the letter from Carnegie, they pointed out, for example, "The IHAF has received grants from William T. Grant, William and Flora Hewlett, Henry Kaiser, Bill and Camille Cosby." Whether this nominee can lay his hands on that kind of information or not--if it is available, I would hope that we could, but I think some of the information about applicants does get a bit distant.

But I think all of us want to get whatever information any member of the committee feels is valuable and desirable, and we will certainly work toward that.

I want to thank the nominee for his cooperation.

The Chairman. Thank you.

Senator Jeffords?

Senator Jeffords. I just want to say that the reason why I am so concerned is that we have run demonstration project after demonstration project by the Federal Government, and we do not know how any of them turned out; we do not know how they worked or whether they worked. So I am going to be scrutinizing all of the studies we do from this point on and insisting that we do evaluations that are accurate and that are statistically valid and that we do not rely upon good feelings.

Everybody who has a program has a great feeling about their program, but we have got to make sure that the statistics verify the good feelings.

Thank you, Madam Chairman.

The Chairman. Thank you, Dr. Foster.

That concludes today's hearing.

[Whereupon, at 5:35 p.m., the committee was adjourned to reconvene on Wednesday, May 3, 1995, at 9:30 a.m.]