

MINORITY
SENATE COMMITTEE ON LABOR AND HUMAN RESOURCES

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Title:

FOSTER NOMINATION

Committee

5-3-95

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Senator Kennedy. 13-15, 18, 20, 40, 51, 101, 117, 136,

137, 139, 140, 142, 143, 152

Senator Mikulski. 54, 55, 76-83, 85, 86

Senator Pell. 27-29, 31, 35, 36

Senator Simon. 65, 68, 138, 146

Senator Wellstone. 98, 101-105, 107, 109

Senator Dodd. 46, 51, 118-124

TRANSCRIPT OF PROCEEDINGS

UNITED STATES SENATE

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COMMITTEE ON LABOR AND HUMAN RESOURCES

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NOMINATIONS

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NOMINATION

WEDNESDAY, MAY 3, 1995

U.S. Senate,
Committee on Labor and Human Resources,
Washington, D.C.

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Senator Mikulski. 54, 55, 76-83, 85, 86

Senator Pell. 27-29, 31, 35, 36

Senator Simon. 65, 68, 138, 146

Senator Wellstone. 98, 101-105, 107, 109

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NOMINATION

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WEDNESDAY, MAY 3, 1995

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U.S. Senate,

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Committee on Labor and Human Resources,

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Washington, D.C.

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The committee met, pursuant to notice, at 9:35 a.m., in room SD-106, Dirksen Senate Office Building, Hon. Nancy Kassebaum (chairman of the committee) presiding.

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Present: Senators Kassebaum, Jeffords, Coats, Gregg, Frist, DeWine, Ashcroft, Abraham, Kennedy, Pell, Dodd, Simon, Harkin, Mikulski, and Wellstone.

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The Chairman. The hearing will please come to order.

Good morning, Dr. Foster. It is probably not a totally accurate statement to say I am sure that it is pleasure to welcome you back or that you are pleased to be back. But I know that we are appreciative and feel it is important to have a thorough review of all the questions to be asked and answered, and I am sure you feel the same way.

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I would like first, before we start, just to say that Senator Slade Gorton, who is a member of our committee from the State of Washington, has not been here yesterday or today because he is managing the product liability legislation on the floor of the Senate, and I have a statement of his that he would like to have made part of the

1 record, and he regrets not being here.

2 Dr. Foster. Thank you, Senator Kassebaum.

3 [The prepared statement of Senator Gorton follows:]

4 / COMMITTEE INSERT

1 The Chairman. I would like to start off this morning,
2 I do not know if you have any additional comments you would
3 like to make or we can just start the questioning.

4 Dr. Foster. I will make just a few brief comments,
5 Senator.

6 The Chairman. Please do.

7 Dr. Foster. Yesterday you asked me what I would do to
8 improve on the "I Have a Future" program. I would just
9 mention three things that we have already begun to do. We
10 have 13 modules that you know; in three of those, we have
11 made some refinements, particularly the one on family life.
12 We have developed focus groups which are increasing our
13 youngsters' ability at decision-making, the ultimate goal of
14 which is to be able to say no at the right time to the right
15 things-^{which will help promote}abstinence. That is their future.

16 The pre-employment module in a sense is more secular.
17 We have gone to the vice president of Manpower New York for
18 training sessions. We will be better positioned for our
19 youngsters to have work.

20 As part of our drug and alcohol module, the Carnegie
21 Foundation, ~~even after the termination of the grant,~~ ^{has}
22 provided a technical assistance team. They ~~are~~ ^{helped} helping us
23 ~~to help our youngsters to develop stronger pro-social~~
24 skills.

25 Lastly, we have formed a partnership with the city of

1 Nashville and Davidson County to provide summer jobs. That
2 is very important for those youngsters.

3 We are having to rely too heavily on part-time staff.
4 We need more full-time staff. We need more resources for
5 families. We have involved families. We have had parent
6 empowerment programs, but that needs to increase. We are
7 strengthening our links with the universities within the
8 community and with high schools.

9 One last point about improvements: Many of the
10 siblings of our "I Have a Future" children tag along, if you
11 will. Our program is for 10 to 17. We have done some
12 things peripherally for the kids 6, 7, and 8. We are going
13 to work harder to get something formally structured for
14 those youngsters, because the more we do earlier, in our
15 judgment, the less we will have to do later.

16 Lastly, I would like to say that we realize that we do
17 not have a corner on the market for these programs at "I
18 Have a Future." However, I want to point out that we are
19 proud of "I Have a Future." It is ^{one of} the first life options
20 program that has any form of evaluation. There is no
21 program that ^{stresses} ~~stretches~~ the third part of Dr. Dreyfus'
22 approach to teen pregnancy of education, service, and
23 enhancing life options. That is new. There are no ^{definitive}
24 ^{evaluated} ~~evaluation~~ programs. But we do know that we do not need an
25 evaluation to involve families with their children. That is

one of

stresses

definitive

evaluated

1 important. We do not need an evaluation to teach
2 abstinence. Abstinence prevents children from becoming
3 pregnant, getting sexually transmitted diseases and AIDS.

4 So what we will do, we will bring those programs
5 together across the country that have shown some promise:
6 the ^Ppregnancy ^Pprimary ^Pprogram in New York, the Enable
7 ^Pprogram in California, South Carolina's school program,
8 Community Program for Sexual Risk to Reduce Teen Pregnancy.
9 Those are the people who should come together, and that is
10 what I would do in the position of Surgeon General.

11 In other words, we would let the strengths of the
12 various programs complement each other, and it is from that
13 that we would have the longitudinal, multicentered, long-
14 term study that I mentioned yesterday that will be needed to
15 refine and answer the questions of improvement.

16 Thank you very much, Senator Kassebaum.

17 The Chairman. Thank you, Dr. Foster.

18 One of the reasons that I focused on the "I Have a
19 Future" program yesterday--and I am sure there are times
20 that it seems that some of these questions do get to the
21 very smallest details, but in a way, what troubles me the
22 most is sort of the responsibility that you have as the
23 director of the program and to follow through with the
24 responsibility, which I think reflects on what would be a
25 requirement of the Surgeon General. For a very small staff,

1 for a very small amount of money, as was pointed out
2 yesterday, you become a very large voice, and I think it is
3 a voice that has to speak with the recognition of the
4 problem, which certainly you have.

5 But more important is the responsibility, and I would
6 just like to go through it with you again, because my point
7 in raising the evaluation of the "I Have a Future" program
8 is not to question the merits of its initiation and the
9 important work that it has done. In just maybe changing one
10 or two lives there is merit. But it was not to set off sort
11 of a statistical analysis but, rather, to look at the bottom
12 line of your own research and what that showed and what at
13 that point, when I think it was clear in an evaluation was
14 made in 1992, that there were difficulties. And, one, what
15 it showed was the dropout rate in the program was at least
16 47.6 percent. It was a high dropout rate. I understand all
17 the parts of people entering in and going out of the
18 program. Participation in the teaching sessions was very
19 low.

20 Now, there may have been very valid reasons for that,
21 but I think that at that point, of the 245 individuals
22 included in the evaluation, only 39 were classified as
23 active participants, meaning they had attended less than
24 half the sessions, and the remaining 206 were low-level
25 participants, the program had no real positive effect on the

1 frequency of pregnancy or the rate of becoming pregnant.

2 I think those are things that are clearly there,
3 whether one wants to sort of argue over what statistical
4 interpretations could be given to it. And that is why, Dr.
5 Foster, once you were aware of some of these concerns that
6 were raised by evaluators of the program--and Dr. Greene,
7 the deputy director, herself stated there were no
8 significant differences between the groups in this variable
9 number of pregnancies, between the control group and the
10 group that was involved in the program.

11 I just feel that the question in my mind is, knowing
12 that, what did you do to acknowledge the problem? And you
13 have pointed out some things in the comment that you made
14 that you were doing. But it seems to me as Surgeon General--
15 --and a recognition of the efforts in this program--it takes
16 a stronger focus and a sense of responsibility at some point
17 to have really, as director, provided stronger guidance for
18 the program. That is what I was trying to get at. What did
19 you do at the time you were aware that these statistics
20 showed there were difficulties?

21 Dr. Foster. When the Carnegie team came, we
22 implemented as many of the recommendations as we could. As
23 you will remember, Senator Kassebaum, the technical
24 assistance provided by Carnegie was after its ^{initial} grant support.
25 That was something we requested, and they provided that.

1 One of the problems I just mentioned, Senator. I will
2 just make two points. I know I ~~am not~~ rushed, but I do feel
3 like I ~~may be holding back from other things~~. But one of
4 the major things that we recognize is we need more
5 counselors. We are using part-time people.

6 What I would like to do, Senator, is focus on the glass
7 as being half-full rather than half-empty. I think the real
8 point that is irrefutable is that those people, those
9 youngsters that we have managed to retain in the program
10 have ^{been} ~~done~~ exemplary. So it seems to me you are absolutely
11 correct. What we have to do now is to find ways to retain
12 more of the youngsters and ^{better identify} ~~identify better~~ the causes ^{of} why
13 youngsters were not in the program, those that transferred
14 out, which you recognized.

15 So what I am simply saying is we have proven if we can
16 keep these youngsters in the program, they do things. I
17 think the young man was absolutely right when he said if it
18 had not been for this program, he would not be in Fisk
19 University in college. And I am simply saying that that is
20 a good chance that he would not have been. Let's find ways
21 to capture and retain more of the children, and let's find ^{good ideas}
22 from other programs, because I think we all can complement
23 each other.

24 The Chairman. Dr. Foster, I agree. I do not want to
25 belabor the point, but I think as Senator Jeffords said

1 yesterday, some of these things are programs that we want to
2 see one success and make us feel good, but you also, knowing
3 in 1992 that there were efforts that were going to have to
4 be made to make it a stronger program, had some
5 responsibility, it would seem to me, to provide that kind of
6 leadership, and more importantly, as it would transfer to
7 responsibilities as Surgeon General, where I think then you
8 have to recognize what your role is in addressing issues and
9 where there needs to be corrections made.

10 I guess I just use this as an example of--there are
11 many programs like this around the country, and it is a very
12 worthy and very important endeavor. But I think that it
13 reached a point where it could have used, certainly, your
14 leadership in a way that would have enhanced some of the
15 problems that it had.

16 I would like to go to another area, again, asking what
17 your responsibility was at a given time. The Tuskegee study
18 was briefly mentioned yesterday, Dr. Foster, and I would
19 just like to ask a few follow-up questions on that issue.

20 You told the committee yesterday that you knew nothing
21 about this study until it became a public controversy in
22 1972 and that actually nobody in the community knew or there
23 would have been outrage.

24 At that point, there was a great outcry in 1972 over
25 the study which denied medical treatment to 400 black men

1 suffering from syphilis for a period of almost 40 years.

2 I certainly can understand why you in the earlier
3 period of time might not have known. There are depositions
4 from some who did know after 1970 because they were involved
5 in it and they lived there. But not to get into all of the
6 problems because you were not one directing this program
7 that was under the direction of the Center for Disease
8 Control, but I think it is important to know what, after you
9 knew about it, was done.

10 You said you did not attend the May 1969 meeting in
11 which top officials of the Center for Disease Control
12 briefed the Macon County Medical Society on the study and no
13 one ever raised this issue with you before it became a
14 public issue. Nearly all of these records that were part of
15 CDC's interpretation of what they wished or did not wish to
16 do have not been kept. So it is very difficult to get
17 accurate records from the Center for Disease Control's
18 initiative at this time.

19 But in 1974, the State health officer for Alabama, Dr.
20 Ira Myers, said in a court deposition that he discussed this
21 issue with you in 1970, before it became public. In his
22 statement--I just would like to ask you, is that correct?
23 Do you recall a conversation with Dr. Myers in 1970?

24 Dr. Foster. No. I recall no such conversation.

25 Maybe this would be helpful. When I first became aware

1 of the Tuskegee study, it was in 1972, and I was in a
2 meeting with Dr. Ira Myers when we learned together--at
3 least I learned. We were at a State planning meeting in
4 Montgomery, and a note was put under us that there were
5 camera crews that wanted to talk to us. And we went out.

6 And I am sure Dr. Myers and I discussed the case then,
7 but that was in 1972. We were together when the story
8 broke.

9 The Chairman. Well, regardless, then, of what one knew
10 when--and it is hard for me to believe that nobody knew
11 about this in Macon County at that time. But, regardless of
12 that, once it became public in 1972--and I believe you were
13 president of the Medical Society in 1972 in Macon County.
14 Is that correct?

15 Dr. Foster. Yes, ma'am.

16 The Chairman. What did you do then at that point when
17 you knew in 1972, in July of 1972, that this was a problem?

18 Dr. Foster. I called a meeting, a call meeting of the
19 physicians in the society, and I told them that we had
20 learned that the CDC had agreed and would treat these men
21 and that we should devise a mechanism to help them identify
22 them.

23 The Chairman. And did you demand that treatment be
24 given at that point? It is my understanding that it was
25 about an 8-month period of time from the time you identified

1 the men until treatment was started. Is that correct?

2 Dr. Foster. I do not know the time interval, Senator.
3 But I do know at the time the CDC had said they would treat
4 the men.

5 The Chairman. And I can understand that is the CDC's
6 responsibility. On the other hand, you were president of
7 the Macon County Medical Society at that time. There was
8 general outrage about what was happening, and I guess I
9 would like to know if you assumed responsibility to say you,
10 too, were outraged and make that clear to the Center for
11 Disease Control that they, indeed, had to start that
12 treatment immediately.

13 Dr. Foster. I did, I thought, the very best thing that
14 I could, and that was to help identify the men. Some of the
15 men were patients of the doctors in the Medical Society. I
16 did not--I am an obstetrician-gynecologist. And, of course,
17 once that was done, Senator, quite honestly I had no reason
18 to feel that the CDC would not follow through on its word.
19 After all, that study had started even before I was born,
20 and I think the atmosphere--and I went back to working 40
21 hours a day in trying to run my ob service. And, of course,
22 you do know that a few months thereafter I left Tuskegee.

23 The Chairman. That is right. Thank you, Dr. Foster.
24 My time is up.

25 Dr. Foster. Thank you, Senator.

1 The Chairman. Senator Kennedy?

2 Senator Kennedy. Thank you very much, Dr. Foster, and
3 welcome again. The interesting point is even in the meeting
4 in 1969--and we will come back to where you were at that
5 time--none of the doctors that were there that were
6 interviewed had any information, understanding, awareness
7 that treatment was being denied. They have all told that to
8 investigators. They said that they had no understanding
9 that treatment was being denied. So they have never
10 understood that it was being denied at the first
11 notification. It was only at the time that you were
12 briefed, as I understand, with Dr. Myers, and that is true
13 with Mr. McRae, who is the one that says you were there.

14 The one person that says you were there--the other
15 doctors do not even remember your being there. The one
16 person that says you were there has stated that he does not
17 ever remember being told by the CDC that treatment was
18 denied.

19 I am interested. If you do not know, how are you
20 supposed to be exercised about this? I thought when you did
21 know you took the steps in terms of demanding there is going
22 to be treatment. That is at least my understanding of the
23 record. Is that your understanding as well?

24 Dr. Foster. Yes, sir, Senator Kennedy, and I have
25 always wondered why this furor continued. None of the

1 doctors who do remember the meeting said anything was ever
2 said about treatment being withheld. So I do not see what
3 there was to cover up. But I can tell you, when I learned,
4 it was in 1972.

5 It is also interesting, as you know, Senator, that this
6 precipitated a class action suit, and during the discovery
7 process the Medical Society was found completely non-
8 culpable in this. And I think that is very important.

9 Senator Kennedy. Now, let me come to the question
10 about the May 19th meeting. Allegedly, you were at that
11 meeting in May 1969. It took a long time to finally get the
12 record. I do not know how many of us could say where we
13 were in May of 1969 at a particular time when you are out
14 there delivering all those babies all over the county. But,
15 finally, it has come out--and I put in the record last night
16 the affidavit about where you were on the May 19th meeting.

17 We have an affidavit, which I put in the record
18 yesterday, stating that you delivered a baby that night and
19 that is where you were May 19th.

20 I have a statement which I will include in the record
21 from Minnie Jameson.

22 [The statement of Ms. Jameson follows:]

23 / COMMITTEE INSERT

1 Senator Kennedy. She was the mother of that baby, and
2 she points out, "I remember the evening well, but I do not
3 remember"-- [Laughter.]

4 "I do not remember all the specific details. I know
5 Dr. Foster looked in on me from time to time. I do not
6 recall exactly what time he looked in or exactly how often
7 he checked in on me. I remember that the delivery took
8 place at night. I was in surgery for 2 hours. I recall
9 specifically that part of the procedure was at 7:00." The
10 alleged meeting was going on--it started at 9:00, as I
11 believe.

12 "I recall that I was very nervous. I was
13 hyperventilating. I was doing breathing exercises. I tried
14 to focus on the clock. At 7:00 p.m. I remember that the
15 anesthesiologist was trying to calm me at the time, that Dr.
16 Foster joined me and helped calm me. I recall all of this
17 was before Dr. Foster started to operate, but I do not
18 recall more specifically at what point this was in the
19 procedure. I understand the medical records indicates that
20 delivery took place at 9:17. I do not dispute that record."

21 "I also remember well what fine care Dr. Foster gave to
22 me and my son. I remember that throughout a difficult time
23 for me Dr. Foster was warm and attentive. I had been told
24 by another obstetrician that I could never have a child.
25 Dr. Foster told me that he would work with me and do

1 everything humanly possible to make sure I could have a
2 child, and he did. He was a very busy man with many
3 patients, but he always took time, was always there to help.
4 He was always very humane and very professional."

5 Now, the affidavit is part of the record about where
6 you were at that time, and that meeting was going on at 7
7 o'clock. This delivery was going on at that time.

8 Maybe you would just tell us what your best
9 recollection of that evening was, if you remember.

10 Dr. Foster. I do not have a specific recollection, but
11 you have refreshed a lot from those comments. But let me
12 tell you what the litany is involved in a complicated labor.

13 You may not know, but in a woman having her first baby,
14 the average length of labor is about 14 hours, and for a
15 women who is a multiparous patient, who has previously
16 delivered, it is about 8 hours on average.

17 I point that out to say that we have to follow patients
18 very closely in labor ordinarily, but when there are
19 complications that care and input has to even be greater. I
20 did not know the patient's name. I do not remember Ms.
21 Jameson. But that is why she said I was in frequently
22 because I am sure she was developing a problem.

23 Now, having said that, once the decision is made that
24 this patient is unable to deliver vaginally, there are many
25 steps that have to be taken. Keep in mind I am the only

1 obstetrician there. There is no other. The patient has to
2 be prepared for surgery. The first thing it calls for is a
3 separate history and physical to satisfy reporting
4 requirements, and it is a good thing to do. Secondly, blood
5 has to be gotten. All the doctors there knew how to do type
6 and cross-matches in the lab which takes about 45 minutes to
7 cross-match blood. You do not do elective surgery in a case
8 like caesareans where you often lose 1,000 cc's of blood
9 without having blood available. That has to be done prior.
10 IVs have to be started to get patients where we have lines
11 to get in.

12 Now the patients have to go through the operating room.
✓ 13 ~~and it made a big point. There was one mistake in the~~
✓ 14 ~~statements made, Senator.~~ We did not have anesthesiologists
15 at Tuskegee. Never had anesthesiologists. We had nurse
16 anesthetists, and it was not uncommon for me doing
17 conduction anesthesia, what we call spinals, epidurals, that
18 I would have to do them. Sometimes the nurses could not.
19 Occasionally, the nurses, when we did general anesthesia,
20 could not get endotracheal tubes in for airways. I would
21 have to do it.

22 I have stopped many times in the middle of an
23 operation, had my medical students to make sure that the
24 wound stayed dry, while I had to break scrub and go and
25 intubate and resuscitate a baby that was in difficulty. We

1 did not have people to do that.

2 Having said all of that, now this patient is finally
3 ready. Now the patient has to go into the operating room.
4 She has to be prepped. Her abdomen has to be prepped.
5 Sterile materials have to be brought in, and then I have to
6 begin the surgery. And the process between the time I begin
7 the surgery and get the baby out can be anywhere from 20
8 minutes to 2 hours, depending upon whether the patient has
9 had previous surgery, depending upon her weight, how obese
10 she is.

11 To make a long story short, I definitely was encumbered
12 on that evening. That I know. I remember no such meeting.
13 I do know that I was a busy doctor, and I am so glad this
14 lady's baby is doing fine.

15 Senator Kennedy. Well, thank you, Doctor. I put the
16 whole statement in the record, but I will just mention she
17 points out, "It had been a difficult pregnancy. I was
18 confined to bed for 7 of the 9 months, and during the 4th
19 months it was necessary for Dr. Foster to perform a surgical
20 procedure to prevent a miscarriage. I had had two
21 miscarriages before this." So this was complicated.

22 On the issue of the "I Have a Future" program, Doctor,
23 I think all of us are looking for people that have got
24 initiatives who are attempting to deal with that problem of
25 the teenage pregnancy. You were out there doing a job. It

1 was recognized by President Bush. What I have heard in your
2 response is you have welcomed technical help and assistance.
3 You asked the Carnegie Commission for help and assistance.
4 They provided help and assistance. You were looking for
5 ways to strengthen the program.

6 You might have done the longitudinal studies which we
7 never do and should do, as Senator Jeffords pointed out, on
8 so many of the pieces of legislation we pass. You are glad
9 to do it. You did not have all the resources and the money
10 to do it. And what was shown in the Carnegie Commission
11 evaluation, which was supportive of the program in their
12 evaluation--it is easy for us up here now today to flyspeck
13 different kinds of programs. We do that. And we should at
14 times. But it is very easy for us with the benefit of
15 hindsight to look back on it.

16 But what is important is that the Carnegie Commission,
17 which is well-known, found justification and support and
18 endorsement of that program on the condition that certain
19 kinds of technical help and other changes be there. And as
20 I understand, you welcomed that intervention. You welcomed
21 the technical help and assistance. You welcomed ways to
22 strengthen the program. You have not been desirous of
23 trying to exclude that kind of help and assistance.

24 Am I right?

25 Dr. Foster. Yes, sir, you are correct.

1 Senator Kennedy. And that at least in their evaluation
2 of the program of the Carnegie Commission, as I pointed out
3 last night and made a part of the record, has been
4 impressed. And I gather from what your comments are, should
5 you be confirmed as Surgeon General--and I am very hopeful
6 that you will be--the first things that you are going to do
7 is talk to parents, include parents, include the community,
8 include the people's families who are going to be affected.
9 That is the way that you develop that program, and that is a
10 priority in the way that you proceed.

11 Do I understand correctly?

12 Dr. Foster. That is absolutely correct, Senator. I
13 plan to bring those members and leaders together from other
14 programs so these ideas can complement each other, which
15 will allow us to do what Senator Jeffords knows needs to be
16 done: develop a longitudinal program where we can truly
17 ^{measure} ~~measures~~ what the effects of our intervention are.

18 Senator Kennedy. Just a final point to correct the
19 record. The meeting, as I am informed, started at 7:00 p.m.
20 I said 6:00 p.m. I would ask the record be corrected.

21 I thank the Chair.

22 Dr. Foster. That is beneficial.

23 The Chairman. Senator Jeffords?

24 Senator Jeffords. I want to follow up, and thank you,
25 Senator Kennedy, for leading into my area of questioning. I

1 am the subcommittee chairman for Education. As well, I have
2 the dubious distinction or honor of being chairman of the
3 Subcommittee for the District of Columbia. So I am going to
4 ask you some questions related to that but also related to
5 the "I Have a Future" program.

6 I noted my concern yesterday for the statistical
7 analysis. I am not going to go over that again. But I know
8 you are aware that we have not just a problem in the
9 District of Columbia, but we have a problem in this entire
10 Nation of huge social costs which are a result of our
11 failures in education. And related to that is the fact that
12 60 percent of the teenage pregnancies are school dropouts.
13 So what I am interested in doing is working with the
14 Department of Education, Department of Labor, et al., as
15 well as you to try and help this country find the ways to
16 improve our educational forces.

17 The facts are very clear that we are failing. Half of
18 the kids that graduate from high school now are functionally
19 illiterate--that is, they cannot perform the tasks that
20 would be anticipated of the normal entry-level job. We are
21 last in the world in averages in math and science, and we
22 have problems.

23 With respect to the city of Washington, it has the
24 highest cost per pupil of any city, and I just talked with
25 the people from the college boards, and it has the lowest

1 results on college boards in the country. So the city needs
2 help, the country needs help.

3 What I am hoping we can do is, working together, find
4 programs that will be helpful in this area. "I Have a
5 Future," even though I question very strongly the results
6 with respect to pregnancies, I am very interested in the
7 concept of the program, and it is dealing with young people
8 and with the community and bringing the communities together
9 to help their schools and all that. And I know that you
10 have talked about, at least once you verified, just exactly
11 what you are doing in that respect.

12 It is my understanding that the "I Have a Future"
13 program has resulted in bringing health clinics into the
14 schools, that it has tried at least to develop a
15 neighborhood concept of responsibility for young people in
16 matters like that. So I am very interested in learning more
17 about what you think you can do as a national leader with a
18 program such as "I Have a Future," because we have got to
19 give those kids the feeling they have a future so they will
20 stay in school.

21 I would like you to outline what you can do, and I also
22 want to say that I am determined to help the people of
23 Washington, to help the school leaders and the community
24 leaders, now that we have assumed the special
25 responsibility, and I know that Speaker Gingrich and the

1 President have stated a similar desire, so that we can work
2 together to help the people of Washington and the leaders of
3 Washington to show the Nation ways which we can improve the
4 status of our young people.

5 Right now it costs about half a trillion dollars in
6 lost GDP because of our ineffective education, with all the
7 various things, and the loss of \$125 billion in revenues due
8 to the fact that we have an ineffective workforce at this
9 time.

10 If you could tell me what you have in mind as the
11 Surgeon General, working somewhat from the models of "I Have
12 a Future" program but also generally, so that we can try to
13 improve the quality of education and improve especially
14 those young people who have economic disadvantages as we
15 have here certainly in Washington and throughout the country
16 and also in the rural areas.

17 Dr. Foster. Thank you, Senator Jeffords. The role of
18 Surgeon General will be a role to which I am accustomed. It
19 is one of consensus building, educating, and advocating.

20 What I can do as Surgeon General is to try and educate
21 families, people, around the country of the benefits of
22 interventions, of bringing families closer together,
23 addressing the problems that they see in communities. So
24 the major role is to get a greater input of families, and
25 that is at every level.

1 We have got to do greater things to make parents have
2 their children understand that they are more valuable to
3 them than other things. That is the first thing. The
4 message has to go out, because what I learned from "I Have a
5 Future" is if you can get the community to buy into the
6 concept, it has a chance to work.

7 Now, be sure, as I said yesterday, everything that
8 works in Nashville will not work in Charlotte or Chicago.
9 We know that. So it seems that the very next thing that
10 needs to be done, Senators, is to bring together people who
11 have had the greatest progress and experience in what we
12 consider the third-generation approach to reducing teen
13 pregnancy. I mentioned it yesterday, but I will do it again
14 today just for reinforcement.

15 Dr. Joy Dreyfus is preeminent in this country about
16 teenage pregnancy. She is at Hastings-on-Hudson. She
17 clearly showed almost 2 decades ago that pregnancy reduction
18 programs in this country either had education or services,
19 or both. But what was missing, particularly in deprived
20 youngsters, was the ability to enhance life options, to
21 build self-esteem. That is the bedrock.

22 Now, Senator, I would certainly be way out of line and
23 not very bright to say that we can solve the school problems
24 in this country. ^{The Surgeon General} ~~We~~ cannot do it. But I will tell you what
25 we do know: youngsters who are abstinent do better in

The Surgeon
General

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1 school. ^{One of the} ~~The~~ biggest reason is they are not out of school
2 when they are pregnant, ~~for no others.~~

3 What we need is a greater coordination. What I like
4 about what we are doing in "I Have a Future" and two of the
5 other programs on the national level is we have some of the
6 cross-pollination between the schools. I think it is very
7 good. We have rites of passages in our program. Our
8 youngsters are rewarded not for just playing basketball or
9 football, but for making good grades. The parents come.

10 How can I say this another way? We do not need a study
11 to try to make parents and children to be more involved. I
12 would hope everyone would agree with that, that that is a
13 good thing, without a study. I think the basis of the
14 approach that we have taken is we have joined families with
15 community entities.

16 So if I were to start this, there should be a national
17 meeting. I will build on what has been done. You probably
18 know better than I that within the past 2 weeks the CDC
19 convened a meeting on teen pregnancy. Many of the people I
20 am talking about were there. The next thing I ^{would} ~~do now~~ is I
21 ^{would} ~~✓~~ sit down with Secretary Shalala, Assistant Secretary Phil
22 Lee, David Satcher, and we ^{would} brainstorm how we can complement
23 each other.

24 The first thing I think needs to be done is to get the
25 concept that I will begin to try to tell parents about how

1 you can come together for your kids to do better. We do
2 that. Now we call a national meeting together. We bring
3 leaders in the field. We bring Governors, some mayors,
4 someone from industry, and say these are the kinds of
5 prototypes we would like to see set up in various
6 communities with the goal of establishing A, B, C, D, just
7 like when I write a grant. What are the objectives? What
8 are your hypotheses? What are your objectives? What will
9 you define as success over time?

10 You do the statistical analysis. The numbers will have
11 to come from a multicentered study. I am not a
12 statistician. You cannot reach chi-squared significance
13 with the numbers like we have, even using multiple
14 regression analysis. You just cannot do it. In fact, you
15 have got to have bigger studies when you do that. But if we
16 have a multicentered, standardized to the point where there
17 are commonalities, we will do that, but yet we can build
18 into the programs the various differences that each city may
19 need. Demographically, cities may have different makeups,
20 but it is an opportunity to bring the schools, the family,
21 and the community together.

22 I will close on this note: the reason I think this is
23 the way to go is because everyone has ownership who has an
24 interest. It is not for this time, well, government should
25 do this, the family should do this. It is a coalition. It

1 is everyone working together. It is volunteers. Every city
2 I have been in, there are retired mathematics teachers. We
3 try to find them. These people would love to come in and
4 help youngsters with their school work. I think we have to
5 reward kids for good school work. I do not think it is
6 wrong to reward kids for productivity. That is how we will
7 have to go.

8 Now, I have in mind some people to function on a
9 national level, to help coordinate this, but, again, I will
10 sit down with Secretary Shalala, Assistant Secretary Lee,
11 Dr. David Satcher, my good friend--and I will say this on
12 national television ^{Secretary} ~~Governor~~ Riley. We worked together
13 with teen programs for 3 years. He would be a part of this.
14 We will bring this together and see for once how we can
15 coordinate. That is what CDC is doing with Bill Paul at the
16 Office of AIDS Research. We must coordinate. I want to
17 head a program, and I want to advocate for cities to bring
18 their resources together so they can leverage and complement
19 each other. And we can do the analysis prospectively
20 determined, just as you said so correctly, ^{which} has not been
21 done.

22 Senator Jeffords. Thank you.

23 The Chairman. Thank you.

24 Senator Pell?

25 Senator Pell. Thank you, Madam Chairman.

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Secretary

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1 Dr. Foster, one of the things that concerns us is the
2 increasing politicization of science, and we can see that
3 clearly in the criticism that recent Surgeons General have
4 received and the reaction of many politicians to your
5 nomination.

6 Dr. Foster. I cannot hear. I am sorry. I could not
7 hear, Senator Pell.

8 Senator Pell. Can you hear me now?

9 Dr. Foster. Yes, sir. I can hear you quite well.

10 Senator Pell. One of the things that we see is the
11 increasing politicization of science, and we can see that in
12 the criticism that recent Surgeons General have received and
13 the reaction of many politicians to your nomination who
14 decided to oppose your nomination based more on some of the
15 legal medical procedures you have performed as a physician.
16 My question is not about these procedures. This is not a
17 hearing to determine whether abortion is okay or not okay.
18 What this is is to determine the suitability of you for the
19 job.

20 I want to know whether you think that scientific
21 objectivity is too compromised in this country, whether you
22 think that threatened the independence of the Surgeon
23 General, whether you think in general that we have become
24 too judgmental in this country at the expense of science. I
25 think the whole furor over your nomination--obviously you

1 are well suited for the job, obviously well trained--is
2 based more on the politics than the science. I was just
3 curious if this is a phenomenon that goes into other areas
4 as well as the appointment of the Surgeon General. Do you
5 see an increase of politics entering into the judgments of
6 pure science, basic science, applied science?

7 Dr. Foster. Senator, I will have to plead ignorance.
8 I am not a politician. I do not know what that interface
9 is. I do know, though, that the health care of the American
10 people should not be politicized. Health care is an issue
11 for all Americans.

12 Now, I would like to say that the current
13 administration, I think, is on the right track, again, and I
14 have said this at least on two previous occasions. There is
15 a greater effort now to coordinate the activities of the
16 NIH, the CDC, I mentioned yesterday the Department of
17 Defense, the CIA. I think that is how you can reduce to the
18 lowest common denominator and increase communication. But I
19 do not think I can answer the question about how this has
20 affected other areas of political activity.

21 Senator Pell. Thank you. As Surgeon General, as we
22 said yesterday, you are really the people's doctor. You get
23 involved in issues that go beyond the personal physical
24 health. You mentioned a few areas of this sort, including
25 preventing teen pregnancy, preventing violence, preventing

1 smoking.

2 What other areas do you think the Surgeon General could
3 properly involved himself in? What about the efforts to
4 prevent lead poisoning, improving the quality of our air and
5 water, even such things as addressing the workforce
6 shortages through greater use of the Commissioned Corps in
7 medical practice?

8 Dr. Foster. Thank you. There are several comments and
9 responses, Senator, that ran through my mind as you spoke.
10 Yesterday, perhaps not as effectually as I would have wished
11 it to be, I tried to emphasize how much I appreciated the
12 public health role of the Surgeon General's job in terms of
13 water quality, paint and lead, passive smoke; all of those
14 things. I tried to bring that out. That is a major force.
15 I even mentioned the fact of the article with Governor Lamm
16 pointing to the strengths and the great needs of public
17 health.

18 Let me just give one example. Many people forget this
19 who are not in medicine. Someone mentioned the District of
20 Columbia and its dire straits, and I mentioned yesterday the
21 decrease in life expectancy in African American males. Do
22 you know the one quickest way to increase life expectancy?
23 It is to decrease infant mortality. Life expectancy is set
24 at the time of birth. So when you can bring down infant
25 mortality, you increase life expectancy.

1 This Nation has to do better than being 18th or 20th,
2 wherever we are. We have to keep the workforce healthy. I
3 think I mentioned that. I mentioned yesterday and I will
4 mention it again; there is nothing more cost-effective and
5 health-effective than health promotion and disease
6 prevention. That will be one of my biggest messages.

7 I am not oblivious to the fact that women and
8 minorities have not received as much attention in medical
9 research as they should. But for minorities, it has been a
10 double-sided sword. I think the Tuskegee situation is an
11 attestation to why we can be ambivalent on this issue.

12 But one of the things we have got to do, we have got to
13 get men to take greater responsibility for health promotion
14 and disease prevention. That does not mean I am not going
15 to continue to push forward with the initiative on the
16 reduction of breast cancer. We have to. But I hope the
17 message gets across to people around this Nation today. You
18 do not need a doctor or a mammogram machine to start working
19 effectively to control breast cancer. It is monthly self
20 breast examinations by patients. That is the first step.

✓ 21 The issue has become politicized, but immunizations--I
✓ 22 am sorry.

23 Senator Pell. You have been a medical professor for a
24 long time. In teaching young doctors, do you do it by
— 25 example or do you do it theoretically, by textbooks? Did

1 your father's approach to teaching, as you have described
2 his methods, in going to your "I Have a Future" program, did
3 that play a role?

4 I think the thing I was most moved by yesterday was
5 when you went into the statement of your roots and what
6 brought you to where you are today.

7 Dr. Foster. I hope I can stay a little bit more
8 composed about this today. My father was a very, very
9 creative man. He was a positive man, and I would like to
10 think that some of that is genetic.

11 Let me tell you what my dad did. You are going to find
12 this absolutely amazing, I assure. When my father finished
13 Morehouse in 1928, as I told you yesterday, he came to Pine
14 Bluff and became a science teacher at a black school in the
15 South. There was a little airport--~~you can have your staff~~
16 ~~check it--~~it was called Tony Field, on the "Altima Highway,
17 and I think the man's last name was Bucalis--I think he was
18 Italian--and he had this little airstrip, with Arracas and
19 Piper Cubs.

20 So when my father got to the phase on physics and
21 Bernuli's principle--which I know Dr. First knows about, the
22 flow of liquids, and air is a liquid in physics as
23 physicists see it--he brought this idea. He said, this
24 would be great for these youngsters to see the world. and
25 he went out and talked to Tony and said, Look, I have this

1 class. What kind of special deal can you make? You know,
2 give my kids a ride. Think how good it would be for these
3 kids to ride.

it 4 And he did. He set ^{it} up. The kids, I remember, had to
5 get permission from their parents, and the kids were all
6 eager to go, and they went out. The very first time I flew
7 in an airplane, I was 7 years old, and I was with my
8 father's class. Some of you may know the name of the
9 distinguished attorney and former dean of the Howard Law
10 School, Wiley Branton. Attorney Branton was in my father's
11 science class. And it was the 13th ride, and the kids were
12 skittish about getting in.

13 Wiley said, I am not superstitious. I will get in.

14 And I said, I am not superstitious. And I got in, and
15 I sat between Wiley's legs.

as if 16 It was a grass strip. As this plane bounced down this
17 grass runway, the thing I can envision just now is that once
18 the plane left the ground, the plane no longer seemed ^{as if} it was
19 moving, and the world was moving away and becoming bigger
20 and bigger and bigger; and I got a view that I could never
21 have conceptualized without the flight.

22 I remember the first time I saw my house from the air.
23 A few people in here are old enough to remember the little
24 box camera by Kodak--the box camera that my Aunt Mary had
25 given me--my Aunt Mary has tons of pictures. And I took a

1 picture of my house. I was fascinated by that.

2 And then, when World War II started, there were
3 students that my father had taught who became distinguished
4 fighter pilots in the 332nd fighter group in the 99th
5 Pursuit Squadron, the squadron, the Redtails--all black men--
6 who people said did not have enough sense to fly an
7 airplane. When the Allies got ready to take out the oil
8 refineries in Romania at Pluisti, they requested the
9 Redtails for their bomber support. The record will show you
10 that the Allies never lost a single bomber to German fighter
11 aircraft being protected by the Redtails. And for those of
12 you who have not seen it, go up on the second floor of the
13 Smithsonian Air and Space Museum. Those things open vistas.

14 When I was a little boy growing up in Pine Bluff, we
15 called it "nursery school"--I think they call it "day care"
16 now--we would do these field trips, and I would be so
17 excited the night before that I could hardly go to sleep. I
18 remember going to the Cotton Belt railroad station and
19 seeing these huge locomotive engines being hoisted up and
20 these men taking the wheels off and servicing these things.
21 That excites the young mind.

22 If I were living in a place, and I had never seen this,
23 I would not know what the future could be. We show our
24 children what the future can be. I think that that has
25 imbued me in my positive outlook. I have always said I am

1 happy. One morning, I was whistling, and the guys asked,
2 What are you whistling about?

3 I said, The fact that I can get up out of bed and put
4 my clothes on by myself is enough to make me whistle.

5 [Laughter.] ^{That}~~that~~ is just me.

6 Senator Pell. I think we all would be interested--at
7 least I know I would be--if you just went very roughly
8 through your average day in Tuskegee, what you were doing--
9 what time you started and--capsulize it, because otherwise
10 we will be here all day.

11 Dr. Foster. I will capsulize, and people will not
12 believe me--there was no starting point. I do not remember
13 a real starting point. I remember stumbling in and out of
14 the house at 3 or 4 o'clock in the morning, trying not to
15 wake up my wife and kids, getting in bed, and as soon as my
16 head hits the pillow, the phone is ringing again, This woman
17 is bleeding, you have got to come down here. I get up--I am
18 just glad I was young. That was the only thing that would
19 have saved me. I worked so hard, I really did.

20 But I do not apologize for it. I went there
21 voluntarily. But it was a tough day. As I said yesterday,
22 I remember going 40 hours without a wink of sleep. I have
23 operated for 14 hours, just operating. Dr. Frist has done
24 some of that long operation because of the nature of his
25 specialty. But it is a tough life. But it was worth the

1 effort, and I felt so fulfilled and rewarded.

2 The hundreds and hundreds of letters and pictures I got
3 of the kids I delivered--I am making a marvelous scrapbook--
4 from all over this country.

5 Senator Pell. It must be very creative to produce life
6 and see life emerge. I wish you well, and I look forward to
7 supporting you.

8 Dr. Foster. Thank you, sir.

9 The Chairman. Thank you.

10 Senator Coats?

11 Senator Coats. Thank you, Madam Chairman.

12 Dr. Foster, welcome back. Dr. Foster, I am still
13 struggling here to reconcile what I indicated yesterday were
14 at least to me some inconsistencies in the record, and
15 obviously wanted to give you the opportunity to clarify
16 that.

17 One matter that came up after the hearing--it was
18 raised in a news program--and I responded to it, and it is a
19 matter now of record, and I thought in fairness to you and
20 also to clarify the record, I ought to just raise it, and I
21 will just try to be brief here.

22 When you visited me in my office last week, one of the
23 first things you said, with pride--and it is certainly
24 something an obstetrician can take pride in--you had
25 indicated, volunteered, that you had never been subject of a

1 lawsuit, that you had never been sued for malpractice in
2 your 38 years, which is an extraordinary record for an
3 obstetrician. In fact, one of our discussions about medical
4 malpractice liability even in this committee is centered
5 around obstetricians and the problems that they have.

6 But the White House has supplied us with a letter
7 indicating that you were sued in Federal District Court in
8 Nashville, and the insurance company which apparently
9 covered you also indicates that a suit filed October 5, 1984
10 in the United States District Court for the Middle District
11 of Tennessee at Nashville alleged "a delay in the
12 performance of a Caesarean section with fetal distress
13 resulting in the death of the infant."

14 Now, that suit was dismissed. The insurance company
15 says that the Meharry Hubbard Hospital, which was the
16 codefendant--

17 Dr. Foster. I am sorry, Senator. I was trying to get
18 a copy of the letter.

19 Senator Coats [continuing.] Sure. The insurance
20 company says that the Meharry Hospital, which was the
21 codefendant, may have subsequently made a compromise
22 settlement with the plaintiff, and so I understand that the
23 suit was dismissed.

24 My question really does not go to the suit. I wonder
25 why did you volunteer to me that you had never been sued

1 when the record shows that you had?

2 Dr. Foster. I just misinterpreted being sued. I
3 thought of being sued as going to court and being
4 questioned. What happened is correct. I did a Caesarean
5 section--

6 Senator Coats. Well, I do not need to know. I am
7 really not interested in the details. I was just--

8 Dr. Foster. Yes. I am sorry.

9 Senator Coats [continuing.] I was just curious. You
10 knew that credibility on the numbers was a big thing with
11 me, maybe bigger than it should be, but I was just curious
12 as to why you, knowing that, volunteered that so
13 enthusiastically and then we were given information that you
14 were sued.

15 Dr. Foster. I stand corrected. I was proud of the
16 fact that I have never been to court.

✓ 17 What happened--there was a disposition--a deposition--
18 and I was dismissed from the case. And the case did go
19 forward. There was no monetary settlement regarding me.

20 Senator Coats. I understand that. Thank you. I
21 understand that.

22 Dr. Foster. And I apologize to you for that, sir.

23 Senator Coats. Well, I am not sure an apology is
24 needed, but I just wanted to clarify that inconsistency.

— 25 Another of the inconsistencies that I am troubled by

1 were the abortion numbers, and I want to just go back a
2 little bit to yesterday. In response to my question
3 yesterday, because you had said that--you had clarified for
4 the record that it was 39 abortions that you had performed
5 in your 38 years of practice, and that 38 years takes you
6 back to before 1973. And there was confusion over whether
7 the 39 represented abortions post-1973 or included abortions
8 before. And my understanding is you indicated there was an
9 additional abortion prior to 1973, which would have been
10 part of your 38 years. So the correct number is not 39; it
11 is 40. Am I accurate in that?

12 Dr. Foster. No, sir. I characterized, I believe the
13 record will show--and I may be wrong--but the case in
14 Tuskegee was a pregnancy termination to save the mother's
15 live.

16 Senator Coats. Right. But so were the other 39,
17 weren't they?

18 Dr. Foster. Well, yes.

19 Senator Coats. Aren't they both counted as abortions?

20 Dr. Foster. Well, this was a woman, which I described
21 yesterday, who was in dire straights.

22 Senator Coats. No, I am not questioning why you did
23 the abortion or the medical necessity for the abortion. I
24 am just trying to get at the number of abortions that you
25 have reported, and the number has been changing, and I am

1 trying to pin that number down.

2 My understanding of your testimony yesterday was that
3 there was an additional abortion, that the 39 number
4 represented abortions performed since 1973. And my specific
5 question was were there any before 1973, and you said yes,
6 there was an additional abortion, and you described that.
7 And I am just trying to--is the number 40 now?

8 Dr. Foster. You can count 40, sir. I characterize
9 that surgical case I did as a pregnancy termination. I did
10 not do an abortion technique. But yes, you can count it as
11 40, sir.

12 Senator Coats. Well, if you do not characterize it as
13 that, I guess my question is what are the other 39? Were
14 they not pregnancy terminations in the sense that this one
15 was? Were they for some other reason?

16 Dr. Foster. The 39--first of all, I was listed,
17 Senator, as the physician of record. I think I pointed that
18 out yesterday. And someone asked me about was anyone else
19 involved with the cases. And I mentioned that we were in a
20 teaching hospital--

21 Senator Coats. Well, no--I am just trying to get a
22 number--

23 Senator Kennedy. Can he answer the question?

24 Senator Coats. Well, that is not my question.

25 Senator Kennedy. Well, he is permitted under the rules

1 to give whatever answer. It might not be acceptable to you,
2 but generally, we listen to the witness give whatever answer
3 they want to give to a question.

4 Senator Coats. Senator Kennedy and Dr. Foster, I in no
5 way want to shorten the time that you have to answer. My
6 only concern is this light here, and I have got a lot of
7 questions, and I was trying to get to the specifics of my
8 question. But I want to give you all the time that you need
9 to answer the question any way you want, and if it does not
10 answer my question, I will come back and ask you that.

11 Senator Frist. Senator Coats, would you yield for 30
12 seconds?

13 Senator Coats. I would be happy to.

14 Senator Frist. If I might, just from a medical
15 standpoint--yesterday, Dr. Foster, in describing the case,
16 the initial case, this 40th case, you described it as a
17 hysterectomy, meaning total removal of the uterus.

18 Dr. Foster. That is correct.

19 Senator Frist. At that time, you did not know she was
20 pregnant.

21 Dr. Foster. Did ^{not} you know it.

22 Senator Frist. It was an incidental finding at the
23 time of pathology.

24 Dr. Foster. Yes, sir.

25 Senator Frist. The intent of that procedure was not to

not

1 perform an abortion to terminate pregnancy.

2 Dr. Foster. No--to save the lady's life. She was
3 going to drown in her own fluids.

4 What I wanted to mention about yesterday--and you said
5 you wanted specificity; I was trying to be specific--I was
6 listed as the physician of record on 39 cases. Someone
7 asked, Was anyone else, and I said yes, on three-fourths of
8 those cases, someone else.

9 Who was it? Residents.

10 Who did the procedures? I said, if I remember
11 correctly, I take responsibility for all, but we are a
12 teaching hospital, and the residents probably did some of
13 the procedures.

14 Senator Coats. Okay.

15 The Birmingham bureau of the AP carried a report
16 quoting your uncle, William Hill, and one of his former
17 colleagues, Dr. Calvin Dowe--I think I pronounced that
18 correctly, D-o-w-e--

19 Dr. Foster. Yes.

20 Senator Coats [continuing.] As saying that you
21 performed abortions--plural--during the time that you were
22 an obstetrician at John Andrew Hospital in Tuskegee, AL from
23 1965 to 1973.

24 Now, they used it in plural--in fact, they said, "Dr.
25 Foster sometimes did abortions. Women simply went to him

1 because there was nowhere else to turn"--but they don't know
2 how many abortions you did at Andrew Hospital.

3 I just want to clarify that. Your indication yesterday
4 is that you did one pregnancy termination. And so what is
5 your response to that AP report?

6 Dr. Foster. My response is to Calvin Dowe and Uncle
7 Billy. Calvin Dowe is not an obstetrician-gynecologist, and
8 Uncle Billy is 93 and not a doctor at all. [Laughter.]

9 Now, what has happened, I know--I did many operations
10 called "incomplete abortions." You see, Senator Coats, in
11 those days, women came in by the dozens with botched
12 abortions--bleeding, hemorrhaging, infected--some died. And
13 to the layperson, an abortion is something that is criminal.
14 In medical parlance, it is not. An incomplete abortion was
15 a very common procedure. And it was miraculous that after
16 1973 at our hospital in Meharry, the incomplete abortions
17 went down so it was precipitous.

18 Yes, I did incomplete abortions, and that is what they
19 are making reference to.

20 Senator Coats. And by "incomplete abortions," you mean
21 abortions initiated by someone else--

22 Dr. Foster. Yes, yes.

23 Senator Coats [continuing.] And a complication
24 resulted, and then they terminated it.

25 Dr. Foster. Yes, sir.

1 Senator Coats. But their statement that you did
2 abortions, you are saying, other than the one pregnancy
3 termination abortion--

4 Dr. Foster. Look, I am a doctor. Let me tell you, if
5 you go to the layperson now, and I am taking a history on a
6 patient and ask, How many abortions have you had? and the
7 patient says, I never had any abortions.

8 And I ask, I am sorry--how miscarriages?

9 Oh, I had three miscarriages. I had one--and so on.
10 They equate that with--

11 Senator Coats. Okay.

12 Now, you said that of the 39--or the 40--that some of
13 those, you did not directly perform, but you were the doctor
14 of record because you oversaw those.

15 Dr. Foster. Yes, sir.

16 Senator Coats. And that raises the question about the
17 Upjohn study, because in response to Mr. Koppel's questions
18 and other questions regarding the Upjohn study on
19 "Nightline" and then in other places, you indicated that you
20 did not count those because you did not actually perform the
21 abortions. But you were the doctor of--you were head of
22 that study, were you not?

23 Dr. Foster. Yes. That is the point I wanted to make.
24 That was the research study. I explained it yesterday, but I
25 will again--

1 Senator Coats. But they resulted in what--59
2 terminations of pregnancy, or abortions?

3 Dr. Foster. Essentially. That is the article--

4 Senator Coats. Why didn't you count those numbers if
5 all the 39--do you see the inconsistency there?

6 Dr. Foster. No, no, I do not. I was not the physician
7 of record on those. I was the administrator of the grant.
8 I did not do those procedures. I took full responsibility
9 for the 39. I did not do the Upjohn procedures, but I was
10 administratively responsible, Senator Coats. I had to make
11 sure that the procedures were done correctly. In fact, I
12 was administratively responsible for all 11 physicians that
13 were on my staff at one time. I have to sign their
14 credentials as chairman of the department. Each month, when
15 our statistics go into our office of the administrator, I
16 have to sign. So I am responsible. But I did none of those
17 cases.

18 Senator Coats. Well, I have a number of questions
19 regarding that study, but the red light is on, and that is
20 why I will terminate.

21 Dr. Foster. Thank you, sir.

22 Senator Coats. Again, if I interrupted you or did not
23 give you sufficient time, I apologize; it is not my intent
24 at all. What I said in the beginning is that we need a
25 thorough discussion of this to remove loose ends and

1 outstanding questions, and I want to give you all the time
2 that you need to do that.

3 Dr. Foster. Thank you, Senator Coats.

4 Senator Coats. Thank you, Madam Chairman.

5 The Chairman. Thank you.

6 Senator Dodd?

7 Senator Dodd. Thank you, Mr. Chairman, and I hope I
8 will not need the full 10 minutes of time.

9 First of all, I want to thank my colleague from
10 Tennessee. He had a point. I think the point needs to be
11 made here. We are talking to a physician, a doctor, and
12 understand that up here you are looking at a group of
13 politicians. Sometimes there is a difficulty not only in
14 this situation but too often in the country as well that
15 people do not understand--that many people do not
16 necessarily use the kind of language in how they relate to
17 one another. So your answer regarding that one case I think
18 is important to be clarified.

19 You were performing an operation, and in the process of
20 doing that, this is what you call it. This was not
21 performing an abortion. This was conducting--trying to save
22 a woman's life, and as part of this process, this happened.

23 Dr. Foster. It happened.

24 Senator Dodd. Madam Chair, as I look at this--I want
25 to come back to the "Points of Light" program in a minute,

1 but as I look at it, as I have listened over the last day-
2 and-a-half, it seems to me there have been basically four
3 issues that I think have been raised. One has to do with
4 the case involving the sterilization issue. I think that
5 has been resolved. Certainly, in my mind it has by the
6 testimony of the head of the American Medical Association
7 and everyone else regarding what were standard procedures,
8 however regretful we may be today about that fact. The fact
9 is that in the 1960s and 1970s this was standard practice.
10 It seems to me that issue has been resolved.

11 The other issue was whether or not you participated in
12 a meeting in which information was shared regarding the
13 syphilis case or cases in which people were not treated. It
14 seems to me Senator Kennedy and others, I hope to the
15 satisfaction of everyone else, not only established where
16 you were at that time, but also the evidence of people who
17 were in the room. I hope that issue has been resolved. It
18 seems to me we have spent time on that.

19 The number of abortions issue, again, I appreciate
20 those who want to continue to raise that. It seems to me
21 that you have satisfied, I think, any person who looks at
22 this from a common-sense standpoint in terms of the numbers
23 involved over a lengthy medical career, by the way, and
24 where the emphasis of your practice has been. There are
25 some 35,000 obstetrician-gynecologists in this country.

1 This is a controversial issue. It does not mean that people
2 who come before us are controversial. It does not mean that
3 35,000 ob-gyn's, because of the nature of their practice,
4 engaged in a legal medical procedure are controversial.

5 We may find the issue controversial, but people
6 performing their professional responsibilities do not become
7 controversial.

8 Dr. Koop was before this committee as a candidate for
9 Surgeon General. He had very strong views on abortion. He
10 was opposed to it. That did not make him controversial. It
11 did in the eyes of some people because of their views on the
12 issue. It turned out he did a tremendous job as Surgeon
13 General. It was controversial, I suppose, because of his
14 views in the minds of other people, but the country might
15 have lost a very valuable contribution in his work had that
16 been the issue.

17 I would hope that is not going to be the standard
18 applied here. I would hope that that issue can be put
19 aside.

20 Lastly--and I do not think it is necessarily--it is a
21 legitimate question about the effectiveness of the program,
22 "I Have a Future," and good questions, and I think in my
23 mind you have answered a good part of that. It is not a
24 perfect program. It involves 240, 250 kids. Certainly one
25 would not rely on that necessarily as an example of what can

1 work everywhere. You have said that yourself. But it is a
2 good try. It is a good effort. You should not be, in my
3 view, maligned because you tried. I wish more people did
4 around the country.

5 This is a staggering problem. It is not just in our
6 country. It is showing up everywhere, the issue of teen
7 pregnancy and the problems associated with it.

8 Senator Moynihan of New York has spoken eloquently
9 about it and pointed out on numerous occasions the
10 difficulties that other societies are having in grappling
11 with this issue. We are not the only nation to be grappling
12 with it. And so I think it is legitimate enough to talk, as
13 Senator Jeffords has, about how we can rely on and look at
14 various studies about what works and what does not.

15 But I do not think in the process of doing that--and I
16 do not think that has been the case, by the way--that the
17 fact that you and people associated with this effort have
18 made a significant effort. And while certainly studies and
19 data and statistics and certainly people applying for
20 grants--I do not think anyone is going to be terribly
21 surprised here that people try to paint a good picture. Now
22 that does not come to me as shocking in the process. But
23 what I think is worthy of note here is many of the comments
24 made by some of these young people that have been a part of
25 this program.

1 Reanon Wilson: "Dr. Foster always tells us that
2 abstinence is what we should follow."

3 Jason Gordon: "The program stresses abstinence to the
4 fullest extent. It is the major goal of the program." The
5 program taught him one thing most of all, Jason Gordon said:
6 "I know I am not ready to have a child."

7 Deena Garrett: "The 'I Have a Future' program tries to
8 teach the teens that abstinence is the only way that we can
9 put a stop to teen pregnancy. The spread of sexually
10 transmitted diseases and the transmission of HIV virus,"
11 says 12th grader, Deena Garrett. I suppose to us from other
12 generations that a 12th grader is even talking about this
13 stuff maybe comes as a shock, but that is the world we live
14 in today.

15 Terrell Carter said, "I thought that having sex was
16 part of everyday life. It showed me abstinence is cool." I
17 think you cited his comment yesterday.

18 Charmine Harris, 18--

19 Voice. What about condoms, though? Dr. Foster is
20 opposed to condoms. Condoms save lives. Ask him about his
21 AIDS record.

22 The Chairman. Would the guard please clear the hearing
23 room?

24 Voice. Act-up.

— 25 The Chairman. Senator Dodd?

1 Senator Dodd. I thought it was one of my colleagues.

2 [Laughter.]

3 The Chairman. Well, that certainly brought attention
4 to your comment. [Laughter.]

5 Senator Kennedy. What did you say, again, Chris?

6 Senator Dodd. I do not know. I am not sure. Terrell
7 Carter.

8 Charmine Harris, 18, says the program taught her skills
9 she could use to resist pressure to have sex.

10 Again, I put these in the record, but as we look at
11 these and listen to these young people and children--and I
12 know every one of us probably up in our own States--Senator
13 Kassebaum talked about a program in her State. We have some
14 in mine. People are wrestling with this issue, and, again,
15 when President Bush recognized the "Points of Light" program
16 and talked about, as I mentioned yesterday, how much he
17 cared about it, cited as part of the rationale in the
18 President's report on the "Points of Light" movement, and I
19 quote him. He said, "Points of Light are the soul of
20 America. They are ordinary people who reach beyond
21 themselves to touch the lives of those in need and bring
22 hope and opportunity, care and friendship. By giving so
23 generously of themselves, these remarkable individuals show
24 us not only what is best in our heritage, but what all of us
25 are called to become."

1 In doing so, he went on to talk about the program that
2 you initiated in Nashville. Again, I am trying to get all
3 of us to appreciate the significance of this program. I
4 would tell you, Dr. Foster, if you did not do anything else
5 as Surgeon General but highlight this issue and invite
6 people from across the country to come up with various ideas
7 on how we can grapple with this issue, you would make a
8 significant contribution, in my view. And the fact that you
9 have tried this in your home town and it has made a
10 difference in even one child's life, made a difference, to
11 me that has value.

12 The fact that a bunch of numbers and statisticians and
13 so forth argue about who is on, who is out, whether or not
14 someone--we are not talking about kids that come out of an
15 "Ozzie and Harriet" situation here. We are talking about
16 tough kids in tough circumstances. And an awful lot of
17 pressure is on them every day. This is not an ideal world,
18 I suppose, that a lot of us maybe at this side of the table
19 are familiar with on a personal basis. And the fact that as
20 a physician and doctor that could have made some other
21 choices, quite frankly, and could have driven by those
22 neighborhoods every single day and never had to associate
23 yourself with it, and the fact that you did says volumes to
24 me about you. And the fact that for 22 years the people in
25 your town, in your community who know you best have stood up

1 and spoken eloquently about you and your service to the
2 community says to me that you ought to be nominated, we
3 ought to move on with this issue, you ought to be confirmed
4 by the full Senate. And I hope that will be the case in the
5 next few short days.

6 Madam Chairman, I really do not have any additional
7 questions. Those are the issues that have been raised here.
8 I think they have been answered. My hope is--I know the
9 chairperson's is as well--that we can complete this process
10 and have Dr. Foster come before the Senate and then let
11 people vote. If they want to vote against this man, vote
12 against him. But the idea that you would even block
13 consideration of this person from having a vote on the floor
14 of the Senate is childish and wrong, and certainly brings
15 disgrace, in my view, on this institution. That is not the
16 way to do our business.

17 I yield back the balance of my time.

18 The Chairman. Senator Frist, would you yield me a
19 couple of minutes of your time.

20 Senator Frist. Yes, ma'am.

21 The Chairman. I appreciate that. I will not take that
22 long, but I would just like to answer perhaps a question you
23 raised, Senator Dodd, about maligning the "I Have a Future"
24 program. That was not the intent.

25 The intent of my questioning on both the Tuskegee

1 syphilis study was not where you were when, but once you
2 knew, what did you do? And the same really with "I Have a
3 Future." I am admiring of any efforts in that direction,
4 but once there were some questions raised about the program
5 as far as how it could be improved, what did you do in
6 providing that leadership?

7 To me, that was important as an example of leadership
8 and responsibility that I believe was important. That was
9 the intent, and not to malign certainly the "I Have a
10 Future" program, but to recognize sort of the responsibility
11 involved.

12 Thank you. And thank you, Senator Frist.

13 Senator Mikulski. Senator Kassebaum, could I just ask
14 a procedural question? I note that it is 10 of 11:00. Does
15 the Senator intend to come back after the votes?

16 The Chairman. I appreciate the question, because it is
17 my understanding now we are going to have a series of votes
18 at 11:15, probably five back-to-back votes, which may take
19 us to 12:30.

20 My suggestion at this point is we recess at 11:15 or
21 whenever the vote is called, and that we reconvene at 1:30
22 and complete a round of questioning.

23 I would suggest after a further round of questioning it
24 would be my desire at that point to have any further
25 questions submitted to the record for answers. But I want

1 to make sure everybody has ample time to have completed the
2 questions they would like to answer.

3 Senator Mikulski. I thank the Senator.

4 The Chairman. Senator Frist?

5 Senator Frist. Thank you, Madam Chair.

6 Dr. Foster, there are basically three areas that I want
7 to try to address in a very short period of time that I
8 still have questions about that I think need clarification.

9 Number one is on the paper that we began to discuss
10 yesterday in the Southern Medical Journal that had to do
11 with removal of a normal uterus.

12 Number two is the Tuskegee study, which goes back to
13 credibility issues.

14 Number three is something about your personal
15 philosophy. I would like to actually go into that very
16 special relationship between a doctor and his or her
17 patient, the relationship that many people do not fully
18 understand until they are actually there. And you and I are
19 the only two physicians in this discussion, so I would like
20 for you to approach that.

21 First of all, with regard to the sterilization, let's
22 revisit that. There were four patients in this particular
23 paper. It was a case review study, retrospective study
24 going back and looking at numbers of patients, several
25 hundred patients. All of these procedures, the four

1 procedures in question, were performed before 1973. Is that
2 correct?

3 Dr. Foster. Yes, sir.

4 Senator Frist. The words that have been used yesterday
5 were "forced sterilization." Where these forced
6 sterilizations?

7 Dr. Foster. No, sir, Senator.

8 Senator Frist. The other words used were "involuntary
9 sterilizations." Were these involuntary sterilizations?

10 Dr. Foster. No, Senator.

11 Senator Frist. Was informed consent given consistent
12 with the medical ethics in the early 1970s or the 1960s
13 during which time these procedures were performed?

14 Dr. Foster. Absolutely, Senator Frist.

15 Senator Frist. When you presented this paper--and,
16 again, many people do not understand what goes into a
17 medical paper like this, but very briefly, an abstract is
18 submitted to a group of people who peer-review that paper.
19 Was that done before your oral presentation in 1974?

20 Dr. Foster. Yes, sir.

21 Senator Frist. Were any comments made by your peers
22 questioning the ethics of that particular study?

23 Dr. Foster. None whatsoever, Senator.

24 Senator Frist. At the meeting when you presented this
25 data in 1974--the National Medical Association, I believe it

1 was?

2 Dr. Foster. Yes, sir.

3 Senator Frist. Was there any questioning at that time
4 regarding the ethics of this paper?

5 Dr. Foster. None whatsoever, sir.

6 Senator Frist. When you published this paper 2 years
7 later, once again, it is peer-reviewed by your colleagues.
8 Is that correct?

9 Dr. Foster. Yes, sir.

10 Senator Frist. Were questions about medical ethics of
11 the time raised by your peer review in 1976?

12 Dr. Foster. Never, Senator.

13 Senator Frist. Usually, if there is some question of
14 medical ethics in a peer-reviewed journal, are questions
15 raised either by the peers or by the editor?

16 Dr. Foster. Yes, sir.

17 Senator Frist. Did the editor, who many times will put
18 a note on that paper if there are questions of ethics,
19 express any concern to you?

20 Dr. Foster. No, sir.

21 Senator Frist. Yesterday you described in graphic
22 detail, a detail I do not think many people fully understand
23 in terms of the patients who come in, a patient with
24 blisters. I believe you said blisters on her thighs where
25 bleeding would actually contribute to infection, contribute

1 to disease of the bone, osteomyelitis potentially, and
2 potentially death. Is that correct?

3 Dr. Foster. Yes, sir.

4 Senator Frist. Do you recall--and, again, I know these
5 were case reviews and residents may have been involved and
6 it was over a 10-year period--any of the particulars of the
7 other studies?

8 Dr. Foster. I really do not, sir.

9 Senator Frist. Yesterday also questions were asked
10 about the Federal Register. The Federal Register, which is
11 dated, I believe, February 6, 1974, were any of those four
12 procedures that were in that paper performed after 1974?

13 Dr. Foster. No, sir.

14 Senator Frist. All of them were before 1973?

15 Dr. Foster. Yes, sir.

16 Senator Frist. I should also add that these HEW
17 guidelines were guidelines established, actually
18 implemented, I guess, February 6, 1974. The discussion had
19 taken place before that time. You probably do not read the
20 Federal Register regularly.

21 Dr. Foster. No, sir, I do not.

22 Senator Frist. But they were proposed for
23 reimbursement for Federal funding. Was Federal funding, to
24 the best of your knowledge, used for any of these four
25 cases?

1 Dr. Foster. No, sir.

2 Senator Frist. Now, in this Federal Register, it does
3 say "a committee." It also says, I believe, things like
4 psychological testing. Was that typically done at Tuskegee
5 in the 1960s on women who were coming before you in your
6 practice?

7 Dr. Foster. No, sir. We did not have psychological
8 testing.

9 Senator Frist. Was the expertise available to you at
10 that time?

11 Dr. Foster. It did not exist, sir.

12 Senator Frist. Was it part of accepted medical
13 standards at that time?

14 Dr. Foster. Yes, sir.

15 Senator Frist. That psychological testing would be
16 done?

17 Dr. Foster. Was not available.

18 Senator Frist. It would not be done.

19 In this report--again, it was published in 1974, well
20 after those cases that you performed--it says that the
21 committee shall determine whether the proposed sterilization
22 is in the best interest of the patient, taking into
23 consideration, among other things: number one, the expected
24 mental and physical impact of pregnancy and motherhood on
25 the patient, if female, and the expected mental impact of

1 fatherhood, if male; and number two, the expected immediate
2 and long-term mental and physical impact of sterilization on
3 the patient.

4 Given the fact that these regulations at the time were
5 not applicable to your particular cases performed before, in
6 your own mind did you do anything that would be outside of
7 these two suggestions for this committee to consider?

8 Dr. Foster. Absolutely not, Senator Frist.

9 Senator Frist. Dr. Foster, at the time you performed
10 these procedures, were you aware of any law, any
11 regulations, any ethical guidelines, or any other rule that
12 applies to you and prevented you from doing or would have
13 prevented you from doing exactly what you did at that point
14 in time in the best interest of that patient?

15 Dr. Foster. No, sir. No such restrictions existed.

16 Senator Frist. Let me briefly turn to the Tuskegee
17 study. It is credibility. You know it is credibility.

18 Dr. Foster. Yes, sir.

19 Senator Frist. We have people on both sides saying
20 different things. Let me just enter for the record, if I
21 could, Madam Chair, an article from the Nashville Banner by
22 Bill Snyder, who independently interviewed a number of
23 people.

24 We have had access to certain records in terms of
25 testimony that has been given about people who were present

1 or not present in 1969 at a meeting that you deny being
2 present at. Let me just briefly read from this particular
3 article.

4 It says that you make the statement that you knew
5 nothing about this until 1972, which you have reiterated
6 today.

7 Dr. Foster. Absolutely correct.

8 Senator Frist. Let me read the article: "However, a
9 former colleague, Dr. Luther McRae, says Foster learned
10 about the study during a 1969 meeting of the Macon County,
11 Alabama, Medical Society and voiced no objections to it.
12 One man's word against the other. Not quite. Two doctors
13 who remember attending the 1969 meeting with officials of
14 the U.S. Public Health Service say the government officials
15 did not discuss the most troubling aspects of the research
16 which began in 1932."

17 The quotation begins: "'They never mentioned anything
18 about denying these people treatment,' says Dr. John Hume, a
19 Tuskegee orthopedic surgeon. 'They only said they were
20 checking on them since they hadn't been treated.'"

21 "This view is supported by the two surviving Public
22 Health Service officials who attended the meeting. 'I don't
23 recall any elaborate or extensive discussion concerning this
24 study,' recalls Dr. Alfonso Holquin, a former official of
25 the Communicable Disease Center in Atlanta, then part of the

1 Public Health Service."

2 I would like to make that entire article a part of the
3 record, if I could.

4 The Chairman. Without objection.

5 [The article follows:]

6 / COMMITTEE INSERT

1 Senator Frist. Is that accurate?

2 Dr. Foster. I did not know there were officials from
3 CDC who said that they did not know anything was said. But
4 everything I heard was accurate.

5 Senator Frist. And, once again, did you know anything
6 about the withholding of treatment to black men, to the
7 subjects of this study, prior to 1972?

8 Dr. Foster. Not before 1972.

9 Senator Frist. Dr. Foster, let me shift gears once
10 again. Do you feel that the administration today has
11 inaccurately presented some factual information as with
12 regard to your past and the qualifications to this
13 committee?

14 Dr. Foster. No, sir, *other than with regard to the
number of abortions I had performed,
the circumstances of which I
have explained to the Committee.*

15 Senator Frist. I may come back to that.

16 Dr. Foster, because I know my time is going to run out,
17 I want for you and me to go to your office, to the hospital,
18 to a clinic. You say you abhor abortion. You have talked
19 about abstinence. Questions have been raised about both of
20 those. People have gone back and looked at the various
21 curriculum, have gone back and questioned your--looking for
22 issues to question your credibility further. So let's go
23 back to the one-on-one doctor-patient relationship.

24 An 18-year-old woman comes into your office. She is
25 pregnant. She is not married. She has little family

1 support. She has no father. She is scared. She has no one
2 to turn to.

3 What counsel do you give her? What do you tell her?
4 Walk us through that relationship, doctor-patient
5 relationship. Tell us what that message is.

6 Dr. Foster. The very first thing that I try to do with
7 any patient, particularly one that has a problem that is
8 vexing them, is to try to convey to them through body
9 language, through facial expression, that I understand that
10 they have a problem. That is the first thing, because once
11 that is established, I think communications can be had.

12 Then the next thing I tell patients, frequently I say
13 you have a dilemma by your own definition. You have an
14 unwanted pregnancy. I say there are only three rational
15 things that you can do. You can have the baby and keep it;
16 you can have the baby and put it up for adoption; or you can
17 have an abortion. But which of those you choose has to be
18 based on your own underpinnings, your moral values, your
19 support system, your minister. They have to help you make
20 this very difficult choice.

21 The final thing I have said--and I have given this
22 speech a lot of times, as you probably can tell. I will
23 tell them to understand that, irrespective of the choice you
24 make, you most likely will have some misgivings. So you
25 don't have to necessarily feel that if you had not done

1 that, that would not have happened. Any of those, if you
2 are ambivalent about this, will give you something.

3 Then the last thing I do is I send them to some
4 professional counseling. We have social workers in the
5 hospital who talk to these women.

6 Senator Frist. Thank you, Dr. Foster.

7 Thank you, Madam Chair.

8 The Chairman. Thank you, Senator Frist.

9 Senator Simon?

10 Senator Simon. If Senator Frist wants another couple
11 of minutes, I would be glad to yield to him.

12 Senator Frist. I'll pass for now. Thank you.

13 The Chairman. Would you yield some of your time?

14 Senator Simon. Let me shift to a very different area.
15 We have heard, since the Oklahoma City bombing, that words
16 have consequences. What the Surgeon General has pointed out
17 on two different occasions is that words and images on
18 television have consequences; that one of the reasons for
19 crime in our society and violence in our society is the
20 entertainment television that glorifies violence.

21 And I am pleased to say, because of a variety of
22 things, that in the broadcast television industry there has
23 been a significant shift--we still have a considerable way
24 to go--but a considerable shift away from violence. On
25 cable, that is much less the case, I regret to say.

1 But the Surgeon General has, in the words of Teddy
2 Roosevelt, a bully pulpit. My hope is that you would take
3 advantage of this pulpit also to remind parents and the
4 television industry that there are consequences from the
5 words and images that we have on television. Any
6 reflections on this?

7 Dr. Foster. Actually, Senator, I wrote down as I was
8 thinking, as thoughts went through, one of the things that
9 our program has done and others like it, for the first time
10 for many of these kids has someone in authority actually
11 talked to them about abstinence.

12 You are absolutely right. The media glamorizes and
13 never shows the consequences or rarely shows the
14 consequences of unrestrained sexual activity by adolescents.
15 They glamorize it, but we live in an open society. I don't
16 know how far we can restrict the media.

17 So what I say I should do, I think we should be
18 positive and try to get the message out. Let's strengthen
19 the families. Let's try to get families to understand how
20 they have to restrict TV hours for their kids. We need to
21 go in and try to get this message across. We have to use
22 the same techniques in an open society.

23 Education, actually the media is no more than a form of
24 education. They may do it in a more sophisticated way than
25 we do, but we have got to find ways to negate that. We are

1 not doing that effectively enough. Youngsters have to know
2 that there are consequences for certain actions.

3 We live in a free society, and what can we do? We have
4 to let people speak, but we have to negate that. It is
5 wrong to allow our children to be bombarded, I think, from
6 sun-up to sundown with sexually stimulating, titillating
7 messages, with a void that doesn't negate this. We are
8 being irresponsible.

9 One of the ways is to try to stop the media. That is
10 for someone else to do, but as Surgeon General, my method is
11 to get families to understand that they have a role in doing
12 this. Parents need to restrict how much television their
13 kids see, and I don't care where that is. That is ^{urban,} suburban,
14 anyplace.

15 I am doing a commencement address very soon, and I am
16 telling these kids that one of the things I think is good--
17 again, my value system, but they can adopt it if they wish--
18 as busy as I was in Tuskegee, which you all heard about, I
19 tried every way I could each evening, even when my children
20 were infants, to get home so the four of us could take a
21 meal together with TV sets turned off.

22 That time was sacrosanct to us. I would go in in my
23 greens. I would go and have to get right back, following
24 someone in labor. But when you do that for 18 years, when
25 these kids go off to college, think of the thousands and

1 thousands of times you have had the opportunity to sit and
2 discuss comical things to the most serious issues there are.

3 I think it is something we have lost, and I think it is
4 important, and I will advocate for it.

5 Senator Simon. Let me just follow through by saying, I
6 think what you have done in your family is great, and I am
7 all for your encouraging that. But one of the practical
8 problems for people who live, say, in a housing project in
9 Chicago, Robert Taylor Homes--

10 Dr. Foster. I have been there.

11 Senator Simon. --frequently single mothers, really
12 struggling with life's problems, they can't let their kids
13 go out and play in the streets because it is not safe. The
14 only thing there is for entertainment is that television
15 box.

16 So I think it is important that you talk to parents. I
17 think it is important, also, that you talk to the television
18 industry, and I just mention that, and for the record, he is
19 nodding here.

20 Dr. Foster. No, I certainly shall. I will carry this
21 message to everyone, and I hope I can depend on you fine
22 people to help get them to come in line.

23 Senator Simon. Let me just add one final comment.
24 Frankly, I am very proud of you. Your family ought to be
25 very proud of you.

1 I think the question has shifted in the last day and a
2 half, from whether you meet the demands of the office of
3 Surgeon General, to whether we as Senators meet the demands
4 of our office.

5 Thank you.

6 Dr. Foster. Thank you, sir.

7 The Chairman. Senator DeWine?

8 Senator DeWine. Welcome back, doctor.

9 Dr. Foster. Yes, sir.

10 Senator DeWine. Doctor, I would like to spend the
11 majority of our time talking about something you probably
12 want to talk about more than some of the things you have
13 been talking about, and that is the future. But before I do
14 that, I do just want to make a statement--and we will get to
15 the future in a moment--and that is about sterilization.

16 I must tell you that--first of all, let me just say no
17 one could meet you, doctor, for any period of time and not
18 be impressed that you are a caring, loving person. I have
19 no doubt that you cared very deeply for your patients, so
20 there should be no doubt in anyone's mind, I think, about
21 that, who would know you for any period of time at all.

22 But I thought a lot last night about what you said, and
23 this morning about what you said in regard to sterilization
24 of these four young mentally retarded women. And I must
25 tell you that even with the comments and the answers that

1 you gave to Senator Frist, I am still troubled, and let me
2 just tell you why I am troubled.

3 You wrote the article published in 1976, given in 1974,
4 and you used the terms, "Recently I have begun to use
5 hysterectomy in patients with severe mental retardation."
6 So maybe that means to you the sixties. Only you know that,
7 but that would not be the normal use of the English
8 language, I don't think, "Recently I have begun...."

9 The standards, doctor, were clearly moving away from
10 you and away from what you are saying you did in this
11 article. Let me just look at a couple. I will go back to
12 the Department of Health, Education and Welfare, August
13 1973. Now, admittedly, these only involve Federal dollars
14 so they don't necessarily apply to you, but it tells you
15 where the country was going and where the standards were.

16 "A review committee comprised of five individuals must
17 review and approve a sterilization of a minor or a legally
18 incompetent person and consider"--several things are
19 considered. Then it says, "A court of competent
20 jurisdiction must review the committee recommendation to
21 permit sterilization if an individual was legally
22 incompetent." That is what was said in August of 1973, not
23 now, then.

24 American College of Gynecology policy on surgical
25 sterilizations, 1970--not 1974, 1970: "If an operation to

1 accomplish sterilization is recommended by the physician for
2 medical indications, the recorded opinion of a knowledgeable
3 consultant should be obtained." That is what was said then,
4 1970, doctor, not now, then.

5 Finally, "Federal court and State of Alabama, Wyatt
6 case, January 8, 1974, Judge Frank Johnson, talking about
7 sterilization, those at institutions. A determination must
8 be made, and several things are listed.

9 And then he says, "A review committee must approve such
10 sterilization," a review committee, "and a court must find
11 that the sterilization is in the best interests of the
12 patient." That is what Judge Johnson said then, January 8,
13 1974, not now.

14 I guess I am just troubled, doctor. I am not saying
15 you did anything illegal. I am not saying you didn't care
16 for your patients deeply. I just think you were on the
17 wrong side of history and you were moving in the wrong
18 direction, when everyone else was moving in the opposite
19 way.

20 But let me just, if I could move forward, ask you about
21 something that you did mention in the office. Let me just
22 ask this question, and then I think we will have plenty of
23 time for you to answer both, doctor if you want to.

24 Dr. Foster. Thank you.

25 Senator DeWine. We talked about a subject that you

1 have been very eloquent about in the last two days, and that
2 is teen pregnancy, which I think everyone understands is
3 just absolutely a national crisis. You said something to me
4 in my office that I found very interesting.

5 You mentioned that the teen pregnancy rates in Great
6 Britain are substantially lower than they are in the United
7 States, and we talked about Europe a little bit. I said,
8 "Well, why, doctor? Why is that? What is your opinion
9 about that?" You gave me two reasons.

10 You said, one, that prescription contraceptives are
11 available without a prescription. What would take a
12 prescription in this country are available without a
13 prescription in Europe. And, two, in Great Britain for
14 those teenagers who chose not to abstain, that education and
15 contraceptives are available at the same location.

16 I would like you to kind of expand on that for me, if
17 you could, and tell me if you think we could significantly
18 reduce or could reduce teenage pregnancy by making
19 prescription contraceptives over-the-counter in this
20 country, and also if it would help to go to school-based
21 contraceptive distribution.

22 Dr. Foster. Thank you, Senator DeWine. Let me answer
23 the first group of questions first.

24 You quoted me as saying, "Recently I have begun," in
25 the article you were reading from. I think what that

1 article says is that prior to that time I wasn't doing it.
2 I think that is what is implicit in that.

3 Number two, which I think eludes everyone but Senator
4 Frist picked up, this was a retrospective chart analysis
5 that went to 1963. That is a very important point, I
6 believe.

7 Senator DeWine. The study was?

8 Dr. Foster. Right, it went to 1963.

9 Senator DeWine. It was a big study, but inserted in
10 the study, in your report, you say, "Recently, I have
11 begun...." It is one of the few times in the whole article
12 you use the word "I".

13 I mean, I think we are saying basically the same thing.
14 My only point was, if the four sterilizations--which are all
15 I am talking about, I am not talking about your article--the
16 four sterilizations you are talking about were in the
17 sixties, I'll take your word for it. It is just an
18 interesting use of the English language, "Recently I have
19 begun...."

20 Dr. Foster. I will go back. "Recently I have begun,"
21 what that says to me is that prior to that I wasn't doing
22 it, and that is what I was trying to communicate. It's
23 correct. That is what I wanted to say.

24 The second thing I wanted to point out is that this was
25 a retrospective study that somebody started before I went

1 there, and so I am reviewing records. I am not doing all
2 these cases.

3 The third thing, you mentioned several times 1974,
4 about something, some proclamation out of Alabama. This
5 study had ended. Even the retrospective study had ended by
6 that time.

7 Senator DeWine. Can I just interrupt?

8 Dr. Foster. I'm sorry.

9 Senator DeWine. This trend, though, about being
10 concerned about people and their constitutional rights--and
11 again, I want to make it clear, I know you cared about your
12 patients. That is not what I question.

13 But the issue about the rights of those patients is not
14 something that just sprang up in 1973 or 1974. This has
15 been going on for years and the trend has clearly been,
16 throughout years, to be more concerned about the rights of
17 patients. I also cited 1970 standards, so I am not locked
18 into 1974 or 1973, but it is clear the trend is that
19 direction.

20 Dr. Foster. Senator, there was nobody that was more
21 concerned about those people than me, in terms of obstetrics
22 and gynecology. That is why I went there in the first
23 place.

24 Senator DeWine. I don't doubt that, doctor.

25 Dr. Foster. You didn't let me make the next point I

1 was trying to make. You cut me off right at the pass.

2 Senator DeWine. Go ahead. Go ahead. You have got
3 time.

4 Dr. Foster. My publications indicate shortly
5 thereafter, 1980, that this is not the best way to go. I
6 think I have that published.

7 Senator DeWine. I have read it.

8 Dr. Foster. Right, I did, but I think that ought to be
9 pointed out. To me, that is very germane. That was 15
10 years ago. I had stopped it.

11 I don't apologize for the ones I did. I was trying to
12 do what I thought was in the best interests of my patients.

13 Now in your office, in our conversation, you left out
14 one little thing when you asked me about why I was hired. I
15 remember I said, "I do not know," But I think these may be
16 two contributing factors. Thank you.

17 Senator DeWine. You are correct, but could you expand
18 on that?

19 Dr. Foster. Yes.

20 Senator DeWine. Are those things that you think that
21 we should look at in this country? Because that was the
22 gist of my question.

23 Dr. Foster. Yes, I would love to expand on it,
24 Senator. You know why? Because if I am successful, really
25 successful, we won't even have to worry about contraception

1 because abstinence will work.

2 Senator DeWine. Is that the complete answer?

3 Dr. Foster. If they would work, it is complete.

4 Abstinence is very complete.

5 Senator DeWine. I think we all agree with that,
6 doctor.

7 Dr. Foster. All right.

8 Senator DeWine. That we can all agree on.

9 Dr. Foster. You know, Senator, you are an extremely
10 bright man or you wouldn't be there. The emphasis is
11 certainly going to be on educating these people.

12 Senator DeWine. Doctor, you have been trying to
13 convince us you weren't a politician.

14 Thank you, doctor.

15 Thank you, Madam Chairman.

16 The Chairman. Thank you.

17 Senator Mikulski?

18 Senator Mikulski. Thank you very much, Madam Chair.

19 Dr. Foster, first of all, you must be exhausted by now,
20 and hopefully we can conclude our hearing even by the break,
21 but I would like to take you through some questions pretty
22 much along the style that Dr. Frist did--

23 Dr. Foster. Yes, ma'am.

24 Senator Mikulski. --and then go also into your
25 methodology and the way you would approach community

1 outreach as the Surgeon General.

2 First, this is to clarify again some of the concerns
3 that people have raised. I would like to go to the
4 malpractice situation.

5 Dr. Foster. Yes.

6 Senator Mikulski. I was the one who said last night on
7 McNeil-Lehrer that you had never been sued for malpractice.
8 I am going to rephrase that. Doctor, have you ever been
9 convicted of malpractice?

10 Dr. Foster. No, Senator.

11 Senator Mikulski. Have you ever had to pay damages for
12 malpractice?

13 Dr. Foster. No, ma'am.

14 Senator Mikulski. Doctor, how many babies do you
15 believe in your 38 years of clinical practice that you have
16 delivered, to the best of your recollection?

17 Dr. Foster. More than 10,000.

18 Senator Mikulski. Ten thousand children?

19 Dr. Foster. Yes.

20 Senator Mikulski. Ten thousand babies born, and never
21 convicted of malpractice?

22 Dr. Foster. Not once.

23 Senator Mikulski. Second, in terms of the question
24 over the 40th or the so-called "other" pregnancy, as I
25 recall that was a hysterectomy that you performed?

1 Dr. Foster. Yes, ma'am.

2 Senator Mikulski. Number two, then, after the
3 hysterectomy was performed to save the life of the mother,
4 that is when you found that she was also pregnant?

5 Dr. Foster. Yes, ma'am.

6 Senator Mikulski. So that would be viewed as a
7 procedure that would be stated as a hysterectomy, and then
8 pathology would indicate that it also had resulted in
9 pregnancy termination?

10 Dr. Foster. Yes, ma'am.

11 Senator Mikulski. Now let us go to the time before Roe
12 vs. Wade. You were born in 1933 and I was born in 1936.
13 Just about the time you were graduating from medical school,
14 I was graduating from social work school, so I remember the
15 days of segregation.

16 I remember them in Baltimore as a social worker, where
17 women who had had back alley or botched abortions were taken
18 not to the nearest hospital, but because of segregated
19 practices had to be taken to the nearest hospital that would
20 take them. That was often a couple of hospitals away. At
21 that time clients that I had, and I remember one in
22 particular, were hemorrhaging to the point that they were
23 near death.

24 Now I am not trying to paint scenarios for you, but
25 that is the kind of atmosphere that I remember which poor

1 women faced.

2 Now let us go, then, to the ERs or where you found
3 yourself during those environments. Is it true that
4 whatever procedures were done were the result of, for women,
5 when you say "incomplete abortions," it is not that you
6 completed an abortion because you wanted to do an abortion
7 but, doctor, am I right in saying that you were presented
8 with clinical situations in which the life of the mother was
9 in endangered, usually because of either hemorrhaging,
10 infection, or other kinds of circumstances?

11 Dr. Foster. Yes, ma'am.

12 Senator Mikulski. Have I described the scenario in
13 which you practiced fairly accurately?

14 Dr. Foster. Yes, ma'am.

15 Senator Mikulski. Now let's go to your hysterectomy
16 paper. I have a great interest in this issue because, as
17 the former chair of the Subcommittee on Aging, we also held
18 hearings on unnecessary hysterectomies. There is a
19 continuing, evolving body of knowledge where they are both
20 medically necessary and medically appropriate.

21 Now let's go to your paper. As I understand it, it was
22 a review of the records of a particular institution. Is
23 that correct?

24 Dr. Foster. Yes, ma'am, that is correct.

25 Senator Mikulski. And of those from the 1963 to the

1 1973 study, the description of the hysterectomies performed
2 were performed not only by you but by others.

3 Dr. Foster. That is correct.

4 Senator Mikulski. And of the four instances where
5 there was a hysterectomy on several mentally retarded women,
6 you recall two?

7 Dr. Foster. Yes, that is correct.

8 Senator Mikulski. That you did?

9 Dr. Foster. That is correct.

10 Senator Mikulski. And of the two, you clearly remember
11 parental involvement and parental request?

12 Dr. Foster. I am certain of that.

13 Senator Mikulski. You don't recall the parental
14 involvement of the fourth?

15 Dr. Foster. I don't recall the other two. I only
16 recall these.

17 Senator Mikulski. We are talking about four.

18 Dr. Foster. Right.

19 Senator Mikulski. Two you don't recall.

20 Dr. Foster. That's correct.

21 Senator Mikulski. Two you do believe that you did.

22 Dr. Foster. Yes.

23 Senator Mikulski. One you clearly remember parental
24 involvement, but on the fourth, do you remember parental
25 involvement or parental request?

1 Dr. Foster. Senator, I am lost. I remember parental
2 involvement on the two that I did. I don't know the
3 circumstances--

4 Senator Mikulski. I am only talking about the two you
5 did.

6 Dr. Foster. Yes, there was parental involvement. They
7 brought them to me, the parents.

8 Senator Mikulski. Well, in the testimony yesterday I
9 only recall you speaking of one. So of the two you did,
10 there was parental involvement?

11 Dr. Foster. Yes.

12 Senator Mikulski. They would be the ones who would
13 stand in loco parentis, or they were standing not in loco
14 parentis, they were standing as essentially the guardian of
15 an individual who was intellectually incapable of making
16 decisions for themselves. Is that correct?

17 Dr. Foster. That is correct. Yes, it is absolutely
18 correct.

19 Senator Mikulski. Is it also true at that time that
20 there was--I recall at the time and even subsequently that
21 there was such debate over bioethics in this area, that the
22 National Science Foundation gave a grant to the Hastings
23 Institute to take a look at these issues around informed
24 consent and also the mentally retarded.

25 Going back to the Hastings Institute, which has one of

1 the greatest reputations in our Nation for commenting on
2 bioethics, what did the Hastings Institute say about your
3 study and your work?

4 Dr. Foster. As I recall, it said that what I had done
5 at that time was in keeping with the standards, and in fact
6 the paper itself would be considered progressive, something
7 to that effect.

8 Senator Mikulski. Now I would like to go to your role
9 as Surgeon General. Senator Frist talked to you about a
10 doctor and the relationship between a doctor a patient,
11 which I thought was an excellent line of questioning.

12 I would like to go to self-help, community organizing,
13 pulling people together, which is really the role of the
14 Surgeon General. You will not be the Nation's doctor, in
15 which we will be asking you for clinical direction. You are
16 to rally the Nation to help itself.

17 Dr. Foster. Programs.

18 Senator Mikulski. Now in "I have a future" you did
19 something very bold, and for all of us interested in welfare
20 reform, also teenage pregnancy, you involved men. This was
21 the first study or first effort that I had ever seen where
22 young men were reached out to.

23 Could you describe, both in your role in "I have a
24 future" and how in your role as the Surgeon General of the
25 United States, you would try to involve young men in the

1 issues around not only teenage pregnancy but what they need
2 to do to protect themselves against violence, and other
3 types of issues.

4 Dr. Foster. It is so critical, what you just pointed
5 out. As I mentioned yesterday, there is no easy way to
6 solve a difficult problem. I have not found it.

7 I think for that particular issue, being a male, an
8 African-American male, for that group makes it a bit easier
9 for me to identify, but I am a physician and I am everyone's
10 doctor. I think the same might be true for someone else.

11 The key thing is, we have to break the cycle. What I
12 see happening is, and I keep harping on it, we are getting
13 messages to people in the inner city that nobody ever
14 brought to them before. People in positions of authority,
15 credibility, and we are bringing males.

16 As I said yesterday, if we bring males in, they will
17 have an altered and hopefully better value system. I
18 believe I am correct on this, and I will stand to be
19 corrected.

20 Senator Mikulski. Well, how did you do that? In other
21 words, we always talk about it being desirable but it often
22 seems very difficult to achieve.

23 Dr. Foster. I want to be careful. I am male, and I go
24 into these communities. I think that makes a difference,
25 but the real differences are our male counselors. We know

1 that that is important.

2 In fact, one of our counselors is a male from the
3 community who is a college graduate who is now working in
4 the community. I just think that is one of the most
5 important things, having the male father figure.

6 Remember, and I want the esteemed committee to just
7 reflect a minute, because I know that this is not a
8 condition you live in every day, but remember, ⁸⁷~~85~~ percent of
9 the homes that these youngsters come from are single female-
10 headed households. That is so important, to get male
11 figures, just like we need more males in elementary and
12 middle school. We need male figures.

13 So I think that is one of the reasons. I believe we
14 also have--I know this--⁵⁴~~56~~ percent of the participants that
15 we have taken care of are male, and I think one of the
16 reasons is, we make a specific and concerted effort for
17 males.

18 I don't want to get into too much detail, but we have
19 two modules on personal health and hygiene, and the girls
20 started first with one called CHARM, "choosing how to adorn
21 and refine myself," which was pretty catchy. The fellows
22 came up, theirs wasn't quite as good, but it was MATURE,
23 "men adorning and thinking using refined energies."

24 So it gets to be where they are now competing with each
25 other. The men are learning how--you know, we teach them

1 little things like my mother taught me: "Eat left, drink
2 right." It means whenever you go out, salad, bread is on
3 the left, water, coffee is on the right. "Eat left, drink
4 right." They learn these little things.

5 Let me say one other thing, because I think it is so
6 important.

7 Senator Mikulski. Well, doctor, the yellow light--

8 Dr. Foster. If you could give me just one second on
9 this one--

10 Senator Mikulski. Sure.

11 Dr. Foster. --we have to be culturally sensitive. We
12 don't teach these children or tell them that the way they
13 speak is wrong or bad. We don't.

14 What we do, and I tell my staff, we tell them they have
15 to become bilingual. They must learn operative English.
16 Because if you tell them they are speaking wrong, they have
17 to reject themselves, their cultures, their grandmothers,
18 and that is not the way. Do it positively. Hispanics have
19 to learn, become bilingual, to function in this country.

20 Thank you.

21 Senator Mikulski. Well, thank you, doctor. I note in
22 what you said that the goal of "I have a future" is
23 completion of school, employability, the ability to be drug-
24 free, the ability to handle interpersonal conflict, and the
25 value of helping others. I think that is not only "I have a

1 future," but I think it is a code of conduct we should all
2 live by.

3 I salute you for your efforts, not because you could
4 guarantee an outcome, but because you certainly guaranteed
5 an effort in this area, and I really look forward to working
6 with you as Surgeon General of the United States.

7 Dr. Foster. Thank you very much, Senator Mikulski.

8 The Chairman. Dr. Foster, there is a vote on now, so
9 we will recess until 1:30.

10 Dr. Foster. Yes, ma'am. Thank you.

11 [Recess.]

1 AFTERNOON SESSION

2 The Chairman. The hearing will please come to order.

3 Senator Ashcroft, I think it is your turn for
4 questions.

5 Senator Ashcroft. Thank you, Madam Chairman, and thank
6 you, Dr. Foster, for your return today.

7 Dr. Foster, I know you were asked about the Meharry
8 study of "I Have a Future" yesterday, the one that was
9 submitted to the Carnegie Foundation. We have only had the
10 report for a couple days, so if you do not mind, I would
11 like to go back over some of the issues that are related to
12 that study again.

13 First, were you aware of the existence of Mrs. Greene's
14 letter to the Carnegie Foundation, outlining statistics on
15 "I Have a Future" before last Friday?

16 Dr. Foster. Yes, sir.

17 Senator Ashcroft. Last Friday was when we got the
18 letter.

19 Dr. Foster, as we have discussed, your program has
20 received a great deal of attention and acclaim and is one of
21 the things that people associate you with most closely. And
22 I would just like to give you a chance to give us any
23 statistical data you might have to substantiate the kinds of
24 representations you have made about the program.

25 Are there other statistical evaluations of the program

1 that you know of that we might be interested in, or might
2 be able to use in evaluating the program?

3 Dr. Foster. No, I do not.

4 Senator Ashcroft. In that case, I would like to focus
5 a little more closely on this statistical information, which
6 is the only statistical information we have on the program.

7 As Senator Kassebaum noted this morning, the report on
8 your program found--and I am quoting the report--"no
9 significant differences between participants in your group
10 and the control group when it came to teenage pregnancy."

11 I would like to focus not on pregnancy, but on sexual
12 activity and contraception. According to the study, those
13 youth involved in your program--and I quote from page number
14 9 of the program--"youth appear to have engaged in sexual
15 intercourse more than the control group." The statistic in
16 the report was 60.5 percent for active participants, 55.6
17 percent for low-level participants, and 42.1 percent for the
18 control group. And I am referring to the information on the
19 top of page 9 in that study.

20 This is striking, given the fact that the active group
21 was made up of younger children than any of the other
22 groups, and even though the active group was comprised of a
23 nearly 50-50 split between boys and girls, it has been my
24 understanding that sexual activity is more likely to occur
25 among young boys than among other children, and so we might

1 expect that the active group would have a lower sexual
2 activity rate than that of other groups, due to their age
3 and the gender of the participants--but it was not the case.

4 In addition, according to the report on the program,
5 when looking at the onset of sexual activity and the onset
6 of contraceptive use, again, according to the report, there
7 was "no significant difference between the active low-level
8 and control groups."

9 So taken as a whole, the active participants in the
10 program were more likely to have had sex than those not in
11 the program, and just as likely not to use contraception as
12 those in your program.

13 It seems to me that that presents some problems. Could
14 you take a stab at explaining why that might be the case?

15 Dr. Foster. Yes, sir, Senator Ashcroft. First of all,
16 I will agree with you--there has not been enough done in
17 terms of evaluation of programs that are designed to enhance
18 self-esteem. They are new. There are programs that are out
19 there. So you are right. That is one of the things that we
20 will have to do, is to find out what works and what works
21 best.

22 These programs were put in primarily funded by this
23 foundation to place services in the community, which we did.
24 We added the research component. Now, it is a matter of
25 interpreting the data, as I explained yesterday, Senator.

1 We had three points in time--T-1, T-2 and T-3--we measured
2 at the end of each year. And what happened is in T-2, we
3 added new patients that had not been participants, that had
4 not been present in T-1. Some of these were older, and some
5 of them were already sexually active. So that makes the
6 data very difficult to interpret.

weighting

7 There was a ^{weighting} ~~waiting~~ factor also, where we assigned a
8 higher weight factor to the use of steroid contraception
9 than we did to condoms. But the point I want to make is the
10 thing that this program has done is it has brought families
11 closer to these young people, and we have provided male role
12 models for a community where 87 percent of the households
13 are female-headed. That is what this program has done. I
14 think we will be able to answer all of your appropriate
15 questions if we can get a multicentered longitudinal study.
16 That is what I will be fighting for, Senator.

17 Senator Ashcroft. Yesterday, after members of the
18 committee had waited for quite some time for material
19 regarding abstinence in the program, material was made
20 available to the committee, or at least, copies of material,
21 regarding abstinence. And I believe you were asked if you
22 were familiar with the material. This is the material that
23 was shown to us. And I think you said you were familiar
24 with the material. Is that correct?

25 Dr. Foster. I did. I am familiar with documents that

1 our program had. I did not examine them closely, but I am
2 familiar with documents that we have used.

3 Senator Ashcroft. So these are documents that have
4 been used in the program?

5 Dr. Foster. I--when I saw them at a glance, I thought
6 they were. They looked similar, but I did not--what is the
7 year on them, Senator? You see, I have not seen those.

8 Senator Ashcroft. Well, this document is the one that
9 was referred to by Senator Gregg, and this says "Copy
10 written in 1995," but I believe it was represented to the
11 committee that this is just another copy of a document, or
12 similar document, that was available in earlier years. Are
13 there other similar documents on abstinence to these 1995
14 documents that were used in the program?

15 Dr. Foster. I have not seen those, and we have used
16 documents and brochures. I am trying to be straightforward.
17 I have not been involved--I have been on sabbatical for
18 almost a year, so if you are asking me what this document
19 is, it looks like documents that we have used. We use
20 printed materials for our youngsters; yes, sir.

21 Senator Ashcroft. Well, we have had some difficulty in
22 getting samples of the printed materials. As a matter of
23 fact, we had not been able to get those, and we got these
24 printed materials that are the 1995 materials. And you said
25 you were familiar. Do you know when you first started using

1 such materials?

2 Dr. Foster. Yes, the year after the program was
3 started, in 1988.

4 Senator Ashcroft. And do you know, are there other
5 documents like this that could be made available to the
6 committee?

7 Dr. Foster. I would hope so. Like I said, I have been
8 away for a year, but I will certainly try to make available
9 to the committee, yes, sir.

10 Senator Ashcroft. These particular documents were
11 obtained from the JourneyWorks Publishing Company in Santa
12 Cruz, CA, and after inquiry with the publishing company,
13 they indicate to me that these are new documents, first
14 published in 1995 and not previously published. And the
15 information from the company indicates that orders from
16 Meharry and from the "I Have a Future" program were never
17 made for documents prior to the month of March in this year.

18 So in terms of the ability of the committee to make
19 judgments about the kinds of materials you provided for use
20 in the program, it is very difficult for us to rely on
21 documents which were ordered a month after your nomination
22 to the job of Surgeon General of the United States which had
23 not been published, at least by this company, in any prior
24 year and which we only got yesterday.

25 So I just wondered if these--I guess the problem that I

1 have with this is that your nomination has been attended by
2 a lot of information from the administration and some other
3 supporters, and that information has had sort of a
4 reliability deficit. In many ways, I think they have
5 misused you in the process. They asked you questions
6 casually which then were represented to the committee--the
7 number of abortions was one of those. They asked you, again
8 casually, how many abortions. You thought more carefully,
9 and it went up by a factor of 12. Then they asked you with
10 greater particularity, and it went up by another factor of
11 between 3 and 4.

12 And you said yesterday, when you were asked about these
13 brochures, and you were familiar with them--you responded
14 that you were, and that they are a part of one of the 13
15 modules you use in teaching the young people at Meharry. I
16 believe those are your words--"They are a part of one of 13
17 modules that we use to--in teaching our youngsters about
18 family responsibility and social responsibility. They are
19 distributed as part of our module on family life education."

20 You would not represent that these are, these ones that
21 were published in 1995?

22 Dr. Foster. If they were published then, no, because I
23 would not have seen them. But I had no--

24 Senator Ashcroft. But there are others that you are
25 familiar with that were?

1 Dr. Foster. Yes, sir.

2 Senator Ashcroft. And how can the committee
3 participate in knowing about those materials?

4 Dr. Foster. I do not know. I am just learning today
5 that you were having difficulty. So I will do whatever I
6 can to make sure. I did not know, Senator, that you were
7 not able to get information in a reasonable period of time.

8 Senator Ashcroft. Well, maybe I jumped to a
9 conclusion, and I have to apologize to everyone had I done
10 so. But the way these documents were presented to the
11 committee yesterday, they were initially presented as if
12 they were a part of the program under your direction and
13 leadership--not as something that had been brought to the
14 program only in the last 60 or 90 days.

15 Second, it was then represented, after the copyright
16 date was made known, that while there were previous
17 iterations of this document, this is just the 1995 version.
18 The publisher denies that. The publisher indicates that
19 this is the first year in which these documents have been
20 made.

21 I understand, Dr. Foster, that you made none of these
22 representations. As a matter of fact, after your initial
23 colloquy with the first Senator who raised these issues, you
24 were asked by Senator Gregg about these documents, and you
25 said, I am not going to make statements about something that

1 I don't know about.

2 I think that was wise of you, but it appears to me that
3 those who are eager for this nomination to proceed have been
4 willing to--well, have made it possible for me, I guess, to
5 jump to an inappropriate conclusion.

6 I had thought that when these were held up as
7 components of the program, and I thought that when you said
8 that "They are a part of our 13 modules that we use in
9 teaching our youngsters about family responsibility and
10 social responsibility," I thought that they had been a part
11 of the program when you were guiding the program and when
12 you were handling it. And really, about these, you tell me
13 that that is not the case now. Is that correct?

14 Dr. Foster. Senator, no. I did not--when you raise
15 those--let me tell you what I do know. The documents that
16 we used for our adolescents initially when I put this
17 program together were put together by the Education
18 Commission of the American College of Obstetricians and
19 Gynecologists. We order lots of documents and have for over
20 a decade from ACOG. I have been vice chairman of that
21 committee.

22 That document looks a little like that. But the other
23 point I--

24 Senator Ashcroft. So when you said--do you know when
25 the first time you saw this document was?

1 Dr. Foster. Well, from what you tell me, it was
2 yesterday.

3 Senator Ashcroft. Well, I do not want to tell you when
4 you first saw it.

5 Dr. Foster. No--I mean, it was today--

6 Senator Ashcroft. I know when I first saw it was when
7 it was held up in this committee room. Had you seen a
8 document or a copy of this document prior to the time it was
9 held up in this committee room?

10 Dr. Foster. No, sir.

11 Senator Ashcroft. No one had ever shown it to you
12 before then?

13 Dr. Foster. No, sir.

14 Senator Ashcroft. Thank you.

15 I see my time is up.

16 The Chairman. Thank you, Senator Ashcroft.

17 I do not know if I can shed any light on this, but I
18 would just say that we have had a hard time getting from the
19 White House the material that we had asked for regarding the
20 program. And that is not a responsibility of yours, Dr.
21 Foster. But it is my understanding now from the White House
22 that we will have all of the material, which would include,
23 I assume, earlier brochures. The only material we really
24 had were modules, and we had hoped to have a fuller look at
25 the program. But I think that helps explain sort of the

1 timing on this particular brochure, which I think was March
2 1995.

3 Senator Gregg. But Madam Chairman--

4 The Chairman. And there probably were earlier ones
5 used at earlier times.

6 Senator Gregg?

7 Senator Gregg. Madam Chairman, yesterday, I think
8 Senator Dodd said that these brochures had been used in 193
9 and 1992. And he held them up, and I believe Dr. Foster
10 sort of affirmed that these were the type of brochures--
11 these were the brochures that were being handed out. And
12 now we are finding that maybe that is not the case--well, it
13 clearly is not the case.

14 I do not contest Dr. Foster's representation here. I
15 think he has been drawn into an enthusiastic presentation of
16 his case by the White House.

17 But I would think it would be incumbent upon the
18 committee to find out the specifics about these
19 documentations because as a very practical matter, they have
20 been held forth as the documents that promote abstinence for
21 this program.

22 The Chairman. And Senator Gregg, I was just suggesting
23 that actually, yes, we did, and we put the request in to the
24 White House yesterday that we asked that all material
25 relevant to the program--earlier brochures and so forth--

1 would be made available so we would be able to see them in
2 the light of what was presented.

3 Senator DeWine. Madam Chairman.

4 Senator Wellstone. Madam Chairman.

5 The Chairman. And we had made that request earlier
6 than that, but we reiterated it yesterday, so until we see
7 that, perhaps we can wait.

8 Senator Wellstone. Madam Chairman, might I respond in
9 turn?

10 The Chairman. And it is Senator Wellstone's time, I
11 think.

12 Senator Wellstone. I thank you.

13 Madam Chairman, as long as we are talking about
14 relevant documents, having been involved in quite a bit of
15 social science research and understanding the different
16 kinds of evaluations that come out, I wish to make it clear
17 to my colleagues that generally speaking, the final
18 evaluation is not based upon a brochure, but rather, an
19 overall evaluation. And the Carnegie Corporation which,
20 after all, funded this--and I read from a letter that was
21 released today--think this is really relevant if we are
22 interested in how the Carnegie Corporation looked at the "I
23 Have a Future" program.

24 "The Carnegie Corporation of New York funded the "I
25 Have a Future" program from its inception in 1986. "I Have

1 a Future" is a life options program addressing the multiple
2 risks that many young people face in adverse circumstances--
3 the risk of school failure leading toward dropping out, the
4 risk of early pregnancy, the risk of drug abuse, and the
5 risk of delinquency."

6 And then I skip a paragraph: "The program combines
7 many of the elements that researchers and practitioners
8 agree are found in successful intervention programs for
9 high-risk youth. These include individualized attention,
10 collaboration with other community agencies, staff with
11 specialized training, social skills training to help
12 adolescents both resist negative peer influences and adopt
13 health-enhancing behavior, peer support, the involvement of
14 parents, career life planning, and opportunities for
15 community service."

16 And I read the last paragraph of this evaluation from
17 the Carnegie Corporation of the "I Have a Future" program:
18 "By 1994, a significant proportion of the young people who
19 received "I Have a Future" services showed improvement on
20 several measures of success compared to the control group.
21 The Corporation has worked with Meharry Medical College in
22 developing the program, and Meharry has been responsive in
23 recommendations for ways to improve the research design and
24 the curriculum. The Meharry team has courageously and
25 thoughtfully tackled an important and difficult problem. "I

1 Have a Future" should have useful lessons to impart to
2 others attempting to enhance the life options of young
3 people caught in adverse circumstances." End of quote.

4 This is an evaluation from the Carnegie Corporation of
5 the "I Have a Future" program.

6 I again, also, Madam Chair, would want to repeat a
7 point I made yesterday, which is there is, of course, a
8 distinction between those who were actually participating
9 and those who did not participate throughout the program.
10 For those who stayed in, it was extremely successful. It
11 is, of course, difficult to keep young people in this
12 program. But I raised the question yesterday, and I will
13 raise it again--what standard are we using? I mean, what
14 standard are we using when we think about programs that are
15 successful in dealing with the problems of teen pregnancy?
16 It is not a standard of perfection. This is a complicated,
17 tough question about why children have children, and I want
18 to repeat what my colleague from Connecticut said earlier,
19 which is that I feel very strongly that Dr. Foster deserves
20 a tremendous amount of credit for this program,
21 imperfections and all, because it does set a model as to one
22 of the ways that we might proceed.

23 I never heard Dr. Foster make the claim that this
24 program was perfect. I never heard him make the claim that
25 this program would be "the national model," a model for our

1 Nation. But I do want to point out--

2 Senator Jeffords. Will the Senator yield? What was
3 the date of that letter?

4 Senator Wellstone. This letter was released today, May
5 3rd, 1995. Are there copies that could be handed out to
6 members of the committee?

7 I ask my colleague from Massachusetts, did you want me
8 to yield at all?

9 Senator Kennedy. No; that is fine.

10 Senator Wellstone. Okay.

11 Senator Ashcroft. Madam Chairman, if we could--it is
12 interesting to note the way we are accumulating this
13 material, and it is helpful, but I would like to have a
14 chance to see the letter as well.

15 Senator Wellstone. Well, Madam Chairman, I would
16 certainly be very pleased to make sure that everybody gets a
17 copy, and I presume that everybody will have one in just a
18 moment.

19 Let me go on and just submit for the record if I could,
20 Madam Chairman, 300 signatures of support for Dr. Henry
21 Foster from Meharry Medical College students and physicians,
22 that I would like to have included in the record.

23 The Chairman. Without objection.

24 [Document follows:]

25 / COMMITTEE INSERT

1 Senator Wellstone. Madam Chair, let me just ask, if I
2 could, Dr. Foster a couple of final questions, and I would
3 like to get back, if you will, to the more positive.

4 You talked about your father's approach to teaching,
5 and I am wondering if you would share with us how his
6 methods affected you when you were setting up the "I Have a
7 Future" program.

8 Dr. Foster. My interest in teaching started when I was
9 at Tuskegee. So I was really interested in teaching. But
10 the primary thing that my father showed me was your horizon
11 is unlimited--if you prepare yourself, if you work hard, if
12 you are diligent, if you have integrity, there is no limit
13 to what you can accomplish. But for people to do this, they
14 have to have a true belief that what they are seeking is
15 attainable. That is one of the most important parts of the
16 "I Have a Future" program for children who come from areas
17 where the families earn \$10,000 a year, it is not
18 believable.

19 I mean, it is great to see African Americans on TV
20 wearing \$400 and \$500 sweaters. That is good, but that is
21 abstract. That is even abstract for me. That is abstract.
22 I want these kids to come to Washington.

23 One of the young women who came up here just 2 days ago
24 and was in the White House with the President, she came 3
25 years ago, and she saw Howard University's campus. She had

1 just gotten her letter of acceptance to Howard University.
2 That young woman would never have had a chance to see Howard
3 University of something like "I Have a Future" had not
4 occurred. It did not have to be "I Have a Future," but the
5 key is stimulate, make people inquisitive--but they have to
6 be honest, they have to be willing to work hard, they have
7 to know that there is a reward for being responsible.

8 That is what my father hammered to me and my best
9 friend, Emory Mazeek and his father--honesty, hard work, and
10 use your brain. I want to expose these kids; that is what
11 creates in them a desire, because there is something out
12 there. They do not see beyond that if they stay trapped in
13 the poverty that they are in. That is how I think my
14 father's influence on me has influenced me as a teacher.

15 Senator Wellstone. How did you teach? I was a teacher
16 for 20 years, and you are an educator and a teacher, and I
17 think you will be a teacher for our Nation; that is part of
18 what I believe you will be as Surgeon General. What was
19 your approach to teaching young doctors? What did you try
20 to impart to them?

21 I just read from I would think some of the men and
22 women who probably know you best--not only your colleagues,
23 but your students. What was your approach to teaching?

24 Dr. Foster. One of my favorite students is right here--
25 -Dr. Frank Perry, Jr., a board-certified internist, a

1 candidate for president of the Nashville Academy of
2 Medicine. He was one of my former students, and he can
3 verify what I have to tell you.

4 Senator Wellstone. Can you verify?

5 Dr. Perry. I can verify.

6 Dr. Foster. I gave no quarter, ask no quarter.

7 But actually, I had two fundamental underpinnings,
8 which I hold to this day, and I am glad Dr. Perry is here.
9 The first one deals with the science of medicine. I
10 absolutely insist that you must learn the science, because
11 if you fail to learn the science, nothing else matters; you
12 cannot retrieve yourself. But the science alone is not
13 enough.

14 Dr. Perry will verify the fact, I was one of the people
15 at Meharry who was absolutely adamant that our students
16 should be required to take the National Board of Medical
exam
17 Examiners^{exam} to pass from the second year to the third year.
18 It was national standardized exam. It was optional around
19 the Nation. About half the medical schools took it.

20 We said you had to. Why? It did several things.
21 Number one, it became an attestation that you had met a
22 national standard so no one could second-guess your
23 credibility or your credentials. But it did something that
24 I did not even expect. Once these kids passed Part 1 of the
25 national board against kids from Harvard, Stanford,

1 University of Alabama and everyplace else, they walked just
2 a little bit taller, their shoulders were back just a little
3 bit more.

4 That is why Meharry students have always taken off in
5 their clinical years. It is now required, so they have to
6 take it.

7 The second thing, what do I do? After you get the
8 science, you have to learn the art of medicine, of caring,
9 of being committed; your body language; you have to learn to
10 listen to patients. You have to hurt a little bit when
11 patients hurt. I am scared of doctors that do not hurt when
12 patients hurt. But you cannot do it to the point where you
13 lose your objectivity.

14 So I wanted my students to emulate me. In other words,
15 I tried to live and practice like I would want them to do.
16 Those are the fundamental underpinnings and tenets of my
17 teaching, Senator Wellstone.

18 Senator Wellstone. Dr. Foster, one last question.

19 Madam Chair, I actually have, dealing with the whole
20 issue of "reliability gap"--I think that is the way it was
21 stated--I have a whole set of questions from whether there
22 were 39 abortions to 40 and the responses today, which I
23 think were very important in clearing up a lot of
24 information--could I ask unanimous consent, because I am
25 going to run out of time, that this be included in the

ah

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1 record?

2 The Chairman. Without objection.

3 [Questions of Senator Wellstone follow:]

4 / COMMITTEE INSERT

1 Senator Wellstone. And I would just finish up, Dr.
2 Foster, by asking you this question. You are now Surgeon
3 General; you have now completed your term. How will the
4 health of the American people be better for your having
5 served as Surgeon General?

6 Dr. Foster. The time has ended. ^{This} ~~It~~ ^a ~~is~~ ^{question} hypothetical.
7 ^{As if} I have been Surgeon General.

8 Senator Wellstone. That is right.

9 Dr. Foster. Well, the very first thing, I am going to
10 build upon what is already in place, that which is good.
11 And I think the best way to start would be "People 2000."
12 Those are ^{our} ~~out~~ objectives. Carry those forth. Those were
13 excellent ^{objectives} ~~objective~~ that were started during the Reagan and
14 Bush years, and we are pushing. We have national goals set
15 for how much breast cancer, what the infant mortality rate
16 should be, what the low birth weight should be. That is
17 what that will have to be.

18 Now, that will have come about because if we are
19 successful in implementing that segment of project 2000,
20 "Healthy People"--health promotion and disease prevention is
21 the biggest tool we have--health promotion and disease
22 prevention. It is cost-effective, it is health-effective.
23 I cannot say it enough.

24 What is it my medical students tell me when I ask them
25 about treatment of the management of breast cancer? They

This
a
question
As if

our
objectives

1 are not going to tell me mammograms. They are going to tell
2 me self breast exam. That can start today, in every home,
3 without one dollar being allocated or appropriated by this
4 body. That is what prevention and teaching is about. It
5 applies to everything. It applies to HIV/AIDS, because that
6 is the only thing that can be done.

7 Do I agree with the goals of "Healthy People 2000"? I
8 do. It ^{focuses} ~~focus~~ on populations at risk. To me, that is
9 important. You go where you are going to get the greatest
10 return. If you have got people who have infant mortality
11 rates of 25, and the rest of the Nation is 12, there should
12 be a focus on that area. And as a consequence, just as an
13 educational issue again, repetition is a very good way to
14 learn. If we can lower infant mortality in this country, we
15 can improve life-expectancy, and we can do it.

16 Obstetrics is actually preventive medicine. It is
17 public health. The text that I used to teach Dr. Perry and
18 over 1,700 other students who took their ob during my 22
19 years there, the first chapter is on public health. It is
20 obstetrics in broad perspective. I made sure that the
21 fundamental issues of public health were understood by my
22 students.

23 If you ask me what is the Caesarean rate in my
24 hospital, unless I know what the standard is, there is no
25 meaningful figure. I played a little game with every ^{class} ~~glass~~.

focuses

class

1 I said I am on a trip. I have travelled 3,000 miles.

2 Evaluate my progress.

3 You heard things like, Well, how are you traveling?
4 When did you leave? Finally, someone would say, Where are
5 you going? And that is what public health is all about,
6 where are you going, and this is what we try to teach our
7 young people.

8 Senator Wellstone. Thank you, Dr. Foster.

9 The Chairman. Senator Abraham?

10 Senator Abraham. Thank you, Madam Chair.

11 Dr. Foster, I would like to return to an area that we
12 talked about at the end of my questions yesterday, and that
13 is the whole area of parental involvement in a number of
14 sensitive issues that involve minor children.

15 I asked you yesterday, and I think earlier, Senator
16 Mikulski had asked your position with respect to parental
17 consent legislation with regard to abortions in the case of
18 minors. And we kind of went back and forth, and I concluded
19 at the end that if there was a bypass in the case of special
20 problems, like sexual abuse and so on, that you would favor
21 such legislation.

22 I do not want to reach that conclusion on my own; I
23 wanted to let you either confirm or correct that impression.

24 Dr. Foster. Fine. What I want to be clear on--I think
25 I may have mixed something, or something may have become

1 mixed. Let me deal with the consent area first, with
2 respect to contraception.

3 Now, do I support parental notification or approval for
4 contraception for minors? My answer is whenever possible,
5 whenever possible, involve families. Involve families
6 whenever you can. But I do not support the required
7 parental notification on contraception, which happened to
8 have been the position of the Bush administration and also
9 the American medical association.

10 With respect to abortion, I agree with you, Senator--
11 there have to be bypasses.

12 Senator Abraham. But you would support legislation
13 that had bypasses which would require parental approval or
14 consent, is that correct, prior to an abortion?

15 Dr. Foster. I am going to be honest with you, Senator.
16 The concept, I support. I would have to see the
17 legislation.

18 Senator Abraham. Okay. But in general--obviously--I
19 am just trying to get at that, because I wanted to get your
20 specific views on this. I know that you were on the board
21 of Planned Parenthood in Tennessee at a time when they sued
22 to block enforcement of a Tennessee parental consent law for
23 abortions that did contain a judicial bypass procedure. And
24 I was trying to determine how your response to Senator
25 Mikulski as well as to me--whether it was consistent with

1 that position taken by the board which you were on in
2 Tennessee.

3 Dr. Foster. Yes. I did support the position taken by
4 the board for the very reasons that I mentioned yesterday
5 and the ones you have just mentioned. I feel if there are
6 not safeguards for families that are in turmoil, where there
7 is disunity, physical abuse, sexual abuse, incest, rape--
8 that is why I did not support it. And what I am simply
9 saying is I would not comment on whether I would or would
10 not support any specific form of legislation until I saw
11 it.

12 Senator Abraham. Okay. My understanding, though, was
13 that the Tennessee statute that the board opposed did have
14 the kind of bypass that would allow for these exceptions
15 that you just referenced--did it not?

16 Dr. Foster. I am not certain, sir.

17 Senator Abraham. But you opposed--you joined in that
18 lawsuit?

19 Dr. Foster. Right, because I was not comfortable with
20 the bypasses.

21 Senator Abraham. Okay. Then, let me ask you--and I
22 guess where I am now kind of puzzled is that you sound to
23 us, or to me, at least, as basically supportive of such
24 legislation that there might be certain instances that you
25 were not comfortable, but that by and large, you are

1 supportive of it.

2 On the other hand, I have here the text of a speech you
3 gave, which was provided to the committee, I guess by the
4 White House, a keynote address which you gave in 1984 to the
5 Planned Parenthood Association of East Tennessee, in which
6 you state: "The Supreme Court in this decision"--and it was
7 a couple of cases, one called "Akron" and one called
8 "Ashcroft"--I do not know which "Ashcroft" that might have
9 been, but I have a feeling--I do not mean to prejudice his
10 vote--but you said "The Supreme Court in this decision
11 upheld by a single-vote margin the constitutionality of
12 minority consent requirements, but in doing so did not
13 examine how such laws work in actual practice. Hence, an
14 opening has been left for those of us who would like to see
15 such laws invalidated."

16 Dr. Foster. Yes, that is my concern now, Senator. I
17 support family involvement. I support that strongly, and I
18 think every effort should be made. But I cannot tell you
19 that I would support a bill that would not allow a 16-year-
20 old whose mother was an alcoholic, who they took a week to
21 find so she could sign a paper, and she was already trying
22 to rear a family--that is what--and I am not going to make
23 the mistake.

24 Senator Abraham. Okay. I guess, Doctor--and I am not
25 claiming to be familiar with every bill that has been passed

1 along these lines, and I am not asking you to be, but almost
2 everyone that I am aware of does provide these kinds of
3 exceptions. I guess the language in your speech, admittedly
4 to a pretty partisan audience, but nonetheless strikes me as
5 not from the perspective of someone who is basically trying
6 to protect these laws and letting them go through and
7 provide slight exceptions. It sounds like somebody who
8 wants them invalidated.

9 Dr. Foster. Yes, I know I sound ambivalent, because I
10 am ambivalent. On the one hand, I want to keep families
11 involved; on the other hand, I do not want to penalize those
12 people who need the protection. And I am trying to do both.

13 Senator Abraham. Okay. Let me move on, then, Doctor,
14 to another area that I just, for my comfort level, need to
15 return to. And I was not here, I acknowledge, for part of
16 this discussion yesterday which took place surrounding the
17 HEW Ethics Board meeting in Seattle that received so much
18 early attention and continues to be a source of some
19 questions.

20 I believe yesterday you stated unequivocally that with
21 respect to the quotes attributed to you about 700 abortions,
22 "I didn't say it, I didn't do it."

23 When the transcript first became public, though, back
24 in February, isn't it true that the White House's first
25 response was that you were not even at the conference?

1 Dr. Foster. I am not aware that that was their
2 response.

3 Senator Abraham. Okay. Well, that was in newspaper
4 accounts in which the White House press secretary suggested
5 that you were not even at the hearing and also suggested
6 that the transcript was a fraud.

7 My question was going to be did you in any way suggest
8 to the White House before they put up this defense of the
9 transcript--or, critique of it, rather--that it was either
10 the case that you were not there or that the transcript was
11 a fraud?

12 Dr. Foster. No, I did not give that information.

13 Senator Abraham. In fact, the transcript is genuine;
14 is that correct?

15 Dr. Foster. Whoa, wait a minute, now.

16 Senator Abraham. I mean, in terms if there was a
17 transcript, it has not been doctored, to your knowledge.

18 Dr. Foster. No, not to my knowledge.

19 Senator Abraham. You would argue the statement that it
20 may not be correct, but--

21 Dr. Foster. Right.

22 Senator Abraham. All right. But you have argued that
23 somehow, the transcriber at the conference inaccurately
24 recorded your comments; is that your position?

— 25 Dr. Foster. Yes, sir. I was asked what might be the

1 explanation, and I gave two possible explanations. When I
2 spent the afternoon in HHS reading through that document,
3 which I saw for the first time 20-some-odd years later, the
4 transcribers said that they were having trouble hearing.
5 They said it. I did not. It was in the record. So you
6 know, it was there. And maybe they--they were hired people.

7 Then, the other thing--the people who were applying for
8 the grant itself, that statement would have made all the
9 sense in the world if it had said "We have done" and did not
10 just say abortions, but said amniocentesis, because that is
11 what they were applying for the research for, and they did
12 have a huge service where they were doing this. That is
13 what I said.

14 Senator Abraham. So you say that instead of "I have
15 done a lot of amniocentesis and therapeutic abortions," it
16 might have been "We"?

17 Dr. Foster. Yes.

18 Senator Abraham. Okay.

19 Dr. Foster. It would make sense.

20 Senator Abraham. Yesterday, I think you said "They,"
21 and I wanted to clarify whether it was "We" or "They."

22 Dr. Foster. Well, who was the sentence attributed to?
23 either the HEW Ethics Board transcript or yesterday's hearing transcript
24 I do not have that in front of me, and I have only seen it
25 ~~once.~~ the HEW Ethics Board transcript once. *

25 Senator Abraham. Well, I can make available for the

* After reviewing the HEW Ethics Board transcript,
"they" is the correct pronoun.

1 record the transcript here.

2 Dr. Foster. Okay.

3 Senator Abraham. Because I have looked through it, and
4 there are several references that you make to "we" in other
5 parts of this discussion, which would suggest that maybe
6 "we" might be appropriate as the pronoun, but "they"
7 probably is not, at least as I would read it.

8 Dr. Foster. Okay.

9 Senator Abraham. I guess the point it just comes down
10 to is this. There obviously is a discrepancy. If it is
11 "we," who--you would still content that your representations
12 of 39 abortions as made yesterday is the extent of what you
13 might be responsible for of this number that was referenced?

14 Dr. Foster. Yes, sir, 39, absolutely in life.

15 Senator Abraham. Okay. And does that also--would that
16 include terminations of pregnancies as well?

17 Dr. Foster. No--the one case that I told you about.

18 Senator Abraham. That is the only case that you would
19 classify--

20 Dr. Foster. Yes, and that was a woman operated on--she
21 could have had cancer--she had a solid abdominal mass.

22 Senator Abraham. But that was the only--

23 Dr. Foster. That is the only one, yes, sir.

24 Senator Abraham. All right. Let me just turn to one
25 separate area now of questions that I have before my time

1 runs out again. Yesterday, you referenced an interest in
2 the provision of medical and health care beyond those people
3 currently able to obtain health care. I assume you are
4 referencing some of the kinds of citizens we have in this
5 country, uninsured and so on, who do not have access.

6 What was your position with respect to the universal
7 health care plan that was debated in 1994 here in the Senate
8 as to a way of providing health care? Were you a supporter
9 of that approach?

10 Dr. Foster. Yes. I had two positions. One is I
11 supported--it sounds like I am a Congressman. [Laughter.]

12 Senator Abraham. It sounds like you are on the wrong
13 side of the table here.

14 Senator Kennedy. You had better be careful here.
15 [Laughter.]

16 Dr. Foster. Let me say I had two positions. One had
17 to do, basically, with the availability of health care for
18 all Americans. I supported a plan that would bring that
19 about. My second position had to do as a medical educator.
20 I was concerned--I wanted to be sure as a medical educator
21 that we would have adequate resources to continue to train
22 the physician workforce for this Nation. I thought that was
23 a legitimate concern as an educator and a health care
24 provider.

— 25 This is a concern that I think most of us have, sir.

1 Senator Abraham. Okay. My time is up. Thank you.

2 The Chairman. Thank you.

3 I believe everybody has had today a chance for a second
4 round of questions. Is there anyone who--

5 Senator Dodd. Madam Chair, in my absence here, I
6 gather my colleague from Missouri and also my colleague from
7 New Hampshire raised some issues about the brochure or
8 brochures which I had raised yesterday. And they can correct
9 me if I am wrong in my assessment that the issue was whether
10 or not there had been some earlier publications of those
11 brochures. And I certainly suggested yesterday, based on
12 information I had requested, that in fact there had been
13 some earlier publications. So I thought the question was a
14 good one. I had not noticed the copyright date of 1995 on
15 it, so inquired as to whether or not there had been earlier
16 publications of those particular brochures or ones like
17 them. I was told there were, not by the nominee, but by
18 others involved and, on the basis of that, shared that
19 information.

20 It turns out I was wrong, and I certainly apologize to
21 my colleagues. I can only rely on the information I get
22 when I make those statements. I was not making it up out of
23 thin air, I would assure my colleague from Missouri or New
24 Hampshire. But I would hope--and I gather from other
25 documentation and certainly the testimony of witnesses and

1 so on about the importance--and certainly we have heard from
2 the nominee about his strong feelings about abstinence as
3 the primary message to these young people--that he would not
4 be held accountable for my error that I made when I
5 requested the information.

6 And I say to my colleagues in all honesty, I assumed
7 they were correct when they told me; I subsequently found
8 out they were not, that that was not the situation. So I
9 apologize to my colleagues.

10 The Chairman. Well, Senator Dodd, let me ask--am I to
11 understand, then, that there were no brochures prior to
12 March of 1995?

13 Senator DeWine. Madam Chairman.

14 Senator Dodd. Madam Chairman, could we--

15 The Chairman. Maybe Dr. Foster can help.

16 Senator DeWine. Yes. I am wondering if we can just
17 show him this--I do not know if he has had a chance to
18 examine it--and maybe this is just a reprint of something
19 that he has seen before.

20 Senator Dodd. I am told it was not. I thought it was.

21 Senator DeWine. Okay.

22 Senator Dodd. I asked the question, because the
23 question was raised I think by Senator Gregg, noticed the
24 date of 1995, I think, on the back, which I had not noticed.
25 And so the obvious question was has this been done since you

1 have been nominated, was this done in January, was it done
2 earlier, is it a reprint. I made the inquiry to determine
3 whether it had been earlier, if not those specifically,
4 something like it. And maybe there was something else, but
5 what I wanted to get at is this is not the nominee's--I
6 responded, I inquired, I was told there were, and now I am
7 told I was wrong.

8 Senator Ashcroft. Madam Chairman, I tried to make it
9 clear that Dr. Foster initially said he recognized the
10 documents, said he had seen them before; then, when pressed
11 by Senator Gregg, said he did not want to make a
12 representation about which he had no personal knowledge, as
13 I recall. And it was at that time you expressed what
14 apparently someone else had told you.

15 Senator Dodd. Yes.

16 Senator Ashcroft. Do you mind revealing the source of
17 your information that these were part of a series of
18 documents, because there have been a number--and I made this
19 clear in my comments--there have been a number of
20 individuals eager to support this nomination who have either
21 caused great problem for the doctor by enticing him to make
22 statements which he later regretted that he had not made
23 with adequate care; or have provided this kind of
24 information. If this is the administration's information
25 that we keep getting, I think it says something to us about

1 the quality of information we are going to get.

2 Senator Dodd. Well, I would say to my colleague, it
3 was the program officials that we made a general inquiry, a
4 verbal inquiry, of.

5 Senator Ashcroft. I thank you.

6 Senator Dodd. And again, unfortunately, what happens
7 in these things that, obviously, there are people who are
8 against the nominee, no matter what, in trying to find
9 things. I think the hearing has gone pretty well, and I
10 think this was an honest effort to find something else. I
11 did it verbally, quickly, because it seemed like a pretty
12 good question to me. The copyright date, I had not noticed
13 it--

14 Senator Ashcroft. It was a dynamite answer.

15 Senator DeWine. Madam Chairman, could he just look at
16 it?

17 Senator Dodd. Those things happen.

18 Senator DeWine. Wouldn't it be helpful if the doctor
19 could just have a chance to look at this and tell us whether
20 or not it is similar to something that has been reprinted
21 before?

22 The Chairman. Yes. I would ask staff to take it down
23 to Dr. Foster. [Staff handing document to Dr. Foster.]

24 The Chairman. Dr. Foster, do you have a comment?

25 Dr. Foster. Yes. I would just like to answer the

1 question so there will be no conjecture. There are
2 documents that existed before, and we will get these. And
3 we update our documents; that is why I do not want to get
4 into the polemics, but I do not know when these were
5 ordered. I have been away. They could have been ordered. I
6 do not think they were ordered. But we update our things,
7 so I am glad to know that the staff is updating them.

8 It looks--this is the same size as the brochure that we
9 use. You will see the ACOG brochures when they get here.
10 They look just like this, and that is what we have used.
11 But we will share those with you, and thank you.

12 Senator Coats. Madam Chairman.

13 The Chairman. Just to further clarify--just a minute,
14 Senator Coats--Senator Kennedy's staff and my staff both
15 joined together in a meeting in which we made a presentation
16 to the White House some time ago, asking for as much
17 material from this program; so it is not as if this happened
18 just a couple of days ago. And it would have been useful if
19 we had had information whether there were or were not
20 available these things. So maybe now we can get it
21 clarified, and that would be useful.

22 Senator Dodd. Yes. And I just want to say, Madam
23 Chair, just as I understand it here, again, I think it is
24 important to make the point I tried to here--and I
25 apologize, as I said to my colleague, for being a bit wrong

1 on that specific brochure, but that in fact there is an
2 ample amount of evidence of the fact that abstinence was a
3 critical element in the program. I think that that is the
4 issue here, more so than the issue of a particular brochure,
5 but was that a central element of this program. There does
6 not seem to be any question about that.

7 Dr. Foster. It is the bedrock of it.

8 Senator Dodd. Whether this particular brochure was
9 published before or not, it seems to me has some
10 significance, I suppose, but the underlying issue of
11 abstinence being the critical element.

12 Senator Ashcroft. Madam Chairman.

13 The Chairman. I think Senator Coats wanted to ask a
14 question.

15 Senator Coats?

16 Senator Coats. Madam Chairman, just to help clarify
17 this, the reason why the question is pertinent is that
18 questions initially were raised as to whether abstinence was
19 a central feature in the "I Have a Future" program. The
20 committee requested some time ago--weeks, maybe months, ago--
21 -information through the administration on the literature.
22 No literature came forward indicating that abstinence was
23 part of the program.

24 The first literature we saw that described or that in
25 any way promoted abstinence was the literature that Senator

1 Dodd held up yesterday in the hearing.

2 So that is a pertinent question. We then contacted the
3 firm that published the literature, and their invoice date
4 is March 20th, because the question came up, well, is this
5 something that the White House scrambled to make available
6 here to show that abstinence was something. It was a very
7 clumsy attempt, because the invoice date was March 20th, and
8 it was shipped on March 20th, and then they shipped a bunch
9 of these pamphlets. So clearly, it was after the nomination
10 was made. It appears that it was an attempt to cover up a
11 lack of other information; otherwise, I assume we would have
12 had it.

13 Senator Dodd. Well, if my colleague would yield, first
14 of all, that is an assumption here. I am trying to clear up,
15 and then you talk about "a clumsy attempt to cover up"--

16 Senator DeWine. Madam Chairman.

17 Senator Coats. Well, what other assumption would you
18 make?

19 Senator Dodd. That is getting a bit--that does not
20 help the debate here. I think it is a question--

21 Senator DeWine. Madam Chairman.

22 Senator Coats. Well, I do not think it is fair to Dr.
23 Foster--

24 Senator Dodd. I said I made the point.

25 Senator DeWine. In all fairness to the doctor, Madam

1 Chairman, could we just ask the doctor a simple question--
2 and I do not know if he can answer it or not.

3 Doctor, you have had a chance to look at that
4 particular document. I guess the pertinent question is
5 whether or not the previous documents did have the very,
6 very strong emphasis on abstinence that that particular
7 document does. I think that is what everybody is getting
8 to.

9 Dr. Foster. I would have to compare the two--
10 Senator DeWine. I am sorry?

11 Dr. Foster. I would have to compare the two side-by-
12 side. I cannot recall the details.

13 Senator DeWine. But did the previous documents have
14 reference to abstinence--if you know.

15 Dr. Foster. I will have to see the documents.

16 Senator DeWine. Okay.

17 The Chairman. It is my understanding, Dr. Foster, that
18 the modules--which we were given modules--did refer to
19 abstinence, and so that was part of the program. Now, I do
20 not know how it compares to what is being referred to now,
21 but the modules--that the earlier programs did refer to
22 abstinence.

23 Senator DeWine. I am not questioning that, Madam
24 Chairman. My question had to do with following up Senator
25 Coats' line of questioning, that simply this was represented

1 to us. And I thought initially, frankly, that this was
2 probably just a reprint, and that the previous documents
3 would show that, and I wanted to give Dr. Foster a chance to
4 say that if that is what the truth was, and basically, what
5 he says is he cannot recall what the previous documents
6 were. I guess we will just wait until we get the documents.

7 Dr. Foster. I mean, the document that I recall most is
8 our initial promotional brochure, and on the very front
9 page, it says that previous programs at contraception have
10 not been successful because they embrace the two concepts
11 only that I have talked about for almost 2 days now, and
12 that is the education and services. What was missing was
13 the life enhancement. So we said that this is a way to
14 build self-esteem, and the fundamental way to do that is for
15 children not to be sexually active. That is not a social
16 norm. Adolescents should not be having sex. It is wrong.
17 It is absolutely wrong. And it is dangerous; it can cost
18 their lives. So that is why we put this program together.

19 The Chairman. Thank you, Dr. Foster.

20 I will ask if there are any further questions. I will
21 be glad to yield my time to Senator Coats, who had expressed
22 earlier a desire to continue some questioning, and we will
23 go back and forth and see who would like to ask further
24 questions. I will yield my time to Senator Coats if he
25 wishes some time.

1 Senator Coats. Madam Chairman, I thank you for that.

2 I do not think your nomination rises or falls on
3 whether or not we have documents here, or whether or not the
4 documents we had were supplied by the administration in a
5 hurry-up order. We do know that those documents were
6 written in December, copyrighted and published in January,
7 and ordered, apparently, in March. Frankly, I do not think
8 any of this--we do not want to put you on the spot because I
9 do not think you had anything to do with it.

10 Let me get to a question that really is nagging at me,
11 Dr. Foster, and I want to tell you why it is nagging at me--
12 because in an editorial in The Washington Post--not an
13 unsympathetic newspaper to your nomination--this editorial,
14 dated March 1st, 1995 says the following: "Recently, Dr.
15 Foster's name has become linked to the infamous 40-year
16 Tuskegee experiment in which hundreds of black men with
17 syphilis were deliberately left untreated in the name of
18 medical research. At issue is what and when Dr. Foster knew
19 about the study before it was publicly exposed in 1972. We
20 hope the answer is, as Dr. Foster and the White House
21 maintain, that he was not informed about the study until the
22 story broke. To have known earlier and not insisted on
23 proper treatment for the innocent patients would disqualify
24 any candidate for the Surgeon General's post."

25 "The Tuskegee Syphilis Study, conducted by the U.S.

1 Public Health Service in Macon County, AL, wa a terrible
2 case of cruelty in science. It is crucial to pin down when
3 Dr. Foster learned about the study. The question of his
4 fitness for the job hangs on it."

5 Madam Chairman, I would ask that this editorial from
6 Post be published in the record.

7 The Chairman. Without objection.

8 [Washington Post editorial follows:]

9 / COMMITTEE INSERT

1 Senator Coats. That is what prompts my questions here,
2 because it is not just this Senator, but it is a respected
3 newspaper, and I think it reflects the opinions of many,
4 that it is crucial that we pin this down.

5 Now, Dr. Foster, you have testified that you had no
6 knowledge of this prior to 1972. In fact, yesterday, you
7 stated that if anyone in Tuskegee had known about the study,
8 "the place would have gone ballistic." That is a quote from
9 your testimony yesterday.

10 What troubles me and what nags at me is that that
11 statement appears to be in contradiction of a number of
12 official Government documents that would lead, I think, a
13 reasonable person to conclude that either you did know about
14 this, or if you did not, you were not at all attuned to what
15 was going on in the county at the time and in the Medical
16 Society at the time.

17 For instance, an official Public Health Service summary
18 of the meeting that took place on February 6, 1969 indicates
19 that Dr. Myers of the State health department said the
20 society--and I quote--"The Medical Society"--the Macon
21 County Medical Society--"had been very reasonable to work
22 with. Some of the fears of real troublemaking have not come
23 to pass. Macon County Health Department and the Tuskegee
24 Institute have been fully cognizant of the study."

25 Dr. Kaiser, who is a senior member of the technical

1 staff for Millbank Foundation--they are the ones,
2 apparently, who paid for the autopsies of the syphilitic
3 patients who died--Dr. Kaiser asked the question about what
4 the Tuskegee Institute thought of the study. And Dr.
5 Olansky, who is a professor of Emory University, explained
6 that the Tuskegee Institute knew of the study. You were
7 head of the Institute at that time, I believe, and--

8 Dr. Foster. No, I have never been head of Tuskegee
9 Institute, no.

10 Senator Coats. All right. What is your connection
11 with Tuskegee Institute?

12 Dr. Foster. I was chief of ob services at John Andrew
13 Hospital.

14 Senator Coats. Okay. I stand corrected on that. You
15 were vice president of the county medical society at the
16 time?

17 Dr. Foster. That is correct.

18 Senator Coats. Dr. Olansky explained that Tuskegee
19 Institute knew of the study; the patients had been taken to
20 the Institute's hospital--apparently, that is the hospital
21 you were working at--he says physicians at the Institute
22 knew of the study.

23 Then, another official Public Health Service document,
24 a letter from a Dr. Brown of the Public Health Service to
25 Dr. Robertson at the Millbank Foundation, dated November 19,

1 1969, indicates that the county medical society--I quote
2 here--"assured Public Health Service officials of their
3 cooperation in continuing the study." In addition, the
4 letter states that the Public Health Service furnished each-
5 -each--of the Macon County Medical Society's members with a
6 list of surviving participants in the Tuskegee study.

7 In a deposition taken on September 19th, 1974, in
8 connection with a lawsuit filed against the Federal
9 Government, Dr. Spencer, who was then director of the
10 Centers for Disease Control, is quoted as saying: "For the
11 first time in a good number of years, the Macon County
12 Medical Society was brought on board. We had lost
13 communication with the Macon County Medical Society over the
14 years, and after the meeting of 1969, we did meet with the
15 physicians who would be treating the bulk of these
16 individuals."

17 Another document dated April 15th, 1969, from Dr.
18 Spencer to Dr. McRae, then president of the medical society
19 when you were vice president, states, and I quote: "Dr. Ira
20 Myers has discussed with you the study that has been
21 conducted in Macon County for the past 30 years."

22 You had indicated in your testimony that no one in
23 Macon County was aware of the study. These documents would
24 suggest otherwise.

25 Another official document, dated March 13, 1979, a

1 letter from Dr. Myers to Dr. William Brown, states that "The
2 Alabama State Board of Health notified the Public Health
3 Service that it was 'referring this matter to the Macon
4 County Medical Society for its decision regarding
5 continuity.'" The letter identifies Dr. McRae and Dr.
6 Settler as officers of the society, and of course, you were
7 an officer then, too.

8 The official Government summary of the meeting on
9 February 6, 1969 with the Macon County Medical Society
10 states that the Public Health Service "should increase its
11 contact with both the Macon County Health Department and the
12 Macon County Medical Society to help them to assist more
13 fully in the continuance of the study."

14 Dr. Myers had indicated in another official document
15 that he thought it was "a good idea to keep the local
16 medical society informed as to what we are doing"--I am
17 quoting--"and what we wish to achieve, to work closely with
18 them and keep them informed of everything that we do."

19 Dr. Spencer is quoted in another document. He said:
20 "If we establish good liaison with the local medical
21 society, there will be no need to answer criticisms."

22 Another official document says, and I quote: "If this
23 study is to be continued, the Centers for Disease Control
24 has to establish a relationship with the medical men in the
25 area."

1 Dr. Smith suggested that doctors go to the county
2 medical society meetings, bring up these points, pro and
3 con. "They might think the same way," he says. "If the
4 local physicians agree there is no need for treating these
5 patients, that would be good public relations."

6 Another document says: "Dr. Spencer said he gathered
7 that the group felt that better rapport should be
8 established as soon as possible with the local medical
9 society as well as the health department to enlist their
10 cooperation in furthering the study."

11 Now, I have got five more pages of official documents,
12 and Madam Chairman, I would ask unanimous consent that all
13 these official documents be placed in the record.

14 The Chairman. Without objection.

15 [Documents follow:]

16 / COMMITTEE INSERT

1 Senator Coats. My question, Dr. Foster, is what would
2 you do if you were me, and you agreed with the editors of
3 The Washington Post that this was a critical question, and
4 your staff presented you with all of this testimony, all of
5 these documents of respected individuals--director of the
6 Centers for Disease Control, State Public Health Service
7 doctors, a professor from Emory University, a doctor from
8 the foundation that was paying for some of the studies, the
9 president of the Macon County Medical Society--all of these
10 individuals indicating that this study was discussed, that a
11 plan was put in place to inform all the doctors of the
12 society, that meetings were held, that people were sent to
13 the community to discuss it, that lists were given of the
14 patients in the study.

15 It just presents such a contrast to your statement that
16 you did not know anything about it, that nobody knew
17 anything about it, that if someone had known, the place
18 would have gone ballistic, but nobody knew. And it just
19 presents a great problem to me in evaluating your
20 qualifications, because you are a decent man, and you have
21 provided honorable service to the most needy of our society,
22 and you have a career that is exemplary in many, many ways.

23 But this is an extraordinarily troubling question that
24 I have, and I just cannot overlook it. And I wish one more
25 time you would address this question for the record.

1 Dr. Foster. Senator Coats, of all the things that have
2 transpired over the past 3 months, I find nothing more
3 offensive than the litany you have just put forth. This was
4 clearly a dastardly experiment conducted under the auspices
5 of the U.S. Government, and that someone would have the
6 audacity to try to put that on the black people in Tuskegee
7 beggars description.

8 I learned of that study in 1972, in the presence of Dr.
9 Ira Myers, and I took what action that I thought was
10 appropriate.

11 You want to know how to answer it, Senator Coats? Look
12 at the facts. I never heard anything mentioned about the
13 fact of those people who do remember the meeting stating
14 explicitly--nothing was ever said about any treatment being
15 withheld. Even Dr. McRae says there was nothing said about
16 treatment being^{withheld}--that is the story, if that is ^athe story.

17 I worked with those doctors. I knew their commitment.
18 That is the most unbelievable thing that ever happened.

19 Why does everyone ignore the legal case, a class action
20 suit that originally was for \$7 million? The suit says
21 there was no implication whatsoever of the medical society
22 or of its doctors.

23 I was outraged in 1972. I would have been equally
24 outraged in 1971, 1970, 1969, 1968, 1967. It was the
25 American Government, and that was an outrage, and they

1 cleared it up. Nobody else at Tuskegee knew about it, in
2 the doctors that I worked with, plus the fact, as I said the
3 other day--Tuskegee is the center; we are the repository for
4 all racial lynchings that have occurred in this country
5 reside right now.

6 That study started before I was born, and the
7 Government covered it up. That is what the studies show.
8 They covered it up. They hoodwinked somebody else for 20
9 years. Why couldn't they hoodwink me for 2 years? ^{Seems}~~Seemed~~
10 logical.

11 Senator Coats. So it is your testimony, then, that the
12 documents that we have, the statements that we have, the
13 statements from the various doctors that I quoted and
14 others, is incorrect?

15 Dr. Foster. Under oath, incorrect, wrong, wrong,
16 wrong, sir.

17 Senator Kennedy. Could we see the documents that are
18 being referred to? Are they documents that are available to
19 the committee?

20 Senator Coats. Yes. I just asked that they be
21 incorporated in the record.

22 Senator Kennedy. I am just asking are they documents
23 now that are available?

24 Senator Coats. Yes, we have it all available, and I
25 just asked consent to put it in the record.

1 Senator Kennedy. Well, I am not objecting to putting
2 them in the record. I am just asking whether those are
3 committee documents. I asked my staff what documents have
4 been--

5 Senator Coats. They have been available to the
6 committee.

7 Senator Kennedy. Can we get copies of them?

8 Senator Coats. Sure.

9 The Chairman. Thank you.

10 Senator Coats. Can you see why it is troubling to me
11 and why the question needs to be pursued?

12 Dr. Foster. That is why I am here.

13 Senator Coats. We are talking about the director of
14 the Centers for Disease Control, the president of the
15 medical society, the head of the State Public Health
16 Service--

17 Dr. Foster. But Senator, in all due respect, why is it
18 nothing is mentioned about the fact that nothing was ever
19 said at these so-called meetings about any therapy? Isn't
20 that central? I am not a legal mind, but to me, that is the
21 story. If there was nothing said, what is there to cover
22 up? I do not understand.

23 Senator Coats. Well, Dr. McRae had indicated
24 specifically that he had talked to you about it.

— 25 Dr. Foster. He hadn't. He had not. If he did,

Said at the
meeting -

1 Senator, he did not have anything to talk about, because
2 there was nothing ^{said at the meeting} about a coverup.

3 Senator Coats. Okay. I am just saying he said that he
4 talked to you. You said that he did not. And we will have
5 to let it rest at that. We have one individual--actually, a
6 group of individuals--testifying one way and you testifying
7 the other way. I am trying to clarify the record to find
8 out what the answer is.

9 Senator Simon. Madam Chairman, I think part of the
10 clarification of the record is the article that Senator
11 Frist put in the record earlier from The Nashville
12 Tennessean, where all the other physicians who were there
13 said they do not recall this being said.

14 Senator Coats. I misspoke. I said Dr. McRae; I mean
15 Dr. Myers testified that he had spoken to you.

16 Dr. Foster. You see--people misspeak, don't they?
17 [Laughter.]

18 The Chairman. All right.

19 Dr. Foster. I mean, really, we do.

20 The Chairman. We have all of the documents, of course.
21 I think that is a compilation that Senator Coats has. But
22 all of the documents have been available to the press and to
23 the committee and anybody who wishes to see them. We did
24 extensive work in piling all of the documents together; we
25 did not do a compilation.

1 Senator Kennedy, it is your time for questioning.

2 Senator Kennedy. Madam Chairman, I welcome the fact
3 that those documents are going to be made available right
4 away and out there, because in the preliminary review, there
5 is virtually no reference to Dr. Foster mentioned in there;
6 there is no reference to Dr. Foster having any knowledge
7 that treatment was denied.

8 I will ask the Senator--is there any reference in any
9 of those documents that would indicate that Dr. Foster knew
10 that treatment was being denied?

11 Senator Coats. Well, Senator--

12 Senator Kennedy. Well, is there or isn't there--
13 because that is basically the question and the challenge
14 which you put. When you held pu those documents, you said,
15 How do you react to these documents? And I am asking right
16 now--and those documents will be made available to the
17 press--whether there is any evidence in any of those
18 documents that Dr. Foster knew that treatment was being
19 denied.

20 Senator Coats. Well, I am happy to respond to Senator
21 Kennedy. I said I was troubled by the fact that a number of
22 respected individuals, including the director of the Centers
23 for Disease Control, indicated that everyone in the medical
24 society was provided a list of patients, that the medical
25 society had been informed on numerous occasions, that Dr.

1 Foster as vice president and then president of the medical
2 society--it just seems unusual to me, in the extreme, that
3 somewhere along the line between 1969 and 1972, with all of
4 these contacts with the medical society, that Dr. Foster
5 would not have been aware, based on his statement, when he
6 said if anyone in Tuskegee had known about the study, the
7 place would have gone ballistic. It is clear there were
8 many people in Tuskegee who knew about the study. We have
9 that as an official record.

10 It is true, Senator Kennedy, there is no specific
11 mention other than Dr. Myers. Dr. Myers said he did inform
12 Dr. Foster of this, and Dr. Foster indicated that that was
13 not the case, so--

14 Senator Kennedy. Now, wait. Madam Chair, the fact is
15 there is no reference in any of the documents that have just
16 been held up, that are so troublesome to the Senator--they
17 will be made public--that there is any information--most of
18 them are self-serving documents from the Public Health
19 Service--there is not a reference in any of those documents
20 that Dr. Foster understood that the treatment was being
21 withheld, number one.

22 Two, I would just refer back, so that people
23 understand, to the testimony and the inclusions that Senator
24 Frist put into the record, which have been sustained by the
25 record of these hearings. That is that the doctors who

1 attended the 1969 meeting--and they have been inquired of--
2 were told of the study, and none of them were told that
3 treatment was being denied. And that is true of Dr. McRae,
4 who is the one who said that Dr. Foster was there; he has
5 stated that it was never represented that treatment was
6 being denied. So this is nothing new.

7 And the final point is the statement of Mr. McRae that
8 Ira Myers and Foster were both at the State planning in 1972
9 is completely consistent with what Dr. Foster said, that he
10 was notified at the planning meeting.

11 And the Senator cannot tell this committee or the
12 members of the United States Senate that that particular
13 meeting was prior to the time in 1972 because Mr. Myers does
14 not remember. And that is the testimony.

15 So I feel, Madam Chair, that the statement and response
16 that Dr. Foster has given was more than adequate in terms of
17 responding to these questions. But it does seem to me that
18 when members hold up documents and ask how are we going to
19 react and respond to these documents, and they are self-
20 serving documents, none of which--none of which--challenges
21 the position and the statement of Dr. Foster or the other
22 information which has been provided in terms of the series
23 of events which have preceded, is worthy of pointing out.

24 And if the Senator has a difference with that
25 characterization and that series of representations, then I

1 would welcome it in whatever time is here for him to make
2 it.

3 Senator Coats. Well, Senator Kennedy, I think I stated
4 very clearly what my question to Dr. Foster was. The
5 question was whether there was knowledge of such a study.
6 Dr. Foster said he had no knowledge, that no one in Tuskegee
7 had knowledge, or the place would have gone ballistic.

8 Senator Kennedy. That treatment was withheld. "That
9 treatment was withheld" are the key operative words. No one
10 is questioning that there was a study and the other members
11 knew that there was a study. The question is when did he
12 know that they were not providing the treatment.

13 Senator Coats. Were you aware that there was a study,
14 Dr. Foster?

15 Dr. Foster. After. I know now.

16 Senator Coats. But before 1972?

17 Dr. Foster. No, I did not. I was an obstetrician-
18 gynecologist.

19 Senator Coats. That is my question, Senator Kennedy.

20 Dr. Foster. I did not know--I am not going to perjure
21 myself. I did not know--

22 Senator Coats. It was not the question of whether
23 treatment was withheld. My question is was he aware that
24 there was a study.

25 Dr. Foster. I became aware, Senator Coats, in 1972,

1 the first time I ever heard of the Tuskegee study in any
2 kind of shape, form or fashion. And I was outraged.

3 Senator Coats. Yes, sir, I understand that.

4 Dr. Foster. I was incredulous.

5 Senator Coats. I am trying to reconcile your
6 understanding of whether or not there was a study with the
7 significant volume of documents and indications that there
8 was knowledge of a study among the medical society, among
9 the doctors in Tuskegee, from 1969 to 1972. That is my
10 question.

11 The Chairman. Do you have any further time you wish to
12 use, Senator Kennedy?

13 Senator Kennedy. Not at this time, Madam Chairman. I
14 would like, after Senators conclude, to make a brief closing
15 comment.

16 The Chairman. Senator Jeffords?

17 Senator Jeffords. Yes, I would like to make two
18 comments. First of all, I want to comment the chairman for
19 how she has handled these hearings. We have listened to, I
20 think, now a final issue that has been very well put forth,
21 with all the possible vigor, by Senator Coats on the issue
22 of the Tuskegee study, and previous to that, we have gone
23 over in depth what I think is the other issue, as pointed
24 out by our chairman, with respect to "I Have a Future."

25 I will say that I am convinced with respect to the

1 Tuskegee situation that you were not aware. And the key
2 question as I remember from that Washington Post editorial
3 was the question I had, too, as did others, and I cannot
4 disagree with the Washington Post editorial, which said if
5 you were aware, and you did nothing, you should not be
6 approved. And you do not disagree with that, and I do not
7 disagree with that. And yet, as Dr. Frist pointed out, and
8 from our review of the documents, there is absolutely no
9 evidence up until 1972 that we were aware that the treatment
10 was being withheld.

11 So I find that I agree with the chairwoman that that
12 was a key issue, and I think that that in my mind has been
13 satisfied.

14 Also, with respect to "I Have a Future," I was deeply
15 disturbed and still am at the fact that there may have been
16 an overstatement of the success with respect to the
17 prevention of pregnancies. I do not think there is any
18 statistical validity, but I do agree with the Carnegie
19 Foundation saying that the program itself is one which has
20 merit and which is attempting to do thing that have not been
21 done before, and it is the kind of thing that we have to
22 look to for guidance.

23 I would say that I want to leave this message with you
24 on studies, though. We have been fooling ourselves for
25 years on demonstration projects and programs by saying that

1 they are working because we feel good, and yet the evidence
2 is that they are not working. So as we go forward, I would
3 hope that you will assure me that we are not going to fool
4 ourselves with trying to rationalize studies and fiddling
5 with statistics to make them look good because we feel they
6 are good. And I know you are shaking your head, and you
7 will not do that.

8 Dr. Foster. I agree.

9 Senator Jeffords. Now, if this question to us today
10 was whether the White House had put forth the information in
11 a way that would give me confidence in approving your
12 nomination, I would say that they have failed miserably.
13 But that is not the issue before us. The issue before us is
14 Dr. Foster and his ability to pursue the job of Surgeon
15 General. And the question is do I have confidence in that.

16 Now, you have been very forthcoming during these
17 hearings. You have corrected previously inaccurately
18 reported information or mistaken, and your answers have
19 addressed the questions and concerns to my mind. And I know
20 you have broad support from the medical community and a
21 record of achievement in addressing difficult problems.

22 So I would just like to say that at this time, I am
23 confident in my own mind that you ought to be approved by
24 this committee, and I hope that you are approved by this
25 committee, and I hope that you do go before the full Senate

1 and let them examine the facts that we all have here.

2 Thank you, Madam Chairman.

3 Dr. Foster. Thank you, Senator Jeffords.

4 The Chairman. Senator Simon, do you have any further
5 questions?

6 Senator Simon. I would just say, Madam Chair, that we
7 face issues sometimes in this committee and other committees
8 that are close calls. This is not a close call for anyone
9 who tries to be objective at all.

10 We are fortunate that you are willing to be a nominee,
11 and I hope we have the good sense to approve you, both in
12 this committee and in the United States Senate. The Nation
13 will be well-served by you if we make the right decision.

14 Dr. Foster. Thank you, Senator.

15 The Chairman. Thank you.

16 Senator Frist?

17 Senator Frist. Madam Chairman, I would just like to
18 comment very quickly on the "I Have a Future" evaluation
19 that has been referred to since yesterday. I just received
20 this late in the week last week and actually just went
21 through it last night. Again, I am going to put my
22 physician hat and scientific hat on for a second.

23 This document that has been referred to, to the
24 Carnegie Corporation, was dated 1992 in February. This
25 particular document, I believe--and Dr. Foster, you can

1 correct me--is with regard to a grant application to that
2 organization.

3 Dr. Foster. That is correct.

4 Senator Frist. The data in a grant application
5 typically is pilot data, pilot information, that occurs very
6 early on in the formation of a program. And with regard to
7 that, we need to view this as not the definitive evaluation
8 of this particular program.

9 Dr. Foster, the "I Have a Future" program began in what
10 year?

11 Dr. Foster. Actually, 1987. We got faculty, and we
12 started our first services for youth in 1988.

13 Senator Frist. And development of the program is
14 ongoing, as implied by the brochures today and based on my
15 interaction with your students in the past.

16 Dr. Foster. We have not gone through two cycles yet.
17 We are still in the first cycle.

18 Senator Frist. In the particular document that was
19 cited--actually, when the questioning began yesterday, with
20 a lot of scientific data, a lot of T-test, chi-squares--it
21 makes it look pretty good. In truth if you read very
22 carefully, it says in this document, "Please note that the
23 program modules were in the development and pilot testing
24 stages during this time."

25 This study was conducted up until what year, in this

1 document--the letter is dated 1992--

2 Dr. Foster. Up until about that time or early 1993.

3 Senator Frist. I think the last people actually in
4 this document were interviewed in 1991.

5 Dr. Foster. That is about right.

6 Senator Frist. Thus we have a program that was started
7 in 1987--

8 Dr. Foster. It was two 42-month periods. That is 3-
9 1/2 years. Seven years. That is perfect. It started in
10 1987.

11 Senator Frist. So it went up until 1991. Also in the
12 document, it says that certain modules had not been
13 developed, there are only a limited number of sessions of
14 the pro-social skills module, and so forth. So it is an
15 evolving program.

16 And I guess I want to say to my fellow members on this
17 committee that this is a nonscientific study; it is done
18 during the very early pilot stages of a program which is
19 evolving; it is a developing program, and it is not
20 published data, not published information, and it has not
21 been peer-reviewed. So I would be very hesitant, in spite
22 of the T-tests and the chi-square, for anybody to look at
23 this information and make definitive judgment on this
24 program, "I Have a Future."

25 Thank you, Madam Chairman.

1 The Chairman. Senator DeWine did not have any further
2 questions. Senator Ashcroft, do you have any further
3 questions?

4 Senator Ashcroft. If I might, thank you, Madam
5 Chairman.

6 I want to thank Dr. Foster for coming and for your
7 cordial response to the questions which we have asked, and I
8 feel like I ought to commend you because you have devoted
9 yourself very sacrificially to a needy population that
10 needed your help, and I commend you for that.

11 I have a couple of final questions that I would like to
12 ask you. Would you assist us in finding whatever
13 documentation and pamphlets there were that referred to
14 abstinence in the program that were earlier than the
15 documents which we have found were only added to the program
16 this March?

17 Dr. Foster. Yes, sir, absolutely.

18 Senator Ashcroft. And I am interested in those because
19 you have featured the idea of abstinence in your comments,
20 and I would like to find it reflected in the program.

21 I noted in the 8-page brochure of which you spoke that
22 the word "abstinence" does not appear--

23 Dr. Foster. That is correct.

24 Senator Ashcroft [continuing.] And there do not appear
25 to be very many items in there that relate to it. So if you

1 have other documentation regarding the emphasis on
2 abstinence, I would appreciate it.

3 You have mentioned on a couple of occasions that you
4 felt that local decisions needed to be made relating to
5 programs; that what works in one area might not work in
6 another. Is it your view that as it relates to the
7 distribution of birth control devices, that those decisions
8 ought to be local in nature?

9 Dr. Foster. Yes, sir, I do believe that.

10 Senator Ashcroft. And it would be your position, then,
11 as the Surgeon General of the United States that you would
12 not advocate a national policy about the distribution of
13 birth control devices, or regional policies, but you would
14 say that those are decisions to be made and respected after
15 having been made by local authorities?

16 Dr. Foster. Yes, sir, I believe that fully.

17 Senator Ashcroft. During my opportunity to chat with
18 you yesterday, and of course, during these hearings, I asked
19 you a question about your support for abortion in light of
20 the fact that you have said that you abhor abortion. And I
21 asked you about elective abortions and public funding for
22 elective abortions. These would be abortions like sex
23 selection abortions, where individuals have decided on the
24 basis of a sonogram, and you originally said, well, the
25 President of the United States campaigned for office and has

1 supported a law called the Freedom of Choice Act, which
2 would provide abortions, elective abortions, to individuals
3 without regard to the reason for which the abortion is being
4 sought.

5 Would you support the use of tax resources taken from
6 people who have a wide variety of beliefs to have elective
7 abortions like sex selection abortions that were decided
8 that, hey, we did not want a little girl, so we are just
9 going to abort this fetus--is that something that--would you
10 support the President in that view, or do you have a
11 difference with the President there?

12 Dr. Foster. I am not sure whether I have a difference
13 with the President or not, but let me state my position. I
14 support the current position with respect of the use of
15 Federal funds in abortion. That is for the life and health
16 of the mother, rape, and incest. I support Federal funding
17 for that.

18 Senator Ashcroft. But you do not support expanding the
19 use of Federal funding for abortions to include abortions
20 for sex selection and other arbitrary decisions?

21 Dr. Foster. No--and that is personal about the sex
22 selection. But let me say one other thing. There are
23 facilities in this country that can provide where everyone
24 can have a choice. It does not have to be with-Federal
25 funding. I just urge everyone to support people to uphold

1 the existing laws so women who are expressing their rights
2 do not have to run the risk of losing their lives and those
3 who are caring for them.

4 Senator Ashcroft. Well, let me close by thanking you
5 for your kindness in coming to my office to speak with me
6 about this, and finally, to say that I believe your job, if
7 it becomes your responsibility to be Surgeon General of the
8 United States, is a very important job. Members of this
9 committee have spoken to derogate the effort that has been
10 made for us to get to information and all, saying that it is
11 only a million dollars in budget; but I really believe that
12 the person who stands to speak to Americans as their doctor
13 can have a profound impact on the way in which we not only
14 deploy health resources, but conduct ourselves individually
15 as a result of the leadership role. And I do not believe
16 that we have unnecessarily consumed time. This has been
17 valuable time to me.

18 I thank you for your willingness to participate, and I
19 do commend you for the way in which you have devoted your
20 life to providing medical care for individuals that you have
21 found particularly needy.

22 The Chairman. Senator Kennedy?

23 Senator Kennedy. Thank you, Madam Chairman.

24 I first of all want to express all of our appreciation
25 to you, Madam Chairman, for the way that these hearings have

1 been conducted. I think, certainly, for all of us on the
2 committee and for the Senate, they have been conducted in
3 the highest traditions of the Senate and in a way to give
4 the nominee the opportunity to respond to questions and for
5 members to inquire of the nominee.

6 I think you have pointed out, and others have as well,
7 that perhaps there could have been more timely information
8 that would be made available. I for one, in reviewing the
9 kind of information that has been available, have thought
10 that in the principle areas and even the related areas in
11 terms of the nominee's qualifications, that we did get the
12 information. I think much of this information goes back
13 over 25 years, a difficult time. But nonetheless, I think
14 all of us here on this committee--and I speak for everyone
15 on this side--want to express our appreciation to you and to
16 your staff and to the members here, and also to all of our
17 colleagues on the other side. This has been, as the
18 Senators have pointed out, an enormously important issue.
19 The Public Health Service has a very, very important
20 responsibility for the families of this country in terms of
21 immunizing children, dealing with public health issues that
22 are affecting many different communities, and in most
23 instances, the population that is left out and left behind,
24 the neediest populations, on so many different questions.

— 25 So it is an incredibly important responsibility, and I

1 think all of us--at least, I do--want to thank the President
2 for the nominee and express appreciation to Dr. Foster for
3 his responses. This is, as has been pointed out by all
4 members, a tedious time, but a very important time. And I
5 must say that I for one have been enormously impressed with
6 the doctor's responses, the candidness of his responses, the
7 fairness of his responses, the passion of his response when
8 that emotion came forward spontaneously, in terms of trying
9 to misrepresent a very proud and dignified record, one of
10 considerable integrity and dedication and competency, one
11 whose whole life has been dedicated to the public interest,
12 as has been pointed out at other times in this hearing, an
13 individual who went into the most underserved areas of this
14 country to try to help and assist the neediest people in our
15 society. With his skills and with his talent and with his
16 leadership qualities, he could have enjoyed an entirely
17 different type of life.

18 Nonetheless, all of us are impressed with his continued
19 commitment to young people, whether it is in the "I Have a
20 Future" program, or whether it is in the education of young
21 doctors to serve. I am sure he is an example in and of
22 himself to those young people. We have seen them and we
23 have heard them over the period of the past days.

24 So I want to express, Madam Chairman, our appreciation
25 to you. I think this has been a very important set of

1 hearings. I am impressed with the doctor's responses and
2 with his background and experience, and I would hope that we
3 could move to Senate consideration and that we could in a
4 timely way fulfill that very, very important position so
5 that his leadership qualities can be out there, benefitting
6 the good public health of the American people.

7 We thank you very much, Dr. Foster.

8 The Chairman. Dr. Foster, first, just two procedural
9 matters. I would like to ask unanimous consent that a
10 February 3rd, 1992 letter which is a response to Gloria
11 Primm Brown of the Carnegie Corporation from Lorraine Greene
12 of "I Have a Future" be made a part of the record, and to
13 indicate that the record will be held open for 7 days for
14 any written questions that would be submitted to you.

15 [Document follows:]

16 / COMMITTEE INSERT

1 The Chairman. I would just like to express my--

2 Senator Coats. Madam Chairman, excuse me. In that
3 regard--I am like Colombo; I seem to get these little loose
4 ends that I cannot quite tie down, and they nag me--I have
5 additional questions and statements, but I think in
6 deference to Dr. Foster and the thoroughness of what we have
7 gone through here, I will just ask unanimous consent that my
8 material, including questions, which Dr. Foster can answer
9 in writing, be incorporated in the record.

10 The Chairman. All right. I appreciate that, and it
11 will be held open for 7 days so that we will have a chance
12 to ask any further questions that might come as we reflect
13 on the hearing, and I know that answers will be forthcoming--
14 -you have been very forthright--and we will want to wait
15 until those answers come before we have a mark-up and a vote
16 in the committee. But I anticipate that that would be
17 within certainly the next several weeks, at the latest.

18 [Questions and statements of Senator Coats follow:]

19 / COMMITTEE INSERT

1 The Chairman. I will just conclude, Dr. Foster, by
2 saying that I wish there were some easy way to do a
3 confirmation hearing. It is never easy, particularly with
4 one that has attracted a great deal of attention. But I do
5 think that this has been entered into on the part of my
6 colleagues here on the committee and staff in a way that has
7 been very thorough, and I appreciate your spending the time.

8 There have been many nominees who have had to spend
9 days and days at a hearing, so perhaps the good side of this
10 is that you have not had to go through that, that lengthy
11 amount of time.

12 But I think that you realize, and we certainly realize,
13 that words do have consequences. And certainly, as Surgeon
14 General, you will bear a lot of responsibility for saying
15 things that will pull the public together in a recognition
16 of health issues facing our country.

17 The Public Health Service has a proud tradition. It is
18 one that I think serves our country very well. And you will
19 be representing the Public Health Service, you will be
20 representing all Americans, and I think in that light of
21 course, it becomes an enormous responsibility, and perhaps
22 as we have thought about it in the past, we have not given
23 it the weight that we should have. But we are very
24 conscious today, I believe, of the importance of the Public
25 Health Service and certainly of the words used by the

1 Surgeon General.

2 So we will be reviewing the comments made during the
3 hearing, and certainly want to thank you for your
4 cooperation in being with us through yesterday and today and
5 answering the questions that you have.

6 If there are no other comments--Dr. Foster?

7 Dr. Foster. If it pleases the chairlady, I would like
8 to thank you very much, Senator Kassebaum, for affording me
9 this forum. I would like to thank the members of the
10 committee for this interchange, and--I do not think this is
11 out of character--I want to thank Senator Frist particularly
12 because I think he brings a perspective to this that has
13 been beneficial to everyone, and I am grateful for it.

14 And I would certainly be remiss if I did not thank my
15 dear wife, who suffers through this more than I--she just
16 does not show it.

17 Thank you.

18 The Chairman. I am sure that is true. Thank you very
19 much, Dr. Foster. This completes our hearing.

20 [Whereupon, at 3:10 p.m., the committee was concluded.]