

**GOVERNMENT
ORAL SUBMISSIONS
ON ABORTION**

SUBMISSION FROM **YOUTH DEFENCE**



YOUTH DEFENCE

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INTRODUCTION

Dé Céadaoin, 31 Bealtaine 2000

Wednesday, 31 May 2000

JOINT COMMITTEE ON THE CONSTITUTION

The Joint Committee met at 9 a.m.

Deputies

B. Daly

T. Enright

M. McGennis

L. McManus

J. O'Keefe

Senators

J. Dardis

D. O'Donovan

F. O'Dowd

K. O'Meara

Deputy B. Lenihan in the Chair

In attendance: Senator M. Henry

Business of Joint Committee

Chairman: We have a quorum. We are now in public session. Before beginning the hearings today, there are two matters I want to deal with. First, the minutes of our nine meetings between 2 May 2000 and 30 May 2000 have been circulated to the members. Are the minutes of those nine meetings agreed? Agreed. There are no matters arising from the minutes

Second, arising from the meeting yesterday, 30 May 2000, it is proposed to print in-house and publish transcripts of evidence from representatives of the Psychologists for Freedom of Information and Dr. Harith Lamki together with the following documents received from Dr. Moane and Professor Magee - letter, 9 May 2000, and attached submission; submission to the working group on

abortion, March 1998, and two attachments, articles from *The Irish Psychologist*; and research article, material supplied, 30 May 2000 meeting. Is it agreed that we print and publish the transcript and documents mentioned?

Agreed.

We will move onto today's hearings.

Chairman: I thank you for your interest and contribution. I suspend the session while we await the representatives of Youth Defence.

Sitting suspended at 12.28 p.m. and resumed at 12.30 p.m.

Chairman: We will now continue public session. I welcome to this meeting of the Joint Committee on the Constitution representatives of Youth Defence, Niamh Nic Mhathúna, who is the chairperson, Dr. Sean Ó Domhnaill and Mr. Justin Barrett. We have received your presentation. It has been tabled before the Houses of the Oireachtas. You can find it on page 289 of the brief book and it has been circulated to the members. The format of this meeting is that you may make a very brief opening statement if you wish, which will be followed by a question and answer session with the members. I have to draw your attention to the fact that while members of the committee have absolute privilege, this same privilege does not apply to you. Mr. Barrett, I presume you will open the batting.

Mr. J. Barrett: I will open. As Deputy Lenihan will be aware, the strongest defence in a libel or slander case is the truth. So in that case we are not worried particularly about privilege. The thing that I would like to bring most strongly to the committee's awareness and attention is the fact that these committee hearings do not occur in isolation from the political facts, the social facts and the legal facts which surround them. I would like to remind the committee that at the end of the day no matter what terms of reference they have been given by the Oireachtas when it comes right down to it, the State is not the master of the Irish people, the Irish people are the masters of this State.

If you were to look at the abortion debate as it has been conducted in this country over the past eight years, you could be forgiven for drawing a different conclusion beginning first of all, of course, with the X case decision and the manner in which it was handled by the then Taoiseach in receiving an unrepresentative character from a rabidly pro-abortion position while refusing to meet with any pro-life grouping whatsoever; the fact that the State, in an unprecedented way, funded a case against the Constitution, which had never been done before; the fact that the Attorney General failed to argue that the eighth amendment completely prohibited abortion; and the fact the then

Government proceeded to ignore pro-life submissions at that time, proceeded onwards through the Maastricht referendum onto those November referendums, deliberately attempted to confuse the Irish people in so far as to bring one member of the Government party to describe it as a three card trick referendum - that is how strongly he felt about it.

There was an attempt to confuse people into believing that travel and information had nothing to do with abortion, even though that was the section of the Constitution in which they were put in. The substantive issue, which allowed for limited abortion was accompanied by a threat, a very direct threat by the Government at that time, that if abortion was not legalised on these grounds that it would be legalised on significantly wider grounds. This is not the kind of behaviour one would expect from a Government in a republic, but it is the kind of behaviour that we got.

The Government thereafter, with the failure of the substantive issue, did not legislate. In not legislating they, in fact, politically recognised this simple fact, that the substantive issue had been rejected by the people on the grounds that it permitted limited abortion. So when people say that both the pro-choice view and the pro-life view were both against the amendment, I think, the Government has recognised and every single party that has been in Government since then have recognised that simple fact, that the pro-choice view on this made no significant impact in that referendum. It made no significant impact on the final vote. In fact, what one had was the vast pro-life majority rejecting limited abortion and some people who had been frightened into the "yes" camp by the threat of worse abortion, who would also have preferred an opportunity to totally prohibit abortion.

We move on from that point. The Government of the day legislated for abortion information. It legislated for abortion referral, in fact, in practice. This was occurring at the same time that pro-lifers, myself included, and various members of the Youth Defence organisation, were being arrested and thrown into Garda waiting cells for exactly handing out leaflets about abortion. The Government was co-operating with the advertising agencies for abortion at the same time as the gardaí, under Government direction under the public order Act, were arresting people for simply handing out leaflets about abortion. The workings of this committee ... again, as I say, I would remind you, it is working under an illusion really to think to yourselves that because the terms of

reference that the Oireachtas have given you are so wide that you really have that much discretion. If we understand the simple fact that the Irish people are at the end of the day the masters of the institutions of the State, then we understand that there is really only one option that this committee has before it, which is option one, to totally prohibit abortion. The terms of reference for this committee ought rather to have been to give the Irish people in law what they want in fact. It was really only the matter of the details of how we totally prohibit abortion that is before this committee, whatever they might believe.

The X case decision itself is profoundly flawed. We had Dr. Anthony Claire go so far as to say that the Supreme Court knew this fact, they knew it, but that they wanted to give a right to abortion on the grounds of rape and incest and since they couldn't do so under Article 40.3.3°, as it reads, they had subverted the Constitution essentially and delivered a verdict on grounds of suicide on very poor evidence. We have had Members of the Oireachtas sit quietly to listen to how the Supreme Court had subverted the Constitution. You will be aware, of course, that it is the duty of the Oireachtas in cases where the courts are guilty of stated misbehaviour that the Supreme Court is subject to impeachment at that stage. If the committee members believe-----

Chairman: Sorry, I have to stop you there. I am not aware of any information that was brought to our attention in the course of these hearings that would warrant the impeachment or raise the question of the incapacity or unjudicial conduct on the part of members of the Supreme Court, so I would prefer if we passed on from that.

Mr. Barrett: Well, it remains simply a fact, whether we pass on from it or not.

Chairman: No, I'm sorry, excuse me. This is a committee of the national Parliament.

Mr. Barrett: Of course.

Chairman: The national Parliament is elected by the people you referred to, and I am the chairman of this committee. You either accept my rulings on a point and pass on from it or you don't.

Mr. Barrett: Of course. As I say, I would simply remind the committee that it is, as you say, the Irish people at the end of the day, who have the right to make

the final decision in this case. While it may not be possible in the time available to us to go entirely through all the transcripts and every single word that is in them, I would remind the committee that law does not make for right. You will understand that the Hague Convention is currently hearing war crime trials concerning legal activities, if you like, under the Governments in those areas, in that place. So there is a legal precedent for a situation, whereby if this committee's decision or if this Government's decision is to finally legalise abortion, it is not beyond the bounds of possibility and it's certainly within the frame of what we would think would be likely that you may have a legal situation whereby abortion is in practice for 20 to 30 years, but at the end of that time - I would caution people to remember this - it is quite within the remit of a Government, which would follow that, to bring before the courts on a charge of a crime against humanity any person who actively conspired for the purposes of the murder of human beings, which is essentially what abortion is. I will deal with any questions now.

Chairman: I just want to clarify the ruling I made in relation to the Supreme Court. There is no objection, indeed, full and fair criticism of court decisions is permitted in the Oireachtas. What was not permitted was an allegation that judges behaved improperly in office without any evidence to back it up.

Mr. Barrett: Well, that was Dr. Anthony Claire's allegation in fact.

Dr. S. Ó Domhnaill: I am reading from the submission on page 8 of 23 from Professor Claire. He does directly address the X case decision. He says that the reason the X case went the way it did was that the only way, it seemed to me, the compassion of the Supreme Court could be expressed was through this interpretation and having been present at that particular hearing, the committee acknowledged their agreement. So I don't think we are saying anything that is untrue.

Chairman: We will pass on from that. I call Deputy O'Keeffe.

Deputy J. O'Keeffe: Thank you for coming here. What do you feel about or what is your attitude towards the hundred thousand Irish girls and women who have had abortions over the last ten to 15 years?

Dr. Ó Domhnaill: If I might make one point in particular----- As I say I have read the briefing document and I have read the transcripts of all the medical experts and the one thing that I felt was missing - I know it was addressed subsequently by Professor Patricia Casey - was that for all the compassion which was being expressed in relation to women's health and the treatment of women there was very little reference at all to the adverse effects of abortion on women. If you were to look at the document from the Royal College of Obstetricians and Gynaecologists - the document which suggests the prenatal discussion that should be held with each woman who is about to have a termination - it gives a list of the complications that the woman should be informed that she might possibly experience. The reason for this of course is that informed consent must be given, so the patient must be informed. The Royal College of Obstetricians and Gynaecologists gives a long list of complications with the relative incidences of each. Even if you want to take the highest proportion of complications from abortion they would seem to be in the area of psychological and psychiatric sequelae. To quote from the textbook of psychiatry, Puri and Hall, the standard textbook in psychiatric training, published in 1998, they refer to a figure of 10% of women who undergo abortion who suffer severe and-or prolonged psychological sequelae.

Deputy J. O'Keefe: Could I get you back to the question I asked you?

Dr. Ó Domhnaill: Yes.

Deputy J. O'Keefe: I asked you what's your attitude to the 100,000 women who have had abortions in the UK over the last ten or 15 years. Perhaps I might add another part to it. Would you agree that in discussing or talking about this issue, and bearing in mind in particular the situation of that tranche of our citizens, it is necessary that we be sensitive in how we discuss the issue?

Dr. Ó Domhnaill: Absolutely, yes. I work in psychiatry myself and I have treated quite a number of women who have undergone abortions - women from the Republic of Ireland, women from the United Kingdom and, in particular, women from the island of Jersey. I was present in Jersey at the time when they introduced legal abortion there in 1997. My attitude in relation to the 100,000 women that you are referring to over whatever period of time that might be is that I think it is dreadfully sad that our society would offer nothing but the council of despair, that in response to what is essentially a psychosocial

problem which would be dealt with most sensitively by compassionate support we would instead direct them to undergo a surgical intervention to terminate the lives of their unborn children. I would far prefer to see a situation whereby women who found themselves in crisis pregnancy----- Again, I have read the report, Women in Crisis Pregnancy. I would find that it would be far more beneficial to society as a whole, to women in particular, if there was far more support for women who found themselves in that crisis situation. Again, I would say if you use the figure of 100,000 women over an unspecified period of time--

Deputy J. O'Keefe: Since '67.

Dr. Ó Domhnaill:-----it is also a very, very sad reflection, that it would infer that there were at least 10,000 women over that period of time who have developed severe and-or prolonged psychological sequelae which obviously are not being addressed because I am not aware of any institute, if you like, within the Department of Health which is dealing with this. It is very, very much a haphazard thing-----

Deputy J. O'Keefe: Could I take it in short then that your attitude is that we should be sympathetic to the situation of such people-----

Dr. Ó Domhnaill: Absolutely yes.

Deputy J. O'Keefe:-----both in our language-----

Dr. Ó Domhnaill: Absolutely yes.

Deputy J. O'Keefe:-----and in the resources that we make available for counselling?

Dr. Ó Domhnaill: Absolutely yes. In relation to our language, as I said I work specifically in the area of psychiatry and I have had the experience of working with women who were contemplating abortion and later women who had terminations of pregnancy and I have seen the fall-out, so I am certainly in a position of compassion with them.

Deputy J. O'Keefe: The second issue I wanted to raise with you was the question of abortion or termination here in Ireland. We have had evidence from

medical experts, in particular the Masters of the maternity hospitals, that in certain rare cases to save the life of the mother it is necessary to terminate the pregnancy. What's your view on that?

Dr. Ó Domhnaill: Its interesting you should use the term "terminate the pregnancy". This was something which obviously arose in the discussion earlier this morning. There is a difference between a termination of a pregnancy and a termination of the life of the unborn child.

Deputy J. O'Keeffe: What's the difference?

Dr. Ó Domhnaill: The difference is that you can terminate a pregnancy by going into labour. You can terminate the life of a child by killing it. Every pregnancy is eventually terminated.

Deputy J. O'Keeffe: Where the unborn foetus is not viable and where the decision has been made that the only way to save the life of the mother-----

Dr. Ó Domhnaill: Is to terminate the pregnancy.

Deputy J. O'Keeffe: Here we get into the language "have an abortion", "terminate". Essentially the result is the same.

Dr. Ó Domhnaill: Exactly and probably the most glaring omission-----

Deputy J. O'Keeffe: Do you accept that that happens for a start, by the way?

Dr. Ó Domhnaill: Absolutely yes, I accept the fact that there are cases----- I am very, very aware of cases whereby in order to treat the mother adequately to protect her life it is necessary to generally deliver the child at an early stage. Sometimes these children are viable, sometimes they are not viable but the intention is there to treat the mother. I personally believe that this whole argument comes down to the area of intent. Someone mentioned earlier that it is very difficult to perhaps legislate for intent or to frame a constitutional amendment which would encompass the area of intent but of course we do this every day. If you look at the courts - if you want to differentiate between what in America would be first degree murder and second degree murder and in Ireland

murder and manslaughter - we very much take into account the intent of the person who is doing the act.

In relation to the three Masters, I certainly would recognise that they are eminent physicians. I would consider the earlier witnesses, Professor Bonnar and certainly Dr. Clinch, as being what I would term pre-eminent. They have managed to practise each for over 40 years without in their opinion performing an abortion. None of the Masters said that they themselves had performed an abortion, insisting that they are providing the same treatment as is allowable under the Medical Council guidelines, so I can assure you that no woman in this country has been asked to sign a consent form for an abortion.

Deputy J. O'Keeffe: The follow-up on that then is that you probably will have read the report of the Constitution Review Group. The Constitution Review Group consisted of renowned constitutional lawyers, academics and other people whose opinions I have no doubt ... I would respect anyhow. It was headed up by Dr. Whitaker. The conclusion of that group was as follows: if a constitutional ban were imposed on abortion a doctor would not appear to have any legal protection for intervention or treatment to save the life of the mother if it occasioned or resulted in termination of her pregnancy. Do you feel that a committee of the Oireachtas has to take note and give very due weight to that view since its the view as I say of the leading constitutional experts in the country?

Dr. Ó Domhnaill: Absolutely but I would suggest to you that if we look at recent history and at the fact that the care of expectant mothers in this country is second to none anywhere in the world and if you look at what they have suggested there that it is impossible to protect medical practice by an absolute ban on abortion I would say to you that as far as the Irish people have been aware we have had an absolute ban on abortion, certainly prior to 1983 and I have not heard of any cases nor have I heard of any cases mentioned here before the committee of women whose lives were lost because doctors felt that their hands were legally tied.

Deputy J. O'Keeffe: No, they were talking in the context of a proposal to introduce, say, something along the lines of your amendment which you propose as follows: no law shall be enacted nor shall any provision of the Constitution be interpreted to render induced abortion or the procurement of

induced abortion lawful in the State. That's your proposal for an amendment. I am putting it to you that the report of the Constitution Review Group, on the face of it, suggested that the adoption of such a proposal would result in a doctor not appearing to have any legal protection for intervention or treatment in the situation described.

Dr. Ó Domhnaill: Yes, the three masters of the maternity hospitals suggested that they felt legally exposed by the present situation.

Deputy J. O'Keeffe: Convince us then that your proposal for an absolute constitutional ban along the wording you have suggested in your submission is justified. How could we justify putting the lives of women at risk? In fact, that's the medical view ... the view of the constitutional lawyer.

Dr. Ó Domhnaill: I will answer from the medical perspective and I'll ask Mr. Barrett to answer from the legal perspective. From the medical perspective we would consider that while this view expressed by the constitution review group in relation to the legal exposure of obstetricians has not proven to be the case we haven't had any incidence, and the Medical Council would have been in a better position to inform you of this, where any obstetrician or any practising medical practitioner has been reported to the council for improper practice or for negligence or for misconduct in relation to a position whereby they terminated a pregnancy i.e. that they performed an early delivery in cases as rare as health or pre-eclampsia or Eisenmenger's syndrome. It would be fair to say that the historical evidence in this country is that there is no legal requirement for abortion to protect medical practice. That's what we have experienced. That is what the country has experienced over the years in which we have led the world from the point of view of obstetric and perinatal care.

Deputy J. O'Keeffe: So you would still think that the proposal you are making--

Dr. Ó Domhnaill: I feel that the proposal I am making-----

Deputy J. O'Keeffe:----- despite the advice of the constitutional experts and despite the established position as highlighted, in particular, by the three masters of the maternity hospitals is justified.

Dr. Ó Domhnaill: Absolutely. I think you have to again come back to the area of intent. If your intent is to protect the unborn child, then you will interpret the early delivery of a child of a mother whose medical position is compromised-----

Deputy J. O'Keeffe: There is no reference to intent in your proposal.

Dr. Ó Domhnaill: What I would suggest is that the Constitution and the law presume intent. Again I will bring you back to something as simple as if someone killed someone else. This is a situation where we are talking about that. It does come down to the area of intent. Did you intentionally kill this person? Was this person killed by you unintentionally, in which case the law will act in different ways? The intentional killing of someone would be punished and the unintentional killing of someone will be, perhaps, punished more leniently but certainly there would be a different approach taken to it. The law deals with intent on an everyday basis.

Mr. Barrett: May I just add to that? There is no reason whatsoever that the constitutional amendment which we have proposed ... indeed I would not suggest it should stand in isolation. During the course of the judgment in the X case, several of the justices made references to the absence of legislation to direct them in the application of the constitutional principle in 40.3.3° and, therefore, said, that in the consequence they were forced, as it were, to make up their own minds as to what that meant. There is no reason whatsoever why legislation could not define exactly what is meant by induced abortion because certainly some reference was made by the committee members previously that there is no such definition given in the Green Paper and how that might be considered a failing in the Green Paper. I would suggest there are many others but certainly that is one of them. There is nothing whatsoever to prevent the Dáil from legislating to clarify this situation beyond any possible doubt. It is quite clear that the Supreme Court would follow that direction.

Deputy J. O'Keeffe: You are actually amending your proposal to suggest that we should have the amendment to the Constitution and, in addition, legislation.

Mr. Barrett: No, at all times we have been of the view that the legislation was required as well. The 1861 Act is inadequate. It is inadequate quite simply because of the phraseology used that, "it shall be a felony to perform an unlawful abortion". The phrase implies that there is such a thing as a lawful abortion. Therefore, the 1961 Act is inadequate. I would follow that with the

necessity for legislation in accompaniment with an amendment to the Constitution.

Deputy J. O'Keeffe: Would you not accept that legislation couldn't override a constitutional provision.

Mr. Barrett: No, of course, it couldn't. It can clarify exactly what is meant. This is what the Supreme Court suggested in the X case judgment. They felt they were acting in a vacuum in the absence of legislative direction as to what 40.3.3° in application would mean. Certainly we would see that if there was a constitutional amendment which would clarify the meaning of 40.3.3°, therefore superseding the X case decision, that clarifying amendment would be accompanied by legislation. It would be accompanied, I presume, by very wide legislation which would do more than simply define the exact application of that amendment but would also include various other measures directed for the purposes of protecting the lives of both mother and child in this country.

Chairman: Were we to enact on foot of the present constitutional basis of the 1983 amendment we can only legislate as far as practicable. Isn't that what the Constitution-----

Mr. Barrett: Absolutely, and as far as is practicable is the total prohibition of abortion, abortion being defined in the terms that we have defined it and abortion being defined in legislation.

Chairman: "As far as is practicable" does not, in fact, relate to a total ban on abortion, it relates as far as is practicable to two lives which are referred to in the Constitution.

Mr. Barrett: This is assuming there is a conflict between the right to life of the unborn child and the right to life of the mother and that, in fact, abortion is sometimes necessary in order to save the life of the mother. This is a political opinion. It's neither a medical opinion nor is it valid legally.

Chairman: The drafter of the 1983 amendment clearly envisaged the possibility that there might be a conflict or he or she would not have referred in express terms to both rights.

Mr. Barrett: Exactly, and perhaps this was one of the failings of the 40.3.3° amendment in so far as it declared a high-sounding principle but wasn't clear. If

you look at the submission which your defence has given, would you not want to remove 40.3.3°, nor do we even want to amend that provision? What we want is a clarifying subsection to make it exactly clear what 40.3.3° meant ... was understood to mean by the people who voted for it and it was subsequently ... the Supreme Court made a contrary decision. The clarifying subsection we are asking for is not to change 40.3.3° but simply return it to its original purpose because that conflict of rights is not, in fact, in practical existence. What we are dealing with is a provision which was, if you like, to make the politically sensitive comment, a comment that we would all wish to have made, which is that the equal right to life of the mother was an absolute thing, that it was something that we were not in the business of saving the lives of the unborn child in killing women, that we were not in the business of saving the life of women and killing children, that there was no conflict between the two and the equality, as the Supreme Court understood it, was not an absolute equality. Justice McCarthy referred to a hierarchy of rights and tried to suggest that the rights of some people were more important than others. This is why we need a clarifying subsection, I believe, to make it understood that a provision which protects the life of the unborn child equal to the right to life of the mother does not require in any instance an induced abortion.

Chairman: Can I come back to Professor Bonner, whom you may have heard? I thought he was very clear. He said, "In dealing with complex rare situations where there is a direct physical threat to the life of the pregnant mother we will intervene always." That was the position in 1983 as well.

Mr. Barrett: Yes, of course. Intervene is not an abortion. We have been playing around with terminology-----

Chairman: Who has been playing around with terminology?

Mr. Barrett: Certainly the committee has been playing around with terminology because it has continued to use the word "terminate". As Dr. Ó Domhnaill pointed out, all pregnancies end in termination. Termination is not an abortion. As a father of two children myself, you could say that I am a father of two terminated pregnancies if you want to put it as bluntly as that. What we are dealing with here is whether there is going to be legalised abortion in the country, not whether there's going to be legalised termination. When people use the word termination they are attempting to confuse the issue and they are

attempting to suggest that women who have their pregnancies terminated have abortions. That means that every child born in the country would fall into that definition of abortion. This clearly cannot be the case so there must be some other definition of abortion, and of course the Green Paper is remiss in not giving us a clear definition of abortion. It is the duty of the Legislature to in fact give us first of all a clear definition of abortion and then it is the duty of the Legislature to give the Irish people an opportunity to, as I say, enact in law what they wish to have in fact, which is a total prohibition on abortion.

Chairman: When the Constitution was enacted in 1937, the direct input came from Mr. de Valera and since then the proposal is formulated here in the Houses of the Oireachtas. So what our Constitution envisages is that there's a process of deliberation before an amendment is put to the people. It doesn't in fact permit a group to make a proposal to the people. It suggests that those who the people elect have the wisdom to devise an appropriate proposal.

Mr. Barrett: Absolutely, and this is what we're talking about. The role of the Legislature here is to give the people in law what they want in fact. I don't think there is anybody who-----

Chairman: No, sorry, that's precisely what I was contradicting. It is not the role of the Legislature. The role of the Legislature is to deliberate on what an appropriate proposal might be.

Mr. Barrett: So what you're suggesting is that the Dáil has it within its remit to decide to legalise abortion, for the specific example, in the certain knowledge that the vast majority of the people are opposed to that decision?

Chairman: No, certainly not.

Mr. Barrett: Certainly they have it within their power but whether they have it within moral justice is another story.

Chairman: No, we stand by the Constitution. We have to operate within the constitutional limitations-----

Mr. Barrett: Obviously.

Chairman: -----and if we seek to amend the Constitution, what I'm saying really is that ... you've used the people, and referred to the people a lot in this context, but the people and their Constitution have provided for a Parliament as well and it's Parliament that draws up the particular proposal that goes to them, and that involves a process of deliberation. Now in the course of those deliberations that we have had, we've heard very cogent evidence, about the words we were arguing about a few moments ago, from the masters of the three principal maternity hospitals in the State. Have you any comment to make on what they said to us?

Mr. Barrett: Well I would refer medical questions to Dr.-----

Chairman: I really don't want to go back into definitions. They said that they have to carry out certain things which they want to characterise as abortion. Now that's something that we, as legislators, have to have very serious regard to.

Dr. Ó Domhnaill: You said there that they want to carry out procedures which they want to characterise as abortions. We, on the other hand, would not characterise them as abortions and certainly the most experienced obstetricians in the country would not characterise them as abortions. When you have to look at the statement from the institute of obstetricians and gynaecologists which, as you know from speaking to Professor Bonner and Dr. Clinch, represented, if you like, a consensus of 95% of the obstetricians in the country, certainly the views expressed by the three masters of the maternity hospitals in Dublin do not reflect in any means the views of 95% of the obstetricians in the country.

Chairman: Well in fact the masters agreed with the letter from the institute. What the letter from the institute did was to do something which we have found it difficult to do - many of the witnesses before us have found it difficult to do - and that is to avoid becoming involved in definitions about nomenclature.

Dr. Ó Domhnaill: At the same time I think if we are going to use certain terms such as abortion, termination of pregnancy, termination of life or whatever, they have to be defined. There are too many definitions of the word "abortion". Every English dictionary has a different definition of abortion. Certainly medical textbooks have different definitions of abortions and as time goes by, because

of the fact that viability of the unborn has reached an earlier and earlier stage, the definition keeps on being changed, but it's important from the point of view of the interpretation of law that there should be a legal definition of abortion and we would suggest that the legal definition we would provide would be that which would be recognised by most of the Irish people.

You know from your electorate that most people who will approach you to talk about the matter of abortion are not actually coming to talk to you about the matter of the termination of pregnancy so as to protect a woman who's suffering from pre-eclampsia or such a condition. Most of the people who would come to you to talk about abortion are specifically talking about, if you like, the deliberate and intentional killing of the unborn child and so our point is that it should be possible, and I'm quite confident that it is, to frame a legal definition of abortion which will be in tune with the wishes of the people.

Chairman: If I was to return to my constituency, one political interest there, the principal rival interest, would support the right of choice so the people wouldn't give me these definitions in my constituency. I'd have my own view on this but I'm just explaining to you it's not as simple, you know, appeal to the people.

Dr. Ó Domhnaill: No, there's nothing simple about this, I suppose, in some respects. The fact that such a large committee is deliberating on it would suggest that it isn't a terribly simple issue but we have to remember that if the intent of the committee - it is actually the intent of the committee which becomes important - were to allow current medical practice to continue while at the same time protecting the right to life of the unborn child, it is perfectly possible for the committee to do that. There are legal means available to you. There are certainly legal terminologies which can be used by the committee so as to protect the vast majority of unborn children.

Deputy J. O'Keeffe: Don't we really get into the issue of terminology and definitions and again, to get back to the constitutional experts, they said that in relation to what is an abortion, first of all they pointed out that in some instances an abortion is unlawful and in some instances it's lawful. They said that the word on its own must therefore be understood to refer neutrally to the termination of a pregnancy or procurement of a miscarriage. They followed on that, by the way, and this is obviously something we have to take note of, their view then was that to ban abortion simpliciter could thus criminalise medical

intervention or treatment necessary to protect the life of the mother if such intervention or treatment required or occasioned the termination of her pregnancy. That's the argument in their report by the most renowned constitutional and legal experts in the country.

Dr. Ó Domhnaill: Absolutely. I'm sure they are. I would though argue that they are being somewhat disingenuous by saying that. I would take the view that it is possible to frame a definition of abortion which would reflect the views of the majority of the people, and I would consider it very remiss if these constitutional review group of, as you said, the most pre-eminent constitutional lawyers and so on could not do so. I would be very concerned about that. Certainly it doesn't make sense that they cannot frame a wording which would express what has been the understood situation in this country over the past, shall we say, as far back as 1861 but certainly as far back as 1983. It would be strange that they would find themselves unable to frame a wording that would reflect that situation that existed. There have been no doctors, as I said, censured for terminating pregnancies in the treatment of women with, as we said, very rare medical complications of pregnancy. There have been no doctors censured.

Mr. Barrett: I think the constitutional review group, as I understand it, would have been reviewing the current constitutional provision and the 1861 Act. It couldn't anticipate, obviously, clarifying legislation. Would that be correct?

Deputy J. O'Keeffe: No, it's dealing with the issue of a proposal to introduce an absolute constitutional ban on abortion.

Mr. Barrett: Yes, but I understand that they gave no consideration to the possibility of clarifying legislation which would accompany such constitutional ban and in the absence of that then I could see how they might draw that conclusion, but there's absolutely no requirement that we here, speaking about the matter, must be similarly limited.

Chairman: If I might help you, I think Professor Binchy made the point this morning that we have had far more consideration of this issue now than the constitutional review group-----

Mr. Barrett: Absolutely.

Chairman: -----in terms of what we have heard. Are there other questions?

Senator O'Meara: Very briefly, you referred, Dr. Ó Domhnaill, to this report. You said you had read Women in Crisis Pregnancy, and I'm delighted to hear that you have because while we're here discussing terminology and definitions and so on, we can be pretty sure, based on statistics, that there are women who have either already made a decision or are about to make a decision to terminate their pregnancies abroad. This report shows that the reasons for those terminations are many, varied and complex and also that many people travel without counselling, with very little counselling, many travel alone, many make a decision alone and it also paints very clearly a picture of a climate of fear, intolerance and very unhealthy secrecy. I want to put it to you that in many ways your group has contributed to that atmosphere of fear and intolerance. Secondly, I want to put it to you what, if any, words can be put into the Constitution that would persuade any woman not to travel for a termination?

Dr. Ó Domhnaill: First of all, you made the suggestion that we have largely contributed to-----

Senator O'Meara: No, I didn't say "largely".

Dr. Ó Domhnaill: Then to a degree.

Senator O'Meara: I said I put it to you that you have contributed to that climate.

Dr. Ó Domhnaill: I would consider that the Irish people as a whole have contributed to that climate, that they have done so over a very prolonged period of time, that in fact the situation has improved greatly in recent years and that people are far more inclined to have a more compassionate approach to women and girls who find themselves in this situation. That, of course, is reflected in the figures, if you look at the maternity hospitals, for the number of single mothers, particularly young unmarried, single mothers.

Senator O'Meara: Why are the figures not dropping then, figures for abortion?

Dr. Ó Domhnaill: I would suggest that the reason the figures for abortion are not dropping is that ... there are several reasons. Certainly since the Freedom of Information Act and the addition of the provision of abortion referral in this

country, the figure for the number of women having an abortion has risen dramatically. Something that was supposedly meant to reduce the number of women going for an abortion has increased it. It hasn't been very helpful at all. The prevention of information has become the provision of abortion referral. I would suggest, on the other hand, that we, in what we do - we have been in existence for eight years as a group - are available to general members of the public every week in several centres around the country and we provide them with information on abortion. We certainly would provide them with information as regards how best they would be served were they to find themselves in the situation of a crisis pregnancy. We certainly would refer many people to Life and CURA and we would offer whatever support, as individuals and as a group, whatever help we would be in a position to provide.

Senator O'Meara: We have been actually given evidence, indeed by a group who is here this morning, the Pro-Life Campaign, that in countries where there is a programme of education, counselling and information, that in actual fact the abortion figures do drop.

Dr. Ó Domhnaill: There has been a common thread that has been, if you like, present in the abortion debate since 1992. One of the points, which has been constantly recurring, is that the Netherlands has some particularly good educational programme and, therefore, its abortion rate is lower than anybody else's, but in fact the Netherlands don't record an abortion as having taken place if it were to take place before the 14th week. In that situation, most abortions, the vast majority probably, 90% to 95%, occur before the 14th week, so we, in that situation, would probably end up having the lowest abortion rate in the world, were we to say that anything that happens before 14 weeks is not an abortion.

Senator O'Meara: Are you saying then that you wouldn't support or you don't think there is any value in putting in place a far broader availability of counselling, information and education?

Dr. Ó Domhnaill: No, I certainly support counselling, information and education and I would personally be more than happy in any capacity to provide such. I would hate to see more and more women going for abortions because, as I said, I have had to deal with the human wreckage that results from abortion and I can honestly say I don't gain any joy from it.

Ms N. Nic Mhathúna: Can I come in there, Senator O'Meara, to rebut, in the strongest possible way, the suggestion you made that Youth Defence may have contributed to a climate of fear. If you take the reality of the situation, hundreds of thousands of ordinary people have received real information about abortion from Youth Defence and are and continue to be perfectly happy to do so. The notion that Youth Defence, in any way, contributed to such a climate is generated within political circles and, perhaps, by the media, but the very real fact that our work is in weekly contact with ordinary people who are perfectly happy to receive practical information about abortion from Youth Defence is proof, if anything, of the fact that we are representative of the vast majority of the Irish people.

Senator O'Meara: Thank you for your response.

Deputy McManus: Thank you for coming here today and waiting so patiently to be given a chance to make a presentation. I have two questions. The first one is in relation to the X case. You were very critical of the decision in that case at the time. The issue was whether or not this girl should have had access to an abortion. Are you saying that, in your view, the girl in the X case should not have had access to an abortion?

Mr. Barrett: We are saying essentially that the option of abortion was not to her benefit, that the court had a misreading of that and that given that it was an anonymous case, we do not know what the consequences of that abortion were for her psychologically. We know from the medical evidence that it is quite clear that it is not a method by which to prevent suicide. Since the court decided to give her an abortion on the grounds that she would otherwise be suicidal, that is quite extraordinary. They did not hear any medical evidence. Mr. Fred Lowe, who spoke before the committee, I believe, said, "I am not a medical person." It would have been of great advantage to the Supreme Court in 1992 if he had opened his comments with the same line, "I am not a medical person." In the X case, as I said-----

Deputy J. O'Keeffe: Are you suggesting that-----

Deputy McGennis: Are you a psychologist?

Dr. Ó Domhnaill: A psychiatrist.

Mr. Barrett: We are not pretending to be the expert medical evidence. Mr. Lowe's was the only medical evidence in that case.

Deputy McManus: To focus a little bit, I am asking you, as Youth Defence, was your position that the girl in the X case should have been prevented from accessing an abortion?

Dr. Ó Domhnaill: We would certainly feel that the girl in the X case was not best served by the court deciding that it would be of greater benefit to her to have an abortion than were she to be disallowed from having an abortion. The court, if it had sought an expert medical opinion on it, would have been told that not only, as you know, does abortion increase the likelihood of suicide, but in a subset of people it increases it even further. The subset, to list the four, would be: previous psychiatric history, in other words, prior to the termination of the life of the unborn - that would include girls who were depressed or suicidal; younger women, which, of course, the girl in the X case was; those with poor social support; and those from cultural groups opposed to abortion. Certainly Ireland is a cultural group opposed to abortion. So they were not serving her very well.

Deputy McManus: To condense it, I take it what you are saying is that you think it would have been a better outcome for her to be prevented from having an abortion?

Mr. Barrett: Certainly, as I said, because it was an anonymous case we have no opportunity of knowing exactly the psychological condition of that young woman today, but we do know, because of our close involvement, the psychological consequences for the young girl in the C case.

Deputy McManus: No, I'm sorry. That is not my question. I think Dr. Ó Domhnaill has indicated that he feels it would-----

Mr. Barrett: It is important to put on the record that the treatment that young girl received has had chronic psychological consequences for her.

Deputy McManus: No, I'm sorry. I am asking you one question.

Mr. Barrett: I'm sure she doesn't matter to you. I mean, that's quite clear.

Deputy McManus: Sorry, Chairman-----

Chairman: I would like if that was withdrawn.

Mr. Barrett: You have a very strong motivation on this subject. You must understand we are here to listen and you are here to try to assist us. There is no point in engaging in what amounts to vulgar abuse of members of the committee.

Mr. Barrett: The principle that was applied in the C case was the principle that was established in the X case. Since we cannot answer absolutely as to what the consequences were for Miss X, I think it is of relevance, since we can answer for the consequences for Miss C, that in fact that is extremely relevant to any answer as to what we would feel about whether she was-----

Chairman: Deputy McManus did not give you any opinion. What do you want to say about the C case for the purpose of the record?

Mr. Barrett: The fact of the matter is that the girl in the C case has suffered enormous psychological trauma, which is directly related to the fact that she had an abortion. The manner in which the Eastern Health Board conducted that case leads any sensible, objective person to the conclusion that at least one organ of the State was deliberately pursuing a pro-abortion policy because the young girl herself had stated that she was not suicidal. The courts refused to allow a psychologist from the family - from her mother and father - to examine the girl on the question of her suicidal tendencies and took what I would say is deliberately misleading evidence because they desired a conclusion. And the consequences for her were enormous and very bad.

That's why we have this view that it was of no benefit to Miss C to have an abortion, it was of no benefit to Miss X to have an abortion and, in the instances similar to that in which we might frame a law for rape and incest, we can see that it is not of benefit to the women ... that, in fact, all it does is actually add a second assault. Again, the medical evidence, statistically speaking, back this up and our personal experience of it back it up as well. So the compassionate

response we would have is that in those very difficult situations abortion is not of benefit and should not have been carried out.

Chairman: I think you have explained your position very, very clearly in relation to those cases and in relation to the matter generally. I want to clarify one thing to the committee, because it is an important issue and I want it on the record. It relates to this issue of the courts. The rulings of the House are that members of the Judiciary are independent by virtue of the Constitution and they may neither be criticised nor have their rulings referred to in the House except on a substantive motion. I have taken the view, in relation to this committee, that, essentially the X and C cases are before us by way of substantive motion and I have permitted criticism of those cases on the basis of what is reported about them in the legal journals and law reports. I would not permit delving into the facts of those cases that does not derive from what is published in the authentic reports of those cases. I would not permit either criticisms of the judges which go beyond fair and free criticisms of court decisions. I just want to put that on the record for the purpose of explaining the approach I've taken on that issue.

Mr. Barrett: Of course, but you'll understand that I can't pretend that I don't know what I do know.

Chairman: Well, you can confine what you want to say to what's published about those cases in the reports published about them. That's my ruling on that issue.

Mr. Barrett: I understand the ruling.

Chairman: It is a very firm ruling and anything you have of your private knowledge is irrelevant in that context as it wasn't published about those court cases and can't be freely criticised. I, in fact, have departed somewhat from the practice because I could rule out all discussion on these cases but I think that would be an absurdity, given the issue that we have to address. But, I can't permit criticism of them or discussion of the facts of them beyond what is in the duly authenticated reports of those cases.

Are there any other questions before I conclude the session? I wish to conclude this session soon.

Senator Dardis: You've made several references about the importance of putting matters on the record. Would you accept that we are confronted by extraordinarily difficult and complex matters here and would you also accept that this committee takes its responsibilities extremely seriously, both to the Houses of the Oireachtas and to the Irish people, and that it will discharge its responsibilities to the very best of its ability in those interests?

Mr. Barrett: We would expect that you would make the very best efforts to do so.

Senator Dardis: Do you accept that we are prepared to do that?

Mr. Barrett: I have not seen, to be quite honest, any evidence that the committee has done anything other than seek to find a justification for the political opinions that they arrived at the committee-----

Senator Dardis: So, in other words, you don't accept that we are prepared to discharge those responsibilities?

Mr. Barrett: I think that the committee, in its individual membership, arrived at this committee with a prearranged conclusion and proceeded to gather evidence for that prearranged conclusion.

Deputy J. O'Keeffe: I think-----

Senator Dardis: Sorry, I think in that context it is extremely important for us, as a committee, to say that we take these issues extremely importantly and that we will discharge our responsibilities because I think it is important that that would be on the record and that's the reason I say it.

Mr. Barrett: Well, certainly the behaviour of the Minister for Health in attempting to manipulate the warrants in the-----

Chairman: That is not before us now.

Mr. Barrett: Well, I think it shows the political attitude of the Government in this-----

Chairman: I'm sorry, I wish to speak. The committee has its own processes to carry out. We are not investigating what a Minister did, we are dealing with that Green Paper which is the result of that. As far as the procedures of the committee are concerned, they're open to the public and the public are free to criticise us as they please. That's the public's right: to evaluate what we do. The only point I would like to make is that there was no prearranged conclusion on the part of the members of this committee. In fact, we have very diverse opinions on this question and that's because we are elected by the people and we tend to reflect their opinions on the matter. That's inevitable, as Deputies. You've the right to organise and contest elections yourselves and put forward your point of view. Up to now, you have restricted yourself, as I understand it, to engaging in symbolic protests to highlight public concern about this issue and that's something you're entitled to do, provided, of course, the protests are conducted within the law. If you wish to carry the matter further, you're quite free to contest parliamentary elections yourselves and make an appeal to the people.

Mr. Barrett: I understand that. I was simply responding to Senator Dardis' question as to what we believed that the committee-----

Chairman: I do not know that-----

Senator Dardis: You have a very significant advantage over us in that we would be much more constrained by the rules in terms of what we could say than you have been constrained and I think you should recognise that in what the Chairman has allowed you say. You criticised the Supreme Court with regard to what you perceived to be them determining a hierarchy of rights. In what you are suggesting to us, are you not also asking for a hierarchy of rights?

Mr. Barrett: I don't understand the question. What I would understand is that the ... what we are proposing is that the equal right to life of mother and child be protected and that that can be best protected by a complete prohibition on abortion. This is medically the case and it's legally possible. As for the question that you've asked, I don't really understand what you're trying to get at.

Senator Dardis: I think you do.

Chairman: Are there any other questions?

Deputy McGennis: I was told by a primary school teacher who had a group of young, very young primary school children in to visit during one of the days that our committee was meeting, and not either of the three witnesses who are here today but somebody was handing out anti-abortion literature which is absolutely their right to do but it was handed out to very, very young primary school children. I was asked, on behalf of that teacher, to bring to the committee's notice that this, in the view of the teacher, was extremely irresponsible and that she would have to deal with the issue in the classroom with a group of young people that she believed were far too young to have to deal with the issue. I'm not asking a question, I'm just putting it on the record.

Dr. Ó Domhnaill: You're putting it on the record in the context of interviewing the members of Youth Defence.

Deputy McGennis: No, no, I'm not interviewing you - I'm asking if you have literature.

Dr. Ó Domhnaill: We have it as a matter of policy that we do not distribute leaflets-----

Deputy McGennis: I can guarantee you that these were children-----

Dr. Ó Domhnaill: -----to young children.

Deputy McGennis: -----primary school children. They were a group that I had in visiting the Dáil who were given literature-----

Dr. Ó Domhnaill: It is a matter of policy that we do not-----

Deputy McGennis: -----going into the Dáil. I can tell you it's a fact ... your literature.

Chairman: On this issue, we've been talking about how to conduct this debate and it's a very important issue. That's one last point. Parliament is where people elect their representatives so, ideally, this is the best place to conduct this particular debate. You have your legal rights and I understand why you wish to

exercise them. But, do you accept the point that we, as representatives of the people, have to make decisions in this matter?

Mr. Barrett: Of course. But, at the end of the day, it is within both the power and the responsibility of the Dáil to finally decide what proposals shall be put into a referendum or not, as the case may be. All I'm saying is in that principle that the people are the masters of the State, is that I'm saying that you ought to be directed by what you perceive to be their will rather than what you perceive to be, perhaps, your own personal opinion.

Chairman: Very good. I call the session to a close and thank you for your assistance. We will suspend for two minutes.

Sitting suspended at 1.29 p.m. and resumed at 1.32 p.m.

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FROM

Youth Defence

60a Capel Street Dublin 1

Tel : (353) 1 873 0463

Fax : (353) 1 873 0464

E-mail : info@youthdefence.ie

Web : www.youthdefence.ie

To

All Party Oireachtas Committee on the Constitution

4th Floor

Phoenix House

7-9 Sth Lenister Street

Dublin 2

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