

## Endearing Moment

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Frank H. Mayfield, Jr.

Sounding like a bedeviled beehive, the hallway beyond the Hearing Room was a buzz. Concerned citizens were assembling for the final Committee action on Substitute House Bill 71. Downstairs, in the State House Rotunda, the crowd had grown larger. This scene of thirty-five years ago appeared like town folks gathered, waiting, wondering, "Will the hurricane come ashore?" The likeness, though, had a clear distinction. No matter the outcome, which ever way the Committee voted, for a probable half those in house, the hurricane will have come ashore - a direct hit. The others would see the storm as having veered, averting serious damage for the time being. Old time political pundits suggested no piece of legislation in their memory had evoked as much torment among citizens and legislators as had Substitute House Bill 71, more simply known as the Abortion Bill.

Pressure from responsible associations and institutions had caused considerable discomfort among legislators. Major centers of influence, the kind most legislators respect, were pushing hard for the individual states to bring clarity, by one means or another, to the law governing abortion practices. Great differences were evident in local medical and religious circles. County prosecutors looked to their own moral compass in applying the Ohio Revised Code resulting in inconsistent patterns of prosecutorial intervention among the eighty-eight counties. State newspapers were editorially weighing in, a goodly number encouraging legislative leaders to "do something." One wrote, "Quit hiding in the closet," and another, in describing what legislators should "get off of, did not use the term "fat asses" but opted for a phrase of equally unfriendly focus.

The American Law Institute was urging national standardization of the Model Penal Code, which included therapeutic abortion. The American Medical Association asserted abortion a medical procedure, recommending modification of most abortion statutes and adoption of the Model Penal Code. The American Public Health Association lobbied fervently for therapeutic abortion in the first trimester. The American Bar Association's House of Delegates approved the Uniform Abortion Act. All of these formal actions were presented directly to the legislators in every state. Yet, in contrast to those learned judgments and supporting interest groups, a measurably large share of Ohio's citizens held the noble view that life begins at inception and what you do with an unwanted pregnancy is not abortion.

Amidst that state of unsettlement, the well-regarded House Speaker, Charles Kurfess, approached a young legislator from southern Ohio. He appealed earnestly to the second-term assemblyman to accept the chairmanship of a special sub-committee. The assignment was to coalesce, to the greatest extent possible, the disparate views on the Health, Education, and

Welfare Committee and craft a closely balanced bill that could be recommended by the HEW Committee for consideration and full floor vote by the Ohio House.

Legislators, many who preferred the recommended reform, pleaded with Kurfess to bury the contested issue, arguing abortion among certain constituencies was a one-issue determinate. Speaker Kurfess was a leader with forthright style, and not one to "hide in the closet."

The newly appointed chairman of the newly formed sub-committee met individually with each member of the Committee-of-the-Whole searching for common ground in whatever corner he could. Improvements to the bill were encouraged and accepted from those openly opposed to the legislation. The final draft of Substitute House Bill 71 was very close to what had been proposed by the American Bar Association and American Medical Association. The HEW Committee consisted of fourteen members. Five members were known votes opposed and seven members had declared in favor. Two members remained uncommitted. Eight "yes" votes were required for passage.

Representative Troy Lee James, a grandson of Texas slaves, was one of the undeclared members. Representative James ultimately would serve thirty-four years in the Ohio General Assembly representing an inner-city Cleveland district. In purest Jeffersonian ideal, Representative James was a genuine representative of the people, and a duly respected advocate of the poor, the disabled and the aged.

The Chairman conferred with Representative James on several occasions. They enjoyed a cordial and warm relationship. They liked each other. Representative James indicated he might be leaning in favor of the Bill as he was well aware of the high mortality rates at illegal "abortion mills" and that such places could be found in his community. He was also sensitive to the stubborn truth that women denied legal abortions, go on getting illegal ones. Those sentiments as they were, the fact remained Representative James was not ready to disclose his decision or had not made up his mind.

The time had arrived. The Committee Room was filled to capacity. The Chairman of the Health, Education, and Welfare Committee passed the gavel to the sub-committee Chairman asking him to chair the final hearing on Substitute House Bill 71. There was virtually no initial discussion, a rarity. The Chairman announced the third reading and called for the vote. As the roll call progressed, one of the more vociferous proponents asked to speak before casting his vote.

While the member was pontificating, the Chairman found his mind fleeting back thirteen years. He and his wife were returning to school in the south. She was thirteen weeks pregnant. Near the end of the all day road trip, she complained of a paralysis sensation in her legs. They proceeded directly to the University Hospital. By the next morning, after a serological procedure,

her diagnosis was confirmed. It was German measles, rubella. Four physicians, including her obstetrician, met with the couple the next day. The awful truth was shared. Infections with the rubella virus are often disastrous in early gestation with studies showing eighty-five percent of babies being left with serious congenital defects. By accident of their college selection, the couple was in one of the two states that enabled therapeutic abortion at the time. Two of the physicians recommended an abortion procedure. One specialist preferred only to offer the medical facts with known statistical probabilities. The obstetrician declared it a patient's private decision. The decision remained with the young couple and later that evening a decision was made.

The Chairman had not shared this very personal experience with his constituents, the press, or his fellow legislators. But in the Committee Room, at that moment, it was an example of what could dance in a legislator's head when approaching an intimate, but otherwise critical public vote. As time went by, his family was less constrained in discussing the experience. The at-risk embryo from way back in 1958 stands tall today - a finely skilled teacher in the Cincinnati Public School system in her twenty-fourth year.

The vote tally had advanced to six in favor, five opposed. The Chairman was a known yes vote but in accordance with custom would be last to record his own. The two undeclared members remained. The one, who veteran observers predicted all along was a "no vote", elected not to speak and voted "no" in a whisper.

The Chairman looked to Representative Troy Lee James extending to him opportunity to speak. You could truly have heard the proverbial pin drop. To some it remains a moment in 1971 ...frozen in time.

Mr. James started softly. He could barely be heard at first. "Mr. Chairman, you have worked long and hard, you have served us all. I know this bill couldn't be any better. If there must be legislation in this state, this is a fine and good bill. Mr. Chairman, I never told you this, but I am one of seventeen children, and Mr. Chairman, I was the seventeenth." Tears welled in Mr. James' eyes as he paused for a minute. "Mr. Chairman, I have wondered whether I would be sitting here today if this bill had been law back then. Last night, Mr. Chairman, I saw the faces of my next youngest sister and brother, and when I wonder, I cry. Mr. Chairman, I respectfully ask your understanding and to let my vote be recorded as "no."

The Chairman took a deep breath, catching if nothing else his emotional balance. He steadily announced the bill had failed of passage and wasted no time, readily adjourning the meeting. The crowd erupted.

An endearing moment from the annals of the Ohio legislative record! Perhaps too, it's an anecdote offering an additional view ... the tedious search for resolution when the dilemma is

inherent with somber differences.

The people's path often leads to its supreme justices. One of the greatest of those was Mr. Justice Learned Hand, who offered his fellow Americans a comforting utterance for their consideration.

He wrote... **"The spirit of liberty is the spirit which is not too sure that it is right... the spirit of liberty is the spirit which seeks to understand the minds of other men and women."**

In the ante-room a little later, the Chairman and Representative James warmly embraced ... one man to another... one a Democrat from a neighborhood of modest means ... the other a Republican from a community of more material accumulation... one black one white... one a "no" the other a "yes". Two good hearts... both right!