

COERCIVE POPULATION CONTROL IN CHINA

HEARINGS
BEFORE THE
SUBCOMMITTEE ON
INTERNATIONAL OPERATIONS AND HUMAN RIGHTS
OF THE
COMMITTEE ON
INTERNATIONAL RELATIONS
HOUSE OF REPRESENTATIVES
ONE HUNDRED FOURTH CONGRESS
FIRST SESSION

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COERCIVE POPULATION CONTROL IN CHINA

WEDNESDAY, MAY 17, 1995

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERNATIONAL RELATIONS,
SUBCOMMITTEE ON INTERNATIONAL OPERATIONS AND
HUMAN RIGHTS,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:05 a.m. in room 2172, Rayburn House Office Building, Hon. Christopher Smith (chairman of the subcommittee) presiding.

Mr. SMITH. The subcommittee will come to order.

First of all, ladies and gentlemen, I want to welcome our distinguished witnesses to this important hearing. We consider today questions that go to the heart of this subcommittee's jurisdiction, what role human rights should play in our foreign relations, into the heart of what we are as human beings.

Civilizations can be judged by how they treat women, children, old people and strangers. Vulnerable people bring out the kindness in every society, but also regrettably the cruelty. Every so often they do become the object of practices so violent they cause people to recoil in horror across the centuries. One such practice is the practice of forced abortion.

The Government of China now routinely compels women to abort their "unauthorized" unborn children. The usual method is intense "persuasion" using all of the economic, social and psychological tools a totalitarian State has at its disposal. When these methods fail, the woman is taken physically to the abortion mill. Forced abortions are often performed very late in pregnancy, even in the ninth month. Sometimes the baby's skull is crushed with forceps as the baby emerges from the birth canal. Other times the baby gets an injection of formaldehyde or some other poison into the baby's cranium. Either the woman or her husband is then forcibly sterilized.

Forced abortion was properly considered a crime against humanity at the Nuremberg war crimes tribunal. It is employed regularly with chilling effectiveness and unbearable pain upon women in the People's Republic of China. Women in China are required to obtain a birth coupon before conceiving a child. Chinese women are hounded by the population control police and even their menstrual cycles are publicly monitored as one means of ensuring compliance.

The New York Times has pointed out in an expose recently that the authorities, when they discover an unauthorized pregnancy, a "illegal child," normally apply a daily dose of threats and browbeat-

ing. They wear the women down. Eventually, if the woman does not succumb to the abortion, she is physically forced to submit.

Last year the central government also issued a new law on eugenics which is now taking effect and which nationalizes discrimination against the handicapped. In a move that is eerily reminiscent of Nazi Germany, the Communist Chinese Government is implementing forced abortion against handicapped children and forced sterilization against parents who simply do not measure up in the eyes of the State. Despite all of this, the United Nations Population Fund continues to provide funds, materiel, people on the ground and what no money could buy, the sort of shield of respectability that the PRC program so desperately wants.

I would just say parenthetically that the head of the UNFPA, the U.N. Population Fund, time and time again has defended the program in China as totally voluntary. This is unmitigated nonsense and a big lie. Degrading a few men, women and children may be of no great matter for the Chinese Communist regime which has long regarded homicide and torture as among the basic tools of statecraft. So the most shocking thing about forced abortions and sterilization in China is not that they happen—and that is shocking—but that otherwise humane societies such as the United States might forcibly return people who have managed to escape from them.

The Clinton administration, which campaigned on a human rights platform that was justly critical of some of the refugee policies of its predecessors, quickly reversed course and began mass forcible repatriations of people who had escaped from China. Responding to a wave of anti-immigrant hysteria, sparked by the arrival of a few hundred Chinese boat people, the administration also reversed the Reagan and Bush administration's policy of granting asylum to people who can prove that they have a well-founded fear of being subjected to forced abortion or forced sterilization.

Some United States courts have upheld the Clinton policy as within the executive power. Others have ruled the Clinton policy illegal. These rulings recognize that Beijing subjects resisters to the population control program to persecution because of their exercise of a fundamental human right and that it singles them out for especially brutal treatment because it regards them as enemies of the State. I am proud to report that legislation drafted and marked up in this subcommittee and approved earlier this week by the full International Relations Committee would make clear once and for all that the United States will not send people back to forced abortions, will not send people back to forced sterilizations.

Ladies and gentlemen, today we hear from two distinguished scholars on the Chinese population control program. Dr. John Aird was for many years the United States Census Bureau's principal expert on population in the People's Republic of China. Nicholas Eberstadt is also a distinguished demographer. He has written and spoken widely on population issues and is affiliated with the American Enterprise Institute.

We had hoped to hear from several people who had firsthand experience with the PRC population control program. The U.S. Immigration and Naturalization Service has in its custody some 18 women who arrived almost 2 years ago on a ship called the Golden

Venture. A number of these women have testified that they were forced to have abortions or to be sterilized. The immigration judges found many of them to have testified credibly. They committed no crime other than escaping from China. And yet they have been incarcerated for almost 2 years. We invited them to testify today but so far the Justice Department has said no. We are continuing to negotiate with the Justice Department. The subcommittee will hold a hearing in Bakersfield, CA where they are presently incarcerated if this is what they want to do—if we can't get their testimony by bringing them to Washington.

Fortunately, we do have one witness who can share her personal observations of the Chinese program: Mrs. Evelyn King, who lived and worked in China as an English teacher and who saw up close what the PRC program does to young women.

I welcome our witnesses to this subcommittee. I would ask that they come to the witness table at this point and would yield to the distinguished vice chairman of the committee, Mr. King, if he has any comments to make.

Mr. KING. Thank you, Mr. Smith. I will keep my remarks brief. I want to commend the chairman for having this hearing. I think it is important if the U.S. foreign policy is going to stand for anything, it has to stand for a strong respect for human rights. Similarly for our immigration policy, if our asylum policy is going to stand for anything there has to be a strong regard for human rights.

Certainly forced sterilization and abortions are a strong violation of human rights. My concern is while this administration talks about its concern for human rights, somehow forced abortion and forced sterilization are not very high on their radar screen. In fact, I think they are inclined to look the other way and ignore it and ignoring a deprivation of human rights is as bad as carrying it out itself.

It is something if we learned anything from Nuremberg we are all responsible for what we are aware of in the world. So I want to again thank the chairman for having this hearing. I think it is absolutely essential that we make a clear and definitive statement on human rights on our opposition to forced abortion, forced sterilization and I look forward to the testimony today.

Thank you, Mr. Chairman.

Mr. SMITH. Thank you very much, Mr. King.

I would like to ask, Dr. Aird, that he would begin his testimony. I would ask you to proceed however you would like and to be as expansive as possible. Normally at hearings like this there are time constraints but this issue is so important I would ask you to spend as much time as you think is necessary to explain exactly what is going on.

STATEMENT OF JOHN AIRD, DEMOGRAPHER

Mr. AIRD. I have prepared a 22-page statement, Mr. Chairman, and I understood that you might want a more abbreviated presentation than that so I have a 4-page summary; however, I am quite willing to read the longer statement for as much time as you can give to it.

Mr. SMITH. I would ask, Dr. Aird that you would.

Again, this is an issue that has gotten short shrift by the administration, and continues to be put under the table. I, like some others, was at the Cairo Conference on Population Control and was outraged that coercive population control was not raised, it was not country specific, and Peng Peiyun, who runs the program in China, was feted and given the red carpet treatment in Cairo as someone who has a prototype that ought to be replicated in other countries. So I think we need to get the details of this program clearly on the table to explode the myths that abound about the program in the PRC.

Dr. Aird.

Mr. AIRD. Concern for human rights is widely shared among the American people, including Members of the Congress, Presidents, and government officials. The United States has played a major role in promoting the idea of universal human rights not only through the United Nations but in its own relations with other countries.

But our policies and actions have not always matched our words. Human rights considerations sometimes come in conflict with the objectives of various domestic interest groups who try with some success to get the government to strike compromises that serve their own agenda.

Such conflicts are most likely to arise in relations with countries like the People's Republic of China, an economically and politically important country whose human rights record is among the worst in the world. China has a long history of abusing its citizens, denying them freedoms supposedly guaranteed under the Chinese constitution, imprisoning them without charges and without trial, subjecting them to cruel and unusual punishments and torture, exploiting prison labor for economic purposes, suppressing speech in the press, and punishing dissidents on false charges.

The Chinese Government insists, much evidence to the contrary notwithstanding, that its human rights record is very good, in some respects better than that of the United States, but, paradoxically, it tries to prevent foreign human rights organizations from examining that record, claiming that they are meddling in China's internal affairs with "ulterior motives." China's posture is that of a government that has much to hide, as indeed it has.

In addition to its abysmal record on civil liberties, for the past 25 years the Chinese Government has conducted a highly coercive family planning program that also shows a conspicuous disregard for human rights. Among the rights widely recognized in the rest of the world is the right of individuals and couples to determine how many children they will have and when they will have them. This right assumes special importance because it relates to matters that are intimate and personal and is closely associated with the right of privacy, with the sanctity of the family and with the pursuit of happiness.

The right to reproductive freedom is included in the United Nations Declaration of Human Rights, has been endorsed by leading nongovernment organizations promoting family planning, including the United Nations Population Fund, or UNFPA, and the International Planned Parenthood Federation. The World Population Conferences of 1974, 1984, and 1994 all espoused reproductive free-

dom in declarations adopted by most of the attending delegations. The 1994 conference affirmed it in these words: "all couples and individuals have the basic right to decide freely and responsibly the number and spacing of their children and to have the information, education and means to do so."

Mr. SMITH. Dr. Aird, if you could suspend for one brief second.

Mr. AIRD. Sure.

Mr. SMITH. Bill Goodling, a senior member of the committee who would like to say a couple of words. He is in the middle of a markup that he has to return to.

Mr. AIRD. Surely.

The CHAIRMAN. The chair recognizes Mr. Goodling.

Mr. GOODLING. We are marking up a little bill across the hall here on job training, employment.

I just want to thank you, Chairman Smith. I know you have worked tirelessly on this issue and I have tried to work with you and I am pleased that you are having the hearing. You and I both have a strong interest in what has happened as far as Golden Venture is concerned.

We still have 100 detainees in the York prison which I thought was a ridiculous place to put someone in the first place. And I have written so many letters to the administration that I discovered writing letters doesn't help very much.

I am hoping this hearing will make some changes. And of course I was happy to work with you to develop language in the bill we passed Monday night out of this committee, full committee, and again, I just don't understand why the administration can't make a decision.

I just don't understand how people can be here for 2 years or almost 2 years and still no decision is made. I mean, it is a political issue, I suppose, but we deal with those 100 times every day. So again I thank you for holding the hearing and hope that the hearing will help expedite, give backbone or give courage or give something to the administration to move.

Thank you very much.

Mr. SMITH. Thank you. OK.

Mr. AIRD. However, the consensus about human rights in the family planning sphere is by no means as unanimous as public declarations imply. The government of China has for the past quarter of a century implemented a family planning program that attempts to limit couples to one child each, two in exceptional circumstances, and demands the termination of pregnancies begun without official permission and the sterilization of couples with two or more children.

The program represents a blatant violation of the principle of reproductive freedom, yet it has incurred surprisingly little condemnation even within countries with strong human rights traditions. Most foreign governments have taken little notice of Chinese population policies while seeking closer relations with China. Many have contributed funds to the UNFPA even though that agency has been supporting the Chinese family planning program for the past 15 years, and some governments have refused to grant asylum to Chinese refugees who claim persecution under the program.

The record of the United States Government regarding international support for compulsory family planning in China has been somewhat ambiguous. Our government has often condemned other human rights violations in China, and has sometimes threatened to withdraw Most Favored Nation status for China if its record does not improve. Members of the Congress have been particularly outspoken in criticizing China's disregard of human rights and specifically the coercive practices in the Chinese family planning program.

In 1993, several officials of the Clinton administration were also quite forthright on the subject. As word of a new escalation of family planning pressures and an upsurge in coercive tactics was making headlines in May 1993, Secretary of State Christopher attacked coercion in the Chinese program, the Administrator of the United States Agency for International Development, Brian Atwood, told Congress the administration was "appalled" by reports of coercive abortion in China, and the United States delegate to the United Nations development program, Warren Zimmerman, declared that "we must condemn such abuses" and "do what we can" to stop them.

What the administration actually did, however, sent a rather different signal. It restored funding for the UNFPA, withheld in 1985 by the Reagan administration because of UNFPA's support of China's coercive program with the proviso that U.S. funds would not be used in China, a gesture that did little to impede UNFPA assistance to the Chinese program. In August 1993, AID Administrator Atwood, in reply to a question from a Senator, cited with apparent approval a legal opinion that before U.S. funding could be withdrawn from an agency supporting a coercive family planning program "it would be reasonable to require evidence that the organization knowingly and intentionally provides direct support for or helps to manage people or agencies who are clearly engaged in coercive abortion or involuntary sterilization."

The use of such restrictive terms as "knowingly," "intentionally," "direct" and "clearly" was obviously intended to make actionable evidence of agency involvement virtually impossible to establish. It meant that the United States Government could continue funding organizations that support China's coercive program so long as these organizations were careful about appearances.

What this seems to say is that the Clinton administration is not sufficiently troubled about coercion in family planning to do more than deplore it. The Chinese leaders probably read the change in the U.S. position on UNFPA funding as a U.S. retreat on the coercion issue and indeed that is what it was.

Why this mismatch of word and deed? What lies behind it?

The most obvious explanation is that some people within the administration see a value conflict between the principle of reproductive freedom and the idea that world population growth threatens human welfare. This conflict troubles many people outside of government, not just family planning advocates, but other people who are concerned about world population growth but abhor inhumane tactics in population control.

Some have become convinced that the world is faced with a "population crisis" that is imminent and serious enough to justify ex-

treme measures, but they are aware that they cannot openly advocate such measures without inviting the condemnation of people more deeply committed to human rights. Rather than confront the issue openly, they pretend to accept the principle of reproductive freedom but tacitly approve of coercive restrictions in China and elsewhere. They tend to ignore or deny the evidence that China's family planning program is highly coercive and sometimes try to excuse the Chinese program on the ground that China "has no choice" but to take extreme actions.

There is a certain superficial plausibility to the "crisis" argument that makes it easy to grasp and popularize, but the argument becomes more dubious on closer examination. The relevant empirical evidence is equivocal at best, suggesting that there is no simple, direct, strong relationship between population growth and human welfare, either positive or negative. As long as that is the case, there can be no logically compelling basis for urgent and extreme family planning measures or for disregarding reproductive freedom in the haste to reduce population growth rates.

Before important human rights can be sacrificed to avoid greater danger to human welfare, the need for such action must be established beyond reasonable doubt. Human rights should never be overridden on the basis of conviction, however strongly, widely and sincerely held that are not supported by incontrovertible evidence. Under no circumstances can the analysis and interpretation of the evidence be entrusted to professions, organizations, or individuals who have conflicts of interest in the matter.

Moreover, proposals for action in such instances must be subjected to thorough democratic discussion and debate before implementation is considered. The "population crisis" view has not yet attained that level of credibility. In fact, it has been under serious challenge by some eminent demographers and economists since the 1960's and still lacks a firm empirical basis.

Adherents of the "crisis" view sometimes express gratitude to the Chinese leaders for making what they consider a major contribution to slowing the world's growing population. There is no question that the decline in the Chinese birth rate since the early 1970's is largely responsible for the world decline in the birth rate during those years. Whether the decline was worth the price the Chinese people have been forced to pay for it is another matter and that is far from resolved.

The whole issue of the consequences of population growth needs further systematic exploration on the basis of experience throughout the world, and the hypotheses of crisis advocates and their opponents need to be put to the test of that experience. However, for that purpose, the experiences of individual countries need to be reported accurately and honestly.

Unfortunately, supporters of the "crisis" view have often shown a culpable lack of candor in their descriptions of the Chinese experience and the Chinese family planning program. Some ignore or gloss over the coercive aspects of the program. Some repeat and help disseminate official cover stories from the Chinese Government that are manifestly improbable or false or engage in egregious misrepresentations of their own devising. Some representa-

tions of the Chinese program are so patently slanted or distorted that they seem to be deliberate attempts to deceive.

Among family planning advocates and the organizations promoting their cause, acceptance of the principle of reproductive freedom often seems half-hearted at best. They seem to feel strongly about the right of couples not to have unwanted pregnancies but not about their right to have more children than the advocates think they should. When reports of coercive family planning tactics in various places are being widely condemned, family planning advocates and demographers often remain silent or try to cast doubt on the evidence.

The UNFPA has always maintained that its principles prevent it from becoming involved in supporting a coercive family planning program, but in 1979 when China's one-child policy was initiated and vigorously prosecuted, the agency negotiated its first 5-year, multi-million-dollar assistance program for "population activities" in China, including family planning.

In September 1983, the year the Chinese program reached its all-time peak in coerciveness and family planning work teams fanned out across the country carrying out 21 million sterilizations, 18 million IUD insertions and 14 million abortions, many of them involuntary, the United Nations gave one of its first two annual population awards to Qian Xinzong, the minister in charge of the State Family Planning Commission who directed the mass surgery drive.

In the following year the UNFPA negotiated its second 5-year program with China. The next renewal came early in 1989, a few months before the crushing of the student demonstrations in Tiananmen Square.

What had become of the UNFPA's commitment to the principle of reproductive freedom? It had been quite deliberately rendered inoperative.

In 1985, the UNFPA Executive Director, Raphael Salas, said that his organization was guided by three principles—respect for national sovereignty, reproductive freedom, and the requirement that population policies be "integrated with national development plans."

However, Salas made it clear that the principle of "national sovereignty" took precedence over the principle of reproductive freedom. He said, "Countries are and must remain free to decide on their own attitudes and responses to questions of population. The United Nations system is not equipped either by law or by practice to go behind this principle and judge the moral acceptability of programs. The relationship of individual freedom to the needs of society as a whole is a matter for each country to decide."

Thus the UNFPA disclaimed any responsibility for ascertaining whether or not a given national family planning program violated the principle. Letting "each country" decide the scope of individual freedom in population matters meant that reproductive freedom was no longer a universal human right. It also meant that in countries ruled by authoritarian regimes, the exercise of that right would depend upon the whim of those most likely to infringe on or abrogate it.

When Dr. Nafis Sadik succeeded Salas as the executive director in 1986, she insisted that "any limitations on the exercise of personal and voluntary choice" in selecting birth control methods was "a violation of the right to have access to family planning," but she also said that "judgments about what constitutes free and informed choice must be made within the context of a particular culture and the context of the overall government program for social and economic development." Thus she also seemed to subordinate choice in reproductive matters to the will of the national government.

The UNFPA position on reproductive freedom had reduced it to a government option. In its modified form, the principle would never deter the UNFPA or any other agency from assisting a coercive family planning program.

UNFPA went further, however, its representatives heaped praise on China's coercive program and commended it as a model for other countries to emulate. In 1981 Salas called it "a superb example of integrating population programs with national goals of development."

In 1983 the UNFPA's Deputy in Beijing said the one-child policy was "the only choice for a country with a large population." In April 1984, Salas said that his agency had no evidence of what he called abuses in the Chinese program although such evidence was not hard to find.

In February 1985, the UNFPA sent a briefing note to AID asserting that compliance with the one-child limit in China "can only be on a voluntary basis." In April, Salas told Chinese leaders in Beijing he had come to "reaffirm our support of China in the field of population activities" and that "China should feel proud of the achievements made in her family planning program."

In the same month he told a Chinese reporter that "China has done an outstanding job in her population problem." In May 1989, Sadik told a meeting in Washington that the Chinese program was "totally voluntary" and in April 1991 as the program was being sharply escalated, she said China had "every reason to feel proud of and pleased with its remarkable achievements" in family planning in the previous 10 years. She added that she was going to "popularize China's experience" in other countries.

In May 1993, as the Clinton administration was about to resume funding of the UNFPA, the media began to report rising coercion levels in the Chinese program, embarrassing both the administration and the UNFPA, which was said to be considering withdrawing its support from the Chinese program.

But shortly thereafter the administration went ahead with its plans to refund the UNFPA, which continued to support the Chinese program. In July Sadik wrote to Atwood that the UNFPA found coercion "morally abhorrent" and promised that the agency would dissociate itself from any program that deviated from "the principles of voluntarism."

She also repeated the Chinese Government's claim to oppose coercion and said the State Family Planning Commission had promised to review abuses in the program. Sadik said that the SFPC had also agreed to keep her agency informed about any corrective action taken in regard to specific instances of coercion and would hold "working level consultations" with UNFPA whenever either

party deemed it necessary. "From these agreements," Sadik assured Atwood, "you can conclude that indeed the Chinese Government is willing to address seriously the problem of alleged or reported abuses and with UNFPA assistance to make improvements where necessary."

Thus the UNFPA, which in the previous 13 years had found no evidence that the Chinese program was coercive, denied it was capable of making such a determination, then claimed to have determined that the program was voluntary, now proposed to help monitor coercion in the program.

At the same time, the UNFPA continued, ostensibly at least, to trust misleading assurances from the Chinese Government about coercion and invited the Clinton administration to share its trust.

Meanwhile, the evidence on coercion in the Chinese program steadily accumulated until it became a formidable mass. Some of it was obtained by foreign reporters in interviews with victims of the program in various parts of the country. Some came from the personal histories of individuals who sought refuge outside China; among the latest and most detailed, the story of Chi An in Steven Mosher's 1993 book, *A Mother's Ordeal*.

But considerable evidence also came directly from the Chinese media, which relayed strongly worded instructions to lower levels demanding attainment of population targets and threatening penalties for local administrators who failed. These directives made it clear that the reason why local cadres resort to coercion is that they are held accountable by higher levels for the fulfillment of their State-assigned family planning targets and penalized by loss of bonuses, promotions, and even their jobs if they fail to reach them.

Popular resistance to the one-child policy remains strong especially in the rural areas and reprisals are often carried out against family planning cadres who have imposed punitive measures on program violators. These include setting fire at night to the cadres' fields and houses, physical assault, and occasionally murder.

Family planning cadres often complain that their task is "the most difficult under heaven," and the authorities concede that "the work is arduous" and that it is like "sailing against the wind." Still the higher levels will not accept excuses from local leaders for failure to reach targets. Lack of results is taken as prima facie proof that the locals neglected to "strengthen their leadership" over family planning.

The reasons for the continued resistance are partly cultural and partly circumstantial. Chinese traditions going back thousands of years emphasize the importance of having children as an act of filial piety. These values have largely eroded among the urban population but are still widely shared among rural Chinese.

In the villages they are reinforced by the fact that Chinese farmers have no social security system and are dependent upon their children for care in their old age. Since, also in accordance with Chinese tradition, daughters join the families of their husbands upon marriage and are seldom able to offer support to their own parents, it is especially important to rural couples to have at least one son to look after them in their waning years.

The one-child policy imposes serious hardship on parents whose only child is a girl, and this is one of the major reasons why rural couples sometimes resort to infanticide if their first child is a daughter, or use ultrasound to determine the sex of the unborn and abort the pregnancy if it is female, or conceal unauthorized pregnancies and endure heavy penalties for unauthorized births in their desperation to have a son.

For these reasons "persuasion," even when backed by veiled threats, often fails to secure compliance with official policies and targets. For local officials under intense pressure from above, coercion often seems to be the only practical alternative.

Despite what they may tell foreigners, including officials of the UNFPA and the International Planned Parenthood Federation, the central authorities are not averse to the use of coercive tactics at the grass roots level as long as they succeed and do not evoke too much hostility from the masses.

In fact, their exhortations to lower levels the central authorities often encourage the use of coercive measures by issuing open ended demands that they "grasp the work firmly", "resolutely implement the policies", "take immediate action", "adopt practical and effective measures," "use powerful measures," and "take every effective measure."

Even more explicit invitations have been issued from time to time by top leaders in the party and government. In 1981, Deng Xiaoping himself was quoted by Vice Premier Chen Muhua as saying, "In order to reduce the population, use whatever means you must but do it."

In June 1983, as the mass surgical campaign was under way, the then premier Zhao Ziyang told a National Party Congress that it was necessary to "prevent additional births by all means." Injunctions like these are obviously intended to spur recourse to extreme measures, and, not surprisingly, they often have that effect.

Some central directives openly advocate the use of measures that are clearly coercive in nature and intent. For example, since the 1980's the provinces have been encouraged to set up what are called "qualified birth control villages" in which couples eligible to have children under family planning regulations may only do so if no one in the village has an unauthorized pregnancy or birth.

The purpose of this arrangement is to generate coercive social pressures on those not in compliance by penalizing the whole village for their deviations. This device was again recommended by the State Family Planning Commission as recently as February 24 of this year as part of a general outline for family planning work over the next 5 years.

Other instructions urged the imposition of extreme fines for unauthorized births which reportedly often exceed a family's total income, sometimes by many times. Others advocate the harassment of women pregnant without official permission by family planning cadres and activists who visit them in their homes repeatedly until they can no longer take the strain and submit to unwanted abortions.

Still others call for the "mobilization" of people eligible under the policies for sterilization and abortion to see to it that the operations are performed. As long as individuals coerced by these means walk

to the clinics on their own legs, the surgeries they undergo there are officially considered voluntary no matter what means were used to compel compliance.

Sometimes the Chinese media drop all pretense that the Chinese program is voluntary and openly condone the use of coercion. An April 1993 article in a legal journal deplored the lack of uniformity among family planning—provincial family planning regulations, because it meant that “some forcible measures that could have been legal have become illegal”.

The article added that “family planning work needs to be backed by forcible measures provided for by the law. It is necessary to have legal rules providing relevant forcible, restrictive measures, such as forcible termination of pregnancy, forcible abortion, or induced abortion. It is necessary to forcibly sterilize those couples who have failed to be sterilized after having had two births.” In June 1993 an article in a major population journal conceded that “so far, the reduction in China’s rural fertility has been the result of external constraints. That is, the mechanism involved has been a coercion-based reduction mechanism.” That China’s controlled press would print these articles without disavowal—both journals are published in Beijing—suggests that the authorities did not object to their contents.

When coercive tactics escalate beyond a certain point provoking strong popular resistance and causing the “alienation” of the people from the party, the central authorities disavow the coercive measures and claim that the local cadres misunderstood their instructions and became “excessively zealous.”

When the local cadres react to that criticism by relaxing their efforts, they are charged by the higher levels with negligence and failure to “exercise leadership” over the program. The tactics for which they have been criticized are again encouraged and the pressures are resumed. These cycles of escalation and remission have occurred several times since the 1970’s.

What the evidence indicates is that the main impetus for coercion in the Chinese program comes not from the lower levels but from the top leadership. Despite official denials, coercive family planning is central policy.

The use of coercive measures first became widespread in the Chinese family planning program early in the 1970’s. However, since the borders of China were virtually closed to emigration, legal or otherwise, until very recently, it is only since the late 1980’s that refugees have begun to seek asylum in the United States because of China’s family planning policies.

This phenomenon was not contemplated when the Immigration and Naturalization Act of 1982 was adopted. According to this law, a foreign national may be granted asylum in the United States if he can show that he is subjected to persecution or has a well-founded fear of persecution on grounds of race, religion, nationality, membership in a particular social group or political opinion.

None of these five categories quite fits the circumstances of refugees from the Chinese program. They do not constitute a distinct “social group” though they are certainly treated by their government in a distinct category nor does their action represent what in the United States would be considered a “political opinion.”

Under current policy regarding the application of this law as laid down by the Board of Immigration Appeals in its decision of May 12, 1989 known as "Matter of Chang", the terms of the law were interpreted in such a way that few Chinese seeking asylum because of China's coercive family planning program would be able to qualify.

"Persecution" was defined as occurring only in situations in which a harsh policy was applied selectively to the members of a particular group and not to the rest of society. Implementation of coercive family planning measures according to the BIA cannot be considered "persecutive" of noncompliant families so long as other families are subject to the same rules.

A person penalized for violating the one-child rule cannot claim he was punished as a member of a social group unless he can show that the penalties were imposed for some reason other than population control or unless he can show that he was given unusually severe treatment because he had opposed the policy in public. Clearly "Matter of Chang" was meant to construe the Immigration Act of 1982 so narrowly that most, if not all, applicants seeking to escape from the Chinese family planning program would be denied asylum.

Why did the BIA take such a restrictive view of the intent of the act?

Perhaps in part because it wanted to curb immigration from China or immigration in general but there is nothing in the text of "Matter of Chang" that suggests that. However, the document explicitly concurs with the stated objectives of the Chinese program and attempts to represent it in a benign light.

It provides a description of the program that is selective, inaccurate at many points, and seriously misleading in its overall characterization of the way the program is implemented. For example, "Matter of Chang" states that couples are "urged" to undergo birth control operations when in fact they are often compelled to do so.

It repeats the official claim that coercion is not approved by to the Chinese Government without noting that there is plenty of evidence to suggest that this claim is false. It quotes an allegation from a secondary source that "punishment in the form of sterilization is not provided for in Chinese law" but does not cite the official circular of the Party Central Committee and the State Council of November 1982 that mandates sterilization for couples with two or more children. This circular sparked the mass sterilization drive of 1983 and is still official policy. The fact that the circular was not technically a "law" is of no real significance because China is not yet a country of laws.

"Matter of Chang" then goes on to imply that coercive abortion is something that affected significant numbers of women only "in the past," but official data on abortions in China show that the annual number of abortions increased between 1985 and 1990 and the presumption is that the numbers of abortions that were coercive, though not reported, rose also. The text cites without reservation claims by the Chinese Government that it "does not condone forced abortions or sterilizations," that it "takes measures" against officials who "violate the government's policy," and that it tries to

“prevent the imposition of rigid quotas” at the local level, claims which are either misleading or palpably false.

Based partly on this misinformation “Matter of Chang” concludes “we do not find that the one-couple/one-child policy of the Chinese Government is on its face persecutive.” But the BIA also offers as justification for its conclusion the official rationale for the Chinese policy, which is essentially the same as the “population crisis” argument advanced by other apologists for the Chinese program to excuse or condone its coercive measures.

I have quoted at some length discussions in the BIA decision that shows that it follows those line. I won't take time to repeat those now.

“Matter of Chang” asserts that “the issue before us is not whether China's population control policies should be encouraged or discouraged, to the fullest extent possible by the United States and the world community,” but it also notes, apparently in defense of these policies, that “China was in fact encouraged by world opinion to take measures to control its population.”

The latent implication of that statement seems to be that we therefore have an obligation to support the Chinese effort. In any case, it is clear that, on the premise that China faced acute population problems, the BIA considered China's birth control measures as reasonable and did not wish to grant asylum to Chinese fleeing from them. The BIA's sympathies were all on the side of the Chinese Government.

So, it would appear, were those of the Office of Asylum Affairs in the U.S. State Department's Bureau of Human Rights and Humanitarian Affairs, which issued several versions of a five-page statement in December 1992 and May and August 1993 casting doubt on the validity of claims of asylum applicants from China's Fujian province.

The OAA statement entitled “Asylum Claims Relating to Family Planning in Fujian Province, China,” was ostensibly intended “to facilitate evaluation of individual cases on their merits but some of what it had to say about family planning practices in China in general and Fujian in particular was as inaccurate and misleading as the assertions in “Matter of Chang”. Like the BIA document, the OAA statement seems to counsel the denial of asylum.

I have gone into some particulars about that document but I need not take time for them here this morning. Whatever influence the OAA statement may have had as a result of “Matter of Chang” immigration judges have been refusing claims of asylum from the Chinese—from Chinese nationals based on persecution under the Chinese family planning program and their appeals to the BIA have been dismissed.

Then the Congress attempted to intervene, and I have got the details of that which are probably familiar to the committee. I will skip over those, too.

As a result of these confused and sometimes contradictory actions, the official U.S. position regarding asylum for people facing coercive family planning policies remains somewhat ambiguous. It needs to be resolved, preferably by new legislation that expands the bases of asylum to include forms of persecution not encom-

passed by the existing immigration law, specifically including persecution under family planning policies.

I have a section on current developments, developments in the last few years, since 1991, going into detail on that showing the details of the escalation of family planning pressures that initiated in 1991 and are continuing to the present, which I will also pass over.

At some point, the disintegration signs that we see in Chinese society at present, the disaffection from the party, the disbelief in its ideology, and the widespread corruption must inevitably impact the enforcement of China's extremely unpopular family planning policies but it is not clear what effect it will have. There have been indications in the past many officials are not in sympathy with their country's family planning program, see no need for it, or begrudge the time and effort its implementation requires.

As central control is further attenuated, enforcement in many areas will probably lapse. On the other hand, local officials still seeking advancement by pleasing their superiors may be more inclined to resort to physical force instead of the more time-consuming indirect forms of compulsion to fulfill their targets. Local expedients in population control may become even more variable than they are now and asylum claims correspondingly harder to evaluate.

U.S. immigration laws need to be adjusted to recognize legitimate claims of asylum based on persecution under coercive family planning programs. Obviously we cannot offer asylum to all the hundreds of millions of people subjected to persecution under that program but this is not a challenge we are likely ever to face. Very few victims of the program presently have any chance of leaving China and reaching our shores. We are directly responsible, however, for what we do with those who do arrive here. If we send them back without giving adequate consideration to their asylum claims we make the United States Government an accomplice of the Chinese family planning program. This situation urgently requires legislative remedy.

There is obviously a limit to what the United States or the world in general can do to discourage or moderate human rights violations in a country like China. We could not afford the kind of intervention that would be needed to guarantee the Chinese people the same measure of human rights that our own citizens enjoy, but we certainly have an obligation to make sure our policies and actions do not lend support or encouragement to Chinese human rights violations.

With respect to China's coercive family planning program, there are two things we can and should do now. We can lower the barriers to asylum for Chinese fleeing the family planning program, which would cost us relatively little and we can deny funds to the UNFPA and other agencies that support the Chinese program, that—which would actually save us money. Hopefully, the Congress will give serious consideration to both matters.

[The prepared statement of Mr. Aird appears in the appendix.]

Mr. SMITH. Dr. Aird, we thank you for that very exhaustive testimony and the fact that you have, as the senior research analyst for the U.S. Census Bureau, now retired but you have continued to do your work, your book, "The Slaughter of the Innocents"—and I

would just say parenthetically Dr. Aird and this particular member do not share the same view with regard to legal abortion.

You happen to take the so-called pro-choice view. I take the pro-life perspective. But on the issue of coercion, you have been a scholar and someone whose integrity and honesty and the unassailable precision that you have used throughout the 1980's and 1990's to pierce the grant myth that has been concocted by the spin doctors in Beijing and all of their accomplices, at the UNFPA, in the U.S. Government, sadly today in the Clinton administration, who are willing to buy into the big lie because it then gives them plausible cover in testimonies of not having to disassociate ourselves from UNFPA or provide asylum for those women who are escaping this.

You know, the most important thing that this hearing is seeking to do is to get the information on the table. This particular Member has been sickened over the years by the embrace of this big lie, that Mike Weiskoph in *The Washington Post*, I remember so eloquently, pointed out in his expose, a three-part expose in 1985 that publicly the Chinese leadership says one thing then privately they do something completely different.

I have led two fact-finding human rights missions in this decade to the PRC. I was told there are no political prisoners, religious freedom flourishes, and that there is no use of coercion and population control on all counts, a clear distortion and a lie.

So I thank you for the work that you have done.

Our next witness is Mr. Eberstadt who is a researcher at the Harvard Enterprise Institute. The American Enterprise Institute, I should say, Harvard Center for Population and Development Studies.

He has written several books, including *Poverty in China*, the *Poverty of Communism*, *Foreign Aid and American Purpose*, and the *Tyranny of Numbers*, and he is the author of over 150 articles and studies on development population, health and other issues.

Welcome to the committee, Mr. Eberstadt. Please proceed.

STATEMENT OF NICHOLAS EBERSTADT, DEMOGRAPHER, AMERICAN ENTERPRISE INSTITUTE

Mr. EBERSTADT. Mr. Chairman, members of the committee, distinguished co-panelists and esteemed guests, it is a pleasure and a privilege to appear before you. With your permission, Mr. Chairman, I will submit a statement to the record after this testimony and also some materials.

Mr. SMITH. Without objection, that will be ordered.

Mr. EBERSTADT. Mr. Chairman, in the interest of time, I think I would make four points at this moment. Summarizing is easier after Dr. Aird's excellent, comprehensive presentation.

Mr. SMITH. Could you pull the microphone a little closer? It is hard to hear you over here.

Mr. EBERSTADT. Summarizing is easy when appearing after Dr. Aird. But I think I might raise four additional points to those he has so eloquently made.

First: at this time, no reasonable and open-minded observer can honestly deny that there is a long history and established pattern of official coercion and anti-natal pressure in the Chinese population program. That history has been documented not only in nu-

merous news accounts over many years but also in the scholarly studies of Dr. Aird, Dr. Judith Banister from the U.S. Census Bureau, Professor Steven Mosher and many other scholars.

The question arises, correspondingly, why there should be so much resistance within what is called the international population community and what is also called the international human rights community to looking squarely at this long-standing pattern of repeated violations of women's reproductive rights—indeed, of human rights.

A second point is that coercive family planning in China has opened the door to a truly perilous path in that country. It is a path toward an ever-extending array of human rights abuses under the aegis of official population policy.

In China today there is an active program of eugenics as part of the State population policy. The State has taken upon itself to determine who is fit and who is unfit to procreate. This is not new. It has been in practice for many years. There was an attempt to codify it last year, ironically just before the Cairo population conference. It was temporarily shelved because of world outcry—but only temporarily.

State determination that certain people are unfit to reproduce—government programs to, sterilizing the retarded, others are unfit to procreate for other reasons—leads in a very dangerous direction. In the Soviet Union during the 1970's, the State used its medical service to declare that decided that people who opposed the government were insane.

In China today, one can imagine how eugenics laws could be used for political purposes as well as "public health" purposes.

Another aspect of human rights abuses in the Chinese population program are the indications and evidence of infanticide. China's population ratio, its ratio of boys to girls, is one not found in any naturally constituted human population. It is unnaturally high for boys. This suggests that a great many girls are missing from China's population, have been missing since the advent of this pressure-laden campaign.

I should also mention the reports now emanating from Hong Kong of the selling of fetal parts. Hong Kong reporters have traveled into China and are reporting the harvesting of babies, of babies and fetuses for medicine, delicacies, other consumer uses. We may hear more about these allegations in the future.

Human rights in family planning programs are indivisible. Abrogating those rights in one area leads to ever more horrific abominations in other areas.

Third, Mr. Chairman: although, China may offer the most extreme example of coercive birth control to modern world, it is apparently no longer alone as an implementer of coercive antinatal birth control policies. If you will, we must fear that China is becoming a sort of "model" in this regard.

There are indications to date unproven—but indications that Vietnam which has a "one-or-two-child norm" has been leaning toward a policy of pressuring its population in the attempt to lower fertility levels. But not all of the countries with coercive indications are Communist. Indonesia, for example, is an example of a non-

communist country which takes a very strong anti-natalist approach to population.

Let me just read one paragraph out of a news story from the Far Eastern Economic Review of April 18, 1991 describing the Indonesian program: "Problems arose in 1987 when the government began mass insertion of Norplant as part of its long-standing "safari" program. The safari represents an intensive effort to meet fixed targets of new acceptors. A team of government health workers, accompanied by local Muslim leaders, teachers and sometimes military personnel descend on a village and gather all the women together for a lecture on the benefits of contraception. By the end of the day, they recruit anywhere from tens to hundreds of women to adopt IUD's, pills or other methods. Individual counseling and information on side effects tends to be minimal on these occasions."

A scholar who has examined the Indonesian program, Dr. Ines Smyth, writes that "undoubtedly the most alarming aspect of the family planning program in Indonesia is the incidence of coercion. The root causes of this have been identified in the target system which increases the likelihood of officials at various administrative levels resorting to unacceptable methods of persuasion toward subordinates and toward eligible couples and individuals in order to ensure that the ambitious targets set by the program are met. Such methods infringe on the most basic rights of individuals especially women.

Our concern, Mr. Chairman, should not be that Chinese approach is such an exception in the international community. Instead, we should worry that China is a increasingly, the exemplar model for varieties of programs in other countries.

Finally, Mr. Chairman: Although responsibility for this Chinese program clearly falls quite squarely on the government of Beijing, and analogously, on those other governments which approve or tolerate coercive pressures and practices in their birth control programs, these gross and perhaps spreading patterns of human rights violations should also make us look very closely at our own accountability in these arrangements. We should look very closely at our foreign aid policies in general, and our population aid programs in particular.

For more than a generation, the United States population policies within USAID have been animated by an explicitly anti-natalist rationale: that is to say, a philosophy that seeks through policy actions to effectuate a reduction in fertility around the world and particularly in low-income, high fertility areas. Anti-natalist programs have a tendency to attempt to set population targets.

Whether those targets be envisioned as numbers of acceptors of particular contraceptive methods or targeted birth or fertility levels, these targets are often and frequently established. They were established in USAID population programs; they were established today in the U.N. Population Fund's documents.

There is no way, Mr. Chairman, there is no way—apart from complete coincidence—that predetermined population targets can be achieved by voluntary actions of hundreds of millions of free individuals. If they are to have meaning or to be effective. Preestablished population targets are inconsistent, are fundamentally inconsistent—with the process of free of free individuals.

In closing, I submit that we must look very closely at our own population programs—and, those that we support through the World Bank, United Nations and other venues, if we hope to remove a contradiction which tends, I fear, to encourage international pressures in population programs.

[The prepared statement of Mr. Eberstadt appears in the appendix.]

Mr. SMITH. Mr. Eberstadt, I would like to thank you for your fine testimony. I would like to ask without objection that your recent article "What is Population Policy?" in Society Magazine be made a part of the record.

Mr. EBERSTADT. Thank you, sir.

[The information appears in the appendix.]

Mr. SMITH. Without objection.

Our next witness is Evelyn King from York, Pennsylvania. Mrs. King spent two summers in mainland China in 1990 to 1991, teaching English to Chinese English teachers. She has been teaching English and visiting the Chinese detainees in the York County prison where some of the Golden Venture people have been incarcerated.

Mrs. King, if you could make your statement now. Thank you.

STATEMENT OF EVELYN KING, TEACHER

Mrs. KING. Mr. Chairman, Honorable Congressmen, it is indeed an honor to have—to be here and to speak on behalf of our Chinese imprisoned brothers and sisters. Our daily entreaty to God is that they will be granted freedom.

It really is an honor to be here and to be able to speak for these people. And having spent two summers in China in the same province in 1990 and 1991 teaching English to middle school, high school teachers, one begins to feel very close to each other and to share many things together.

Chinese teachers were loving, caring and very wonderful group to be with. In the summer of 1990, following Tiananmen Square, it took some time, at least a week, for the Chinese to trust us, but once our bonds were firmly established, we were able to share many experiences.

The one-child family was very obvious during the 1990 and 1991 summers that we were there. A college teacher, T.R. for her name, spoke with me regarding the coercive family planning program and how she endured at least four abortions and many of her co-workers had 6 or 7 abortions. Because of the lack of birth control, this was brought on to the Chinese women without adequate—adequate planning or resources and help for them. And it was very detrimental for them.

Having returned to the same province in 1991, many past memories were renewed and new ones established. A very sad event kept returning to my mind at the end of our second summer of teaching.

On the last day of class, I noticed the tears continuing to fall from one of our female teachers. As class was dismissed and hugs and kisses were shared, I approached one of our very bright, intelligent students. I held her in my arms and could almost feel the life inside her tumbling around. As she wept so hard, I asked her what was wrong and how could I help her.

She was between 7 and 8 months of pregnancy. She had to have an abortion that afternoon. I said but you don't have any children. After many tears, she said that—she said her husband—she and her husband lived in another province the year before and she became pregnant and they registered with the government in that province.

They were so anxious then to have their child and she had a miscarriage. For some reason, they moved to Honan Province and registered her pregnancy at her place of employment. She told me that she had to go that afternoon to have an abortion because they had no records from the other province to show that she had an abortion.

People at the workplace would not believe her, no matter what they tried to tell them. They were told their story would never be believed. They had no records so they lost the child also with no hopes of ever having a child that they could hold or pass—or even be able to pass on the family name.

The whole system is against survival of the family name and against survival of their children. If the one child is a son and dies, there is no hope of carrying on the family name. They all want to have a son to carry on the family name.

That could possibly account for why many children disappear, many little girls disappear. The one-child factor also brings in the little emperor thing. The one child is made to be very special, which is good, but in noticing and observing the one child, the need is there so much to have a little brother or a little sister.

We visited with a friend who is also a teacher who had a son with a serious heart problem. It would take 10 years of his father's earnings to pay for corrective surgery. Since he chose not to be a Communist, he could not get insurance so his son—so that his son could have the operation.

We were in their home, invited in several times in 1990 and were invited back in 1991. In 1990, his son was healthy looking, but in 1991, at the age of 2 years, he was very thin and sickly looking and without assistance in danger of not living much longer. His father could not bring himself to become a Communist.

He was offered a principal's job but would have to become a Communist to get insurance. Otherwise he would have—not have that or the best—or best hospital service without becoming a Communist. Noncommunist people went to little buildings marked with a Red Cross on it for medical care. We had two medical doctors in our class and they chose—they chose English names.

All of our teachers were given a choice to choose an English name which they loved. They would choose this.

So I would say Katherine and Mike, they were not Communists and they did have the joy of having twin boys. But as I think back of the many sorrows that took place as a result of this one-child family, it is very, very difficult to think of it too long and it is something that really needs to be considered seriously.

Mr. SMITH. Mrs. King, thank you very much for your testimony.

Many of us on this committee, including a number of our colleagues on the Democratic side of the aisle, petitioned the administration last year to expedite a visa on behalf of a couple. The husband was in California, the wife was already approved to come to

the United States. She was—I think between her fourth and fifth month of her pregnancy, had been told by the government that she had to abort the child.

We appealed and her husband appealed through the normal channels for a humanitarian parole because the abortion, the forced abortion was imminent. Again, this is somebody who is already in the pipeline to come to this country through the normal channels, completely apart from her pregnancy.

Fifty Members of Congress, Democrats, Republicans, liberals, conservatives and moderates, petitioned the administration. I called Janet Reno over and over again during the crunch time over about a three or 4-day period pleading with her to just give this humanitarian parole and it was turned down. Nothing was done.

The woman was forcibly aborted in Fujian province then during her normal time came to this country and was devastated. And I think Mrs. King, you bring out a part of this other than the intrusion of the State into the privacy of that woman in forcibly aborting or sterilizing her—again, against her will, there is the emotional trauma that is life-long that goes unfocused upon in all of this, as well.

There was an article in *The New York Times* that began with a very, very sorrowful story of a woman who became an emotional basket case because she was forcibly aborted. So all of this trauma is being visited upon these women with the United States turning its back, the Clinton administration has turned its back on the most cruel exploitation of women probably in the history of the world and in terms of numbers, certainly it is the largest.

And then they hide behind plausible statements made by high officials in the government of the People's Republic of China which are notoriously inaccurate and wrong and just put out there for public consumption and they hide behind that as if they don't know. Shame on us when we accept such lies. I would like to ask if any of my colleagues would like to make any further comments before we go to questions.

Mr. HYDE. I just want to congratulate you, Congressman Smith, for holding these hearings and trying to shed some light on this despicable practice. We must have a blind spot to tolerate this sort of thing in a country that prides itself on its civilization extending back many, many years.

I think the more people understand about this, the more they can determine that the value of human life is very precious and that treating it as a thing that is expendable and disposable is part of the problem that we see in every country in the world. We just don't respect each other. We don't respect human life. We are all expendable. And that kind of mental attitude is reaping the whirlwind.

I thank you for having the courage and the persistence to stay on this horrible example of man's inhumanity to mothers.

Thank you.

Mr. SMITH. Thank you, Mr. Hyde.

Earlier in the week, the International Relations Committee marked up a rewrite of our foreign policy and there was language in the bill that essentially said no funds for the United Nations Population Fund unless they get out of China.

Dr. Aird, you pointed out in your testimony that previously, as and I think all members of the panel know, under the Kemp-Kasten provisions we would not provide any assistance to any organization that supported or co-managed a coercive population control program, trying to put human rights at the center. If we are going to have a population policy and AID population programs, the least we can insist upon is that human rights of women and of men be guaranteed in it and that coercion should have no place in such a program.

In the last Congress, language was adopted by Congress that nuanced the issue and played a game, if you will, of brinksmanship saying that if the money is segregated, the U.S. contribution, that the UNFPA would put that in one account and then their other money would be used another way. Of course, money is fungible.

If you give me \$5 and I put \$2.50 in one pocket and \$2.50 in the other, I still have \$5. It certainly does free up money when we make a large contribution to the UNFPA to put more money into China.

Dr. Aird, you testified that they have been there on the ground providing substantial assistance to this program. If you could, if you could, all of you, perhaps, talk about this duplicitous, in my view at least, provision that again is making its way through Congress. Next week there will be a fight on that issue. I plan on offering the amendment to try to end that kind of duplicity but as of now, the bill that was reported out in a very narrow vote continues this idea of segregated accounts.

Dr. Aird, could you speak to that?

Mr. AIRD. Well, I think what that clearly suggests is—and certainly conveys to the Chinese leadership is that it is simply a facade erected to serve United States domestic political situation where people here will accept the notion that because the funding is technically segregated, we are not really supporting the program.

But, in fact, as the Chinese communists would easily recognize, we had taken a stronger position which we are replacing with a weaker position and that is a backing down on this issue. And I think that they—they will recognize that it begins to resemble the attitude of much of the rest of the world, which is to say we may not approve exactly of what they are doing but we approve of the objectives of the program. And I don't think you can separate those two.

I think if human rights mean anything, they mean that there are certain measures one will not support, and one will not support an enterprise that encourages those measures. It isn't enough just to condemn the Chinese verbally, then go ahead and support programs that provide funds for the same operation.

The UNFPA has often said, and I think it is probably true, that they don't directly involve themselves in coercive sterilization, coercive abortion. But if you stand by and offer encouragement in general to a program in which that happens and don't take exception to it or don't disassociate yourself from it, then you have taken a position in which you have already compromised your values. And I think it is a basically hypocritical position and what it suggests is that you don't care that much about the right of reproductive freedom. I think there is no other interpretation possible than that.

Mr. SMITH. Mr. Eberstadt.

Mr. EBERSTADT. Mr. Chairman, speaking as a citizen rather than as a specialist, it seems to me that one of the great strengths of the United States in international relations is the strength of the U.S. example. And one of the great foundations to that strength is the universalism of the American vision.

It troubles me that we would finance practices in other countries which we ourselves would never tolerate at home for our own citizens, for our families, for our friends, for our communities. Coercive population control clearly qualifies very strongly as such an approach or such practice. And as I mentioned earlier, it is not just the indications of coercive birth control in China which should give population activity financiers pause.

There are questions about Vietnam, there are questions about Indonesia, and other countries, as well. More broadly, I think there is a real question about the appropriateness of numerical population targets in family planning programs that are financed by American taxpayers.

Mrs. KING. I just want to say sterilization very definitely does exist. And with their trust in us, the second summer we learned some of the terrible results and things that actually happened to human beings. And my husband is here beside me. We were there together for 2 years. And it just made us sick. But they had to learn to trust us. And if there is any doubts about what is really going on, it is.

Mr. SMITH. Mr. Eberstadt, you made an excellent point about the—if this were to occur here that the outrage and the chorus of dissent I think would be deafening. We have a situation that we are willing to impose or look the other way and be complacent in other countries, but if this was happening to our wives, our daughters and our mothers, the neat little bookkeeping arrangement that gives the semblance of plausible deniability then becomes, you know, ridiculous on its face.

We would never accept, I don't think in this country, a one-child per couple policy with forced abortion and forced sterilization as the means to enforce the imposition of that.

So I think you made a very excellent point. I would yield to my colleagues if they have any questions.

Mr. GOODLING. I don't have any questions. I just wanted to mention that you have some leaders from my area who have at great risk, I suppose, to themselves constantly brought to the attention of the people in my area this horrendous problem. They also know very well that they have people available who will be responsible for these people if they are released.

It isn't a worry that somehow or other we will have a financial problem or a financial burden placed on other people in the United States because it is very well—they are very well aware that employment is available and people are available who will assume the responsibility to make sure that they have an opportunity to be good citizens in our country.

But I do want to point out that, including a minister who has been very, very active. She is smiling out there. But the concern in our area certainly has been heightened by some very, very faithful people who realize how horrendous this is and it is why I can't

understand that we can't get the Attorney General to move or whether she isn't able to move because of the White House. I don't know because I don't get responses to my correspondence that shed any light on the problem.

Mr. SMITH. Dr. Aird, as I think you know, the UNFPA contract was due for renewal or termination in 1994 and last week in the course of deliberating on whether to authorize U.S. funds for UNFPA, my office contacted UNFPA and we were told that they have not announced a decision yet. Again, the language that we tried and will try again to insert into the legislation is that UNFPA should get out of China and no longer be part of this holocaust.

Do you have any information about what the UNFPA is doing at this point in terms of renewing a 5-year or perhaps a lesser year contract with China?

Mr. AIRD. I do not.

Mr. SMITH. Mr. Eberstadt, you mentioned the missing girls phenomenon which many, even Chinese demographers suggested would become a problem very, very quickly in China. Do you give us any numbers on that? Do you happen to have any figures on how many girls are missing in China?

Mr. EBERSTADT. I should probably consult with John Aird about this. As I recall, figures for 1987 and 1988 showed a birth ratio, a population ratio at birth of something like 111 boys for every 100 girls. To put that in perspective, in natural human population there is some variation, but it usually tends to be—to run between 105 and 107 boys per girl. In a large population, that observed four points of difference should set off great warning bells. This doesn't happen naturally in large populations.

Mr. AIRD. I can add a little to that. A more recent figure, I think for 1992 or 1993, shows 118.5 boys per 100 girls. For a time, some foreign demographers assumed that the reason for the imbalance was at least in part that the girl births—birth of girls were not being reported to the authorities and they were left out of the statistics.

The assumption was that when the next census was taken, which was the 1990 census, they would show up in their appropriate age groups. However, analysis of the subsequent analysis of the census data by Banister and Cole, two American demographers, found that the girls are missing from those age groups and this means that they are really gone, that they are—that their pregnancies were terminated.

The Chinese Government has long opposed female infanticide. In fact, there was a great deal of female infanticide in China prior to 1949, and the government made a pretty good faith effort to stamp that out after it—the Chinese Government, the Chinese Communist, the People's Republic of China after it took control in October 1949. It was quite successful.

However, after the adoption of the one-child policy in 1979, the problem appeared again and for a time the Chinese authorities became quite concerned about it. An article in the China Youth Daily about 1981 the—it quite sensationally deplored the possibility that unless something was done to stop female infanticide, many young Chinese would not be able to find wives 20 years later.

When the foreign press began to take note of this problem, the Chinese media suddenly shut down on this issue and denied that there was any problem of sex imbalance. The problem became more acute recently, however, when the ultrasound technology began to spread through China. Ultrasound machines were purchased abroad at a very high rate and Chinese manufacture went up. Now—and that is what is behind the sharp rise now.

Infanticide is still occurring, I am sure, but the use of ultrasound is becoming very widespread and although the Chinese Government has banned its use to determine sex of pregnancy prior to birth, sex of the unborn prior to birth, they really cannot seem to control it because of the corruption in the regime, the bribery and so on, and the fact that many parents are desperate to have a son, and their medical people are somewhat sympathetic to what they want and therefore will inform them if their unborn child is going to be a boy or a girl, and if it is a girl it will be aborted.

Once again, the Chinese press has taken up the cry that a dangerous sex imbalance is threatened and this time the danger is far greater than it appeared to be back in 1981.

Mr. SMITH. If any of you could shed some light on the new eugenics law, how that will work. My understanding is that several of the provinces have in operation since as early as 1988 and the most recent law just nationalizes what has been a practice of selecting children who may be handicapped for destruction by the State. Mr. Aird.

Mr. AIRD. That is correct. As Nick pointed out, there was some embarrassment in China when public criticism welled up over the draft law that was under consideration during the summer of last year, and for a time we had press reports that it had been cooled and that it would not come before the Standing Committee of the National People's Congress and Suddenly we heard that in October it had been adopted, which, as Nick pointed out, was right after the end of the World Population Conference in Cairo in September.

The purpose of the law is not only to prevent what the Chinese authorities claim is a tremendous burden of defective children being born in China. The figures cited, which probably have no firm statistical base, suggest that 5 percent of the population of China is defective, which means about 50 million people out of the total population of a little over a billion. However, it is not clear how they define "defective." American medical people say there is no way to be absolutely certain what constitutes a hereditary defect and what is an a circumstantially induced defect.

On this point, the minister in charge of the State Family Planning Commission several years ago defended the sterilization of women whose mental deficiencies were environmental rather than genetic on the grounds that men do take advantage of them and get them pregnant in spite of themselves. Therefore, it was all right, she seemed to say, to sterilize even people whose problems were not genetic.

The attitude of the top leaders in China on the genetics question seems to be about on a parallel with that that prevailed in much of the West back in the early decades of this century. It goes back to the attitude toward the Jukes and the Kallikaks Act and the no-

tion if you didn't sterilize these people you would be inundated with a flood of idiots.

And in fact that word "idiots" was used by Premier Li Peng in talking about the threat of the danger to China, which shows their thinking is absolutely primitive and has no connection whatever with modern medical science and its views and attitudes on this subject.

So I think what it suggests is that the Chinese authorities are looking for any excuse to cut down the birth rate of any group in China that they can target for that purpose. How far they will go in this regard is, I think, indicated by another law recently adopted, a law on adoptions in China, which limits adopting families to one child.

Now, what has that got to do with fertility? These children are already born. All you are doing is denying them a loving family.

But the Chinese authorities probably see this as a way of curbing the practice of Chinese who have a daughter and don't want it recorded but don't want to kill her and so they have somebody else adopt her out. If you can put a stop to those adoptions, then you put them in an even tighter bind. So the adoption law is also an attempt to enforce the one-child rule.

Mr. SMITH. Mrs. King.

Mrs. KING. I have a picture here. This is a picture of a little girl and she is seen on many, many billboards throughout China. And it is of course to point up the one-child family. And this is good public advertisement by using this and it is glorifying the one-child family. But it is always a little girl and there is significance to that.

Mr. SMITH. If there are no further comments—Dr. Aird?

Mr. AIRD. Just one other idea way I did not include in my presentation but I think would be of interest to the committee, Mr. Chairman, and that is it has often been said there is no point in our opposing coercive family planning in China because the authorities are going to do what they want to do. There is no point in our arguing about human rights because they are going to reject it. And as far as talking points are concerned, they do.

But there are also occasionally sources in China which indicate that when foreign agencies, foreign governments, foreign human rights organizations criticize coercive family planning in China, the local leaders hear about it and they then become less assiduous in enforcing the policies. So the idea that we can't really do anything about things in China by condemning them is simply not true.

Mr. SMITH. Dr. Aird, I thank you for that. That gives us further hope that what we do here in Washington can positively impact in the People's Republic of China. And I again, to repeat in a sense, what I said in my opening comments, the Clinton administration has turned its back on the women of China by changing two fundamental policies that were in force during the Reagan and Bush years. One was that we would not contribute to those organizations that support or co-manage a coercive population control program and after a review of that policy, each year the administration under Reagan and Bush concluded that UNFPA, U.N. Population Fund was inextricably involved with helping to craft the birth quotas, to train the cadres and to provide all kinds of logistical sup-

port that makes implementation of this hideous policy more effective, and maybe effective in the first place.

It also provides the cover as we pointed out, as you pointed out earlier, when you have got the UNFPA standing there white washing these crimes against humanity, that gives—provides substantial cover for these crimes.

Mr. HYDE. Will the gentleman yield?

Mr. SMITH. Certainly.

Mr. HYDE. Didn't the United Nations make an award to the Chinese population control program?

Mr. SMITH. The gentleman is correct. On two occasions they have made awards. Dr. Aird spoke about that.

Mr. AIRD. Yes, that was in 1983 the year when the coercion in the program reached a peak. And the Director of the Chinese State Family Planning Commission was one of the two first awardees of the United Nations population award.

When that award was given, an eminent professor, Theodore Schultz, of the University of Chicago, who was on the Technical Advisory Committee, denounced it as a travesty and asked that his name be dissociated from any mention of the award. The other awardee was Indira Gandhi whose government had fallen in the 1970's in part because of its support of a compulsory sterilization program. So the first two awardees of the United Nations Population award were people strongly identified with coercive family planning.

Mr. HYDE. I guess you can also solve people problems by just getting rid of the people. That is a pretty direct way to do it. And that has been tried throughout history and I guess it is still going on.

Mr. AIRD. Well, and the attitude is very prominent amongst the Chinese leadership. Just a few months ago Deng Xiaoping was quoted in a statement that in effect all of China's problems stem from its excessive population. That is an absurd simplification and a very convenient one for the leader of the Chinese Government because, of course, it means that the fault can't be blamed on misguided policies or on bad ideological judgments on which those policies are based.

It lets the leaders off the hook but it is also untrue. And it shows how far their attitudes are out of touch with reality even in their own country.

Mr. HYDE. I am certainly no expert, even close to it, even well versed in population data, but I have been told that density is a much more relevant factor in countries such as—Japan, Switzerland, and Holland that have a much greater density, more people per square mile and yet have a very good standard of living, a high standard of living simply because they go beyond the population density issue and have a free-market economy and a government that provides productivity and adequate distribution; to blame everything on excessive population is extremely narrow and unscientific.

Mr. AIRD. That is the problem, Mr. Hyde. The thesis on which population control or the notion of a population crisis is based is an extremely simple proposition. It suggests a very simple relationship between population growth and measures of human welfare. But actual experience does not support the simplicity. It is ex-

tremely complex. High population does not always relate and rapid population growth does not always relate to increased difficulties in living.

The matter is very complex, and an eminent economist some years ago, Simon Kuznets, pointed out that the evidence simply is not in on this issue and there is therefore no basis, he said, either for complacency or for alarm. However, alarm brings in money, and if you are running an enterprise that depends upon the public perception of a crisis, you don't want to tell them that your evidence is shaky or that the threat may not be real. You will lose funding if you do that.

Mr. HYDE. Someone said if Malthus was accurate, we would be up to here in birds. We would all be overwhelmed by the prolific birth of birds. Somehow nature has a way of keeping things in check.

Mr. AIRD. It is interesting that Malthus himself was opposed to the notion of compulsive family planning measures.

Mr. EBERSTADT. And even Malthus himself changed his mind after his famous first pamphlet. Malthus in his later years took a much more measured and balanced view of the population pressure's possible impact on well being.

Mr. SMITH. Thank you, Mr. Hyde.

And just the other policy that has been reversed obviously is the very humanitarian policy put into force under Mr. Reagan and Bush which provided safe haven for those women and men who were fleeing from forced abortion, and that too has been reversed by the Clinton administration, and hopefully if this legislation that is making its way to the floor in both the House and the Senate is enacted into law, again, the United States will become that safe haven for those escaping that kind of tyranny.

Are there any other comments that the members or the witnesses—just let me close.

I mentioned this previously but just two paragraphs from The New York Times article which I think is right on point with what Mrs. King was talking about in terms of the women themselves.

It is an article written by Nicholas Kristoff: "China's crackdown on births, stunning and harsh success. Draconian steps cut fertility rate to lowest ever." April 25, 1993, Beijing" should be taking her 2-month-old baby out around the village now, proudly nursing him and teaching him about life. Instead her baby is buried under a mound of dirt and Lee spends her time lying in bed emotionally crushed and physically crippled.

The baby died because under China's complex quota system for births, local family planning officials wanted Miss Lee to give birth in 1992 rather than 1993 so on December 30 when she was 7 months pregnant, they took her to an unsanitary first aid station and ordered the doctor to induce early labor. Miss Lee's family pleaded. The doctor protested. The family planning worker insisted. The result? The baby died after 9 hours and a 23-year-old Miss Lee is incapacitated."

This hearing is adjourned.

[Whereupon, at 11:45 a.m., the subcommittee was adjourned, to reconvene Thursday, June 22, 1995.]

COERCIVE POPULATION CONTROL IN CHINA

THURSDAY, JUNE 22, 1995

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERNATIONAL RELATIONS,
SUBCOMMITTEE ON INTERNATIONAL OPERATIONS AND
HUMAN RIGHTS,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:10 p.m. in room 2172, Rayburn House Office Building, Hon. Christopher H. Smith, (chairman of the subcommittee) presiding.

Mr. SMITH. I will start the hearing at this point.

Good afternoon, ladies and gentlemen. My name is Chris Smith, the chairman of the International Operations and Human Rights Subcommittee. And I am very pleased to be joined by the distinguished chairman, Ben Gilman, from New York, who is chairman of the full committee.

Last month on Good Friday 13 Chinese women in INS detention were moved to a deportation holding center in Bakersfield, CA.

Five of these women had fled China after being forced to have abortions. Others had been forcibly sterilized or had escaped after being ordered to undergo abortion and/or sterilization.

Their asylum claims were rejected. It appears that their deportation to the People's Republic of China is imminent.

These women and others like them may be forced back to China because of a novel and a bizarre interpretation of United States asylum law under which those who have resisted forced abortion and forced sterilization are regarded as common criminals rather than as victims of persecution. After all, they did break the law. And never mind what kind of law that they broke, never mind fundamental human rights and broken lives; the law is the law, and people who break a forced abortion law or any other law must be sent back to take their punishment.

This is the kind of thinking that we are up against. This interpretation was adopted by the Immigration and Naturalization Service in August 1994. It reversed the longstanding policy of granting asylum to applicants who can prove a well-founded fear of forced abortion or forced sterilization or other forms of persecution for resistance to the PRC coercive population control program.

An important provision of the American Overseas Interests Act, marked up by our subcommittee and recently passed by the whole House, will restore the traditional interpretation and save these women and men.

This provision should not be controversial. Almost all Americans, whatever their views on the moral and political questions sur-

rounding abortion, regard forced abortion and forced sterilization as particularly gruesome violations of fundamental human rights.

In the meantime, however, these women languish in U.S. Government detention, often in handcuffs and legcuffs, even though they have committed no crime other than trying to escape from the People's Republic of China.

Today, after lengthy negotiations with the Immigration and Naturalization Service and Justice Department officials, we had planned to hear their first-hand accounts on how the Chinese population control program really works, a view from the inside about what it is like to have a forced abortion.

We had gone more than half way to accommodate the Justice Department's concerns. We had agreed to hear only the testimony of 2 women and 2 men who are detained in York Pennsylvania instead of all 13. We had agreed to hear testimony only about conditions in China, not about conditions under which these men and women were detained in the United States.

Two days ago, after we had rearranged the subcommittee's schedule to hear this important testimony and the news media representatives and hundreds of ordinary citizens had arranged their schedules that they too could learn from these women, we learned that the Justice Department might have some unspecified, quote, problems with allowing these asylum seekers to testify.

Yesterday, late in the afternoon, we received a letter saying that the Justice Department would only allow these asylum seekers to testify if we agreed to close the hearing. This is a clear repudiation of the agreement that we had reached.

The reason cited by the Justice Department—that these people might strengthen their asylum claims by making public statements—is a shameful reason to deny the American public and the world its right to know about the conditions to which we may send these people back.

These detainees are victims of one of the gravest human rights violations of our century. They deserve a chance to tell their story to the Congress and to the world.

Again, I am very sorry to say and I regret to say that the administration had reneged on its promise and has opted not to allow these women and men to appear before us today.

They have said—and I say this to the members of the press—they want to censor you, to say you cannot be here to hear what they have to say.

I brought this up earlier with the Speaker of the House, Newt Gingrich; and he was outraged and said that if subpoenas are necessary, they will be issued and we will do whatever is necessary to get the truth on the table and stop hiding behind closed doors and trying to put this under some kind of cloak of security or secrecy far and away from people's ability to see it and discern the truth.

Again, I am outraged by this. We had operated in good faith for months, trying to get this hearing; and we have met them more than half way. And they have denied the opportunity of these victims to have their say here in this committee room today before a representative body of the American people, a subcommittee of the U.S. Congress.

We will be hearing from their attorney, Mr. Trebilcock, a little bit later in this hearing. And I hope to hear very specifically about their conditions and the information he can impart.

But I would like to yield to the distinguished chairman of the full committee for any comments he might have.

Mr. GILMAN. Thank you, Chairman Smith, for arranging this hearing. It comes at an appropriate time, before any of these people are going to be shipped back to possible incarceration and possible repression.

I think it is extremely important that we hear from the witnesses, and we will make a recommendation to our staff to look into the possibility of issuing subpoenas.

Mr. SMITH. I thank you. And we will now go vote on the floor, and then we will resume the hearing.

Thank you.

[Recess.]

Mr. SMITH. The hearing will come back to order. I apologize to everyone for the delays. We have had a series of votes, and we will have another series of votes commencing shortly.

I would like to ask Craig Trebilcock if he would begin his testimony, again, knowing that there may be some interruptions; but I will stay here throughout the course of the day in order to complete this hearing, and then we will go to our second attorney who will speak after you, Craig.

STATEMENT OF CRAIG T. TREBILCOCK, ATTORNEY, STOCK AND LEADER

Mr. TREBILCOCK. Thank you, Mr. Chairman.

Obviously I expected my client to be doing the talking here today, and unfortunately the INS and the Department of Justice have reneged on their promise to produce these people so that the American people and the press could hear their testimony.

After dealing with the INS for 2 years and in anticipation of this eventuality, I had my client write out his statement which, if I may, I would like to read so that those present and the record could have the benefit of his words:

This is the statement of Pin Lin to the United States Congress:

"I was told that America is a good place. There were freedom and rights for everyone who lives there. It is a democratic country and besides I have had the 'one child one family' policy problem in China."

"On April 5, 1991, my son Wei Wei Lin was born. This was my second child. (My daughter was born on May 10, 1989.) (My wife was born on November 16, 1965.) My uncle was the Governor of the village by the time. Then he was impeached because he had supported the 'movement of the students.' He has encouraged people to fight for their rights and he has encouraged people to endow the money for supporting the students. Because of this that they—meaning the Chinese Government—hated my family and have intended to make trouble for our family."

"It was just few days (on April 15, 1991) after my son was born officials came from the birth control department. In due time we were told that we had too many children. They started to catch my wife without any condition. By seeing that I got wild nervous. Be-

cause my wife had a very difficult delivery with my son and lost a lot of blood she was very weak by that time. As you know how the government is!"

"They insisted that either my wife or I must be sterilized. This argument got very hostile and turned into a pushing match. By that time some friends of mine heard the noise of argument. They came to help me with the matter. They joined the pushing and hitting. Finally, the officials left our home."

"According to the action of government my parents and my friends told me that we must leave home immediately because they won't forget that what I have done. I took my parents' and my friends' advice and fled. The next day the sterilization officials with home policemen returned to our home to get us. (There were about 14 people.) They surrounded our house and they found that we were not in the house. Then they asked my parents if they knew where we were. When my parents refused to talk about it, they arrested my father and destroyed things in our home."

"I knew because of my fight with the officials and against the policy and my uncle's political activities that I would be put in jail if I was caught by them and the punishment would be more severe. (So) I decided to try to escape from my government's harsh policies. I wanted to go somewhere where we have our family free from government interference. Meanwhile I learned that it was possible to take a ship from the Port of Fu Chow to the United States. That was arranged by my relatives and friends and other people."

"If I am returned to my country, I will be placed in prison for a number of years. I will also be beaten and tortured for embarrassing my government by leaving without permission and because of fighting with the officials and against the policies and my uncle's political activities."

And then there are some grammatical problems here but it concludes stating that he will continue to have problems because of "in public against the government such as talking to many press, even to congressmen of the U.S."

[The prepared statement of Pin Lin appears in the appendix.]

Mr. TREBILCOCK. Mr. Chairman, I have been involved in litigation on behalf of the Golden Venture refugees for nearly 2 years now. The Department of Justice's position has been essentially two things: that these abuses are not happening in China; and, second, that these people have come to the United States using this as a pretext and they are simply here to steal our jobs.

To refute that, I would like to present to the committee the United States Government's own documents from the Department of Justice and the Department of State.

One of these documents which I will present to the committee is a memorandum of December 16, 1993, from Deputy Associate Attorney General Phyllis Coven to the White House Counsel's Office, directed to Mr. Cliff Sloan and Alan Krezcko.

Ms. Coven had been asked by the White House how many of these people were telling the truth, essentially, in the document and how many were not.

She states in this document the following: "Giving a precise number requires that we review each of the approximately 275 files. We

can undertake this review, but it will take some time because the cases are in a variety of places.

However, our litigator—my counterpart in this litigation—estimates that approximately 60 percent of the people who have pursued their claims in court were determined to be credible.”

[The document appears in the appendix.]

Mr. TREBILCOCK. A second document that I would like the committee to consider and have is a letter received by me on October 8, 1993, from then-Acting General Counsel Paul Virtue of the INS.

[Material appears in the appendix.]

I had written to Mr. Virtue requesting a new hearing for my client based on the perception the hearings had been improperly tainted by ex parte contacts from the National Security Council personnel.

However, in responding to that letter, Mr. Virtue, on behalf of the INS wrote the following about the Golden Venture coercive family planning claims; he stated: “Additionally, in the vast majority of the cases the alien’s testimony was found to be credible, however, the request for asylum was denied as a matter of law because the individual had not established a well founded fear of persecution on one of the grounds delineated in section 101(a)(42)(A) of the Act,” referencing the Immigration and Nationality Act.

Thus we have it from the government’s own officials, the Department of Justice, an official who worked in the office of Attorney General Janet Reno that they recognize that over 60 percent of these people are telling the truth.

On August 5, 1994, with the permission of the White House, an administrative policy was put into place called “Humanitarian Parole.” That policy stated that if you had a credible claim of flight from forced abortion or forced sterilization, you would not be deported from the United States.

In that review, performed pursuant to that policy, 24 out of 767 Chinese nationals were granted humanitarian parole, an abysmal ratio where we have here from the Attorney General’s Office and from the INS that over 60 percent of these people were telling the truth.

As one of the counsel for these individuals, let me put in as an aside that I believe it is much more than 60 percent; but for these purposes, I am willing to use the government’s own estimate that 60 percent were telling the truth.

So one would assume that 60 percent would be out on the streets today enjoying the freedom of this country and protection from forced sterilization and forced abortion. That has not happened.

It is clear that the August 5th Humanitarian Parole policy was a pretext. It was window dressing for the Congress of the United States and for the press so that whenever a particularly egregious case were to capture the imagination of the American people, the administration has an out, they have a way of saying, “OK. We’ll give her humanitarian parole.” But for the hundreds and perhaps thousands of Chinese refugees who come to this country who do not have the opportunity to be before Congress or in the newspapers, the administration continues to follow the legal reasoning of Matter of Chang and put them on a fast-track back to China.

As one last comment I would like to make, Mr. Chairman, 5 days ago I received additional documents in the litigation which had been declassified by the State Department on June 15, 1995.

At the beginning of my statement I referenced the initial litigation position that these people are lying. We have shown that is not true. The second position is, this is not happening in China.

I would like to reference these State Department cables sent from the Guangzhou consulate to the Secretary of State in Washington, D.C., the first of which is dated June 1993, the same time as the arrival of the Golden Venture.

This document indicates, and I am quoting in the cable from Guangzhou: "In one case Qingxing officials forcibly removed two women from a small township for sterilization. However, the township head and others stopped the county government vehicle and permitted the women to return home. County officials subsequently dropped the case after learning one of the women was the township head's sister-in-law."

Well, I guess if you are not fortunate enough to be the township head's sister-in-law, you will still be in that jeep on your way to the forced sterilization table at the local clinic.

The last item I would like to bring to the committee's attention is, again, in a State Department cable dated February 1992. I find this of particular relevance to my own client's case, Pin Lin, who in defense of his wife from forced sterilization that might have killed her, physically opposed the China Government. This cable, again from Guangzhou to the State Department, relates the account of another gentleman who did exactly that: "Yesterday, the Kaiyuan District People's Court sentenced Mr. Zhong Yuanfu to 1 year's imprisonment for openly obstructing and assaulting family planning cadres who were carrying out their duty. Zhong Yuanfu and a woman named Qiu had been illegally cohabitating, and Qiu became pregnant. Last year the family planning cadres from Zhonghua, Xiagang and Xiahe street committee offices, cadres from units coordinating family planning work and civilian police all went to Zhong Yuanfu's refreshment stall and attempted to mobilize Qiu into taking remedial action regarding the pregnancy."

Those familiar with this issue know that "remedial action" means abortion.

"Zhong Yuanfu refused to listen to them and moreover, he assaulted two of the cadres. A family planning staffer named Chen, a cadre surnamed Xiao from an office which coordinates family planning, and a civilian policemen named Fu suffered injuries."

"Comment—and this is the State Department's comment—the above article indicates at least five separate birth control officials visited Mr. Zhong and Ms. Qiu en masse. This delegation's goal was to mobilize Dongyuan Qiu into terminating the pregnancy. The term 'Dongyuan' literally refers to military troop movements or the physical movement of a group of people to some political end. It is not difficult to imagine a case in which a man would become so incensed at a massive harassment of his partner that he would become violent."¹

¹ Department of State cables which are too lengthy for inclusion in the record are maintained in subcommittee files.

Mr. TREBILCOCK. Well, at least there is one individual within the State Department who realizes that this is wrong, that a gentleman could be properly incensed by the forced sterilization of his spouse.

Thank you, Mr. Chairman.

Mr. SMITH. Mr. Trebilcock, thank you very much for your excellent testimony. Without objection, the documents you have cited will be made a part of the record.

Mr. TREBILCOCK. Thank you.

Mr. SMITH. Mr. Hyde, would you like to make any comment?

Mr. HYDE. No. I just thank the witness very much for a very telling story.

Mr. TREBILCOCK. Thank you, Mr. Hyde.

Mr. SMITH. I would like to welcome now, to make his testimony, Mr. Craig Wilson, who, if you could—we will have to interrupt. There is another series of votes coming up. But would you please begin your statement, and then I will come back, and other members of the subcommittee, to receive the remainder of it.

STATEMENT OF CRAIG WILSON, ATTORNEY WILSON AND ASSOCIATES, P.C.

Mr. WILSON. Yes. Thank you, Mr. Chairman.

Mr. Chairman, I am here as an immigration attorney from New York from that is now a three-attorney firm; and I became involved in the Golden Venture representation from the beginning; and I handled quite a few cases during the pre-appellate aspect of the cases with the immigration judges.

Up until that time, one could say I specialized-in this area. I probably handled about 1 to 200 other Chinese cases for persons who fled China based on the Chinese coercive population control policy.

As I tried to assist my clients in obtaining their statements, they asked me for predictions on what might happen to them. Based on my experiences, I made certain predictions on whether they would be eligible for parole, whether their claims amounted to asylum under our laws and policies.

And unfortunately all of the predictions were contradicted by what became a very rapid and furious change in policy right at the time of the Golden Venture.

The clients were in various locations, and the attorneys who handled these aspects of the cases administratively spent weeks locating the clients who were hired by relatives in New York City and other places to represent them. We could not find them.

The hearings were expedited. There were characterizations in the press of the reasons why they came here. The reasons we heard were that they were coming for economic reasons. I had heard from employees of INS that the women were being brought here for prostitution.

I do not know who invented these stories, but there was nothing really to support that in anything that developed later.

The harsh treatment continued up until today. As you can see, the proposed witnesses are not with us. And this is a continuing aspect of the harsh treatment that they have been receiving.

In a letter which was addressed to the Honorable Chairman, INS explains why they are not being brought here today. There are two reasons outlined which I have had just a moment to review.

Enforcement concerns. Basically, INS is concerned that if they bring the people here to testify it would delay their departure from the United States.

Well, they have been here for 2 years and are likely to be here for a while longer. I cannot even guess at what percentage we are at resolution of this matter.

Second, and what I am a little confused about is they are saying that if they are brought here that we would be creating an asylum claim where none otherwise exists, because if they were to testify here, they would receive further harsh treatment in China from the government by means of reprisals.

This seems completely irrational. I think this is the most publicized immigration case probably in the history of the country.

When I tell people who do not know me very well that I am an immigration lawyer, they ask me if I have worked on the Golden Venture. If they know nothing else about immigration, they know about the Golden Venture.

Second, if by bringing these four individuals here we really are creating an asylum claim, what is the harm in that? I think the government has failed to express why that would not be in the interest of the United States to have them here, even if it means creating another asylum claim.

And that has been the policy that I cannot fully understand the meaning of.

I thank you very much.

Mr. SMITH. I thank you for your testimony.

And the subcommittee will stand in recess until these couple of votes have been concluded.

Mr. HYDE. Before the gentleman—

Mr. SMITH. I would be happy to yield to the gentleman.

Mr. HYDE [continuing.] Does that, I would like to ask the last gentleman who—I do not see your name there—

Mr. BURGESS. John Burgess.

Mr. HYDE. Oh, Mr. Burgess. Do you do immigration work generally?

Mr. BURGESS. Actually, I have been kind of a country lawyer the last few years.

Mr. HYDE. Well, the gentleman who just testified—I do not see your name either.

Mr. WILSON. Mr. Wilson.

Mr. HYDE. Mr. Wilson, do you do immigration work in New York?

Mr. WILSON. Yes, sir.

Mr. HYDE. Is it your information that a Jewish person from Russia who gets an exit visa to Israel but prefers to come to the United States does get to come to the United States by way of Vienna and Rome and then to the United States and is admitted as a refugee by virtue of the fact that they are of the Jewish faith and it is presumed, ergo, they are persecuted in Russia?

That is my understanding of the scenario. Is that your understanding?

Mr. WILSON. Well, I have handled only two such cases and neither of them had arrived via Israel. However, if they are admitted as refugees, I would imagine that—

Mr. HYDE. No, they do not go to Israel. In Vienna they are asked where they want to go, and a third of them, I guess, go to Israel and two-thirds come here.

I asked one of these refugees in Rome why they—since they asked to go to Israel—why they did not go to Israel, and they said, "Well, there's a war on there." They wanted to come here.

I am just trying to make a point that if you are Jewish and you are from Russia, where you would be persecuted because of your religion, there is no problem getting classified as a refugee and coming into the country.

But if you are Chinese and they are coercing abortions out of you, nobody wants to talk to you or see you or hear you. Or, God forbid, publicly put your story on the record. That might give you a claim for asylum.

Mr. WILSON. I would agree with that.

Mr. HYDE. I thank the gentleman.

Thank you, Mr. Chairman.

Mr. SMITH. The subcommittee is in recess.

[Recess.]

Mr. SMITH. The hearing will reconvene. I want to thank everyone for their forbearance, and I do apologize for the constant interruptions. This has been a very heavy floor day in terms of voting. The next vote should not be for an hour or so, so I think we are in the clear, at least for the time being.

I would like to ask Mr. John Burgess if he would make his testimony now. And any documents you would like to submit for the record, and this goes for all the other witnesses as well, without objection, they will be made a part of the record.

Mr. Burgess.

STATEMENT OF JOHN M.A. BURGESS, ATTORNEY

Mr. BURGESS. Thank you, Mr. Chairman. We wanted to thank you for your interest in this issue and your support for these men and women who are suffering greatly, as you know. We greatly appreciate it. You may be their best and final chance for justice and for humane treatment. So we thank you.

I have already submitted a copy of my testimony which is arguing the International Torture Convention. I think I left a copy with a staff member and would ask that that be submitted to the record.

Mr. SMITH. Without objection, it will be a part of the record.

Mr. BURGESS. Thank you.

[The statement of Mr. Burgess appears in the appendix.]

Mr. BURGESS. One thing that seems to be happening here, we seem to be revisiting some prior territory in these cases.

One, I just mentioned the 1882 Chinese Exclusion Act which was eventually repealed, I think, in 1943. But surely it stand as the most vicious and racist immigration act in the history of America. And once again we seem to have come full circle with Chinese people being involved.

Also in the Nuremberg trials, the issue of forced sterilization of Polish women was raised and declared an international crime against humanity and punished.

And, once again, it seems to have arisen.

The United Nations charter, the signature of which we are now observing the 50th anniversary in San Francisco this week, as I left to come here, provides in Article 55 that "the United Nations shall promote . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinctions as to race, sex, language, or religion."

This is known in common parlance as the "Universal Declaration of Human Rights." And its standards have become international law and are considered customary legal norms, recognized throughout the world and have been recognized in Federal courts in the United States.

The International Covenant on Civil and Political Rights, which entered into in the United States on September 5, 1992, provides specifically: "The right to found a family implies, in principle, the possibility to procreate and live together. When nation parties adopt family planning policies, they should be compatible with the provisions of the covenant and should, in particular, not be discriminatory or compulsory."

Even prior to the ratification of the "Political Covenant" by the United States, a series of Federal judicial decisions had recognized and indirectly incorporated provisions of the covenant into law throughout the United States as a basis of fundamental human rights and minimum standards of fairness and due process guarantees.

More specifically and more recently the Convention Against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment, which by shorthand we call the "Convention against Torture," entered into force in the United States in November 20, 1994.

The provisions in Article 1 define torture as: "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him or her for an act he or she has committed or is suspected of having committed, or for any reason based on discrimination of any kind." And that includes any "pain or suffering inflicted by or at the instigation of or with the consent or acquiescence of a public official."

Clearly that applies to Chinese planning officials and governmental officials acting in concert with them.

Article 3 of the convention states: "No state party—meaning no nation party—shall expel or return or extradite a person to another nation where there are substantial grounds for believing he would be in danger of being subjected to torture."

This may create a new international right of non-refoulement or non-repatriation. It has yet to be ruled upon by any court. We have brought this before the United States District Court in the Northern District of California in which, on May 25th we had a hearing. The court has still not ruled in this case. But I attached

the Convention Against Torture as Exhibit 1 to our brief in support of the writ for habeas corpus.

Article 3 of the Torture Convention goes on to state that: "For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the state concerned of a consistent pattern of gross, flagrant, or mass violations of human rights."

When you have millions of men and women being forced to be sterilized or aborted, certainly that is a consistent pattern of a gross violation of human rights affecting all of them.

And as everyone knows, I think, in this country, reproductive self-determination is a fundamental right protected by the United States Constitution through numerous Supreme Court decisions beginning with "*Skinner v. Oklahoma*," where they were going to sterilize persons convicted two or more times for felonies and continuing down through "*Griswold v. Connecticut*," and, of course, "*Roe v. Wade*."

In summary, we believe it is beyond argument that reproductive self-determination is a fundamental and universally recognized international human right protected under our constitution as a basic civil right of men and women.

It is equally clear that forced sterilization and abortion violate international customary legal norms enunciated in the Declaration of Human Rights and prohibited by the International Covenant on Political Rights and specifically by the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment ratified by the United States.

We believe these provisions are clearly in force and binding on the executive branch and the Immigration and Naturalization Service, both under the treaty making power of our Constitution as the supreme law of the land and under international law.

Beyond question, forced sterilization and abortion constitute cruel and unusual treatment prohibited under the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution.

For that reason, we believe the foregoing treaties, international standards of universal human rights, and customary international law, require a finding that these petitioners, these Chinese refugees, be granted asylum because of their opposition to the family planning policies of the People's Republic and on account of their past persecution thereof.

It is respectfully submitted that only by holding that the Universal Declaration of Human Rights and the aforementioned treaties have no legal or moral binding effect in the United States on implementing its asylum policies and by holding that forced sterilization and abortion are not cruel, inhumane, or degrading treatment or cruel and unusual punishment can these folks be forcibly repatriated to China.

And in closing I just would like to say that one of our clients, as Mr. Rees has so eloquently argued in many of his memoranda, was 6 months pregnant. They forced her to have a child, injected the little baby's head with formaldehyde to kill the child upon birth.

Whether one is a freedom of choice advocate or a right to life advocate, that is murder under almost any statute in the world. And we feel that the United States, through the Immigration and Naturalization Service, by denying these people asylum are, in effect, morally becoming accessories after the fact to murder.

Thank you for the opportunity of appearing here.

Mr. SMITH. I want to thank you, Mr. Burgess, for your very eloquent testimony.

Mr. SMITH. I want to commend all three of our witnesses for the tremendous humanitarian work that you are doing behalf of people who have, by our own government now, been deemed to be a kind of persona non grata. The unwillingness of our government to show at least a minimum amount of humanitarianism, empathy, and compassion for those who have suffered such indignities and cruelty is breathtaking. It is mind boggling.

I, during the course of hearings that we had last year, repeatedly asked the administration what their position was on asylum vis-a-vis coercive population control programs in China and continually was led down a path of subterfuge and gobbledegook and language that would indicate that somehow they were concerned, while in reality they are doing everything that they possibly could do to send these victims back to their oppressors.

And I want to say that this subcommittee, and I know the full committee will do the same, will be tenacious in trying to assist these victims. I suspect there will be a barrage of anti-immigration-type organizations who are already attacking me personally. And I can say—and I say this very much for the record—that the more they attack me, the more I harden my position that we are doing right. We are simply trying to help people who are being oppressed.

And if my wife were in this situation, I would hope that somebody in the other country would be taking, as you three gentlemen are and other like-minded people like you who support these individuals, would rise up on their behalf or on my wife's behalf.

You know, my wife and I have four children. If we lived in China, three of them would be dead. It is a shame that we are not willing to protect that very, very small number of people. During the Reagan and Bush years we opened our arms and said, yes, these are grounds, if they are well founded, for receiving asylum.

It is an outrage.

It is also, I think, a real insight into this administration's callousness toward women. Because if a woman—as you have pointed out, Mr. Burgess—forced sterilization and forced abortion, at the Nuremberg war trials, were indeed found to be a crime against humanity. And these crimes against humanity are ongoing in the PRC. We know it.

Congress has gone on record on two separate occasions endorsing a statement that these are crimes against humanity in China. And we still persist in aiding and abetting and winking and white-washing these heinous crimes.

You are doing tremendous humanitarian work, and I commend you for it. We will do everything we can possibly do to see that your clients are here before this subcommittee.

And, again, if that provides some avenue for a new claim, as Mr. Wilson, you pointed out, I frankly think that your being here might do that. The fact is they are already women and men who have a target on their back. The Golden Venture is probably the most celebrated asylum case, the Golden Venture, in recent times.

It is ludicrous to think that there are not people who are very well known to government officials in China. Ludicrous. It defies one's imagination to think that appearing before this subcommittee today would somehow make them more marked. They already have a target on their back. And shame on the administration for its insensitivity to these individuals.

I have been in Congress for 15 years. I have never seen such a callous disregard for people's lives as I have seen by the Clinton administration. I do not say that as a partisan. You know, if this was being done by Presidents Reagan or Bush, I would be saying the same thing. It just boggles the mind.

I commend you. We will keep trying on this subcommittee. We are now in consultations with Speaker Gingrich and others to see what our next step will be vis-a-vis subpoenas and the like.

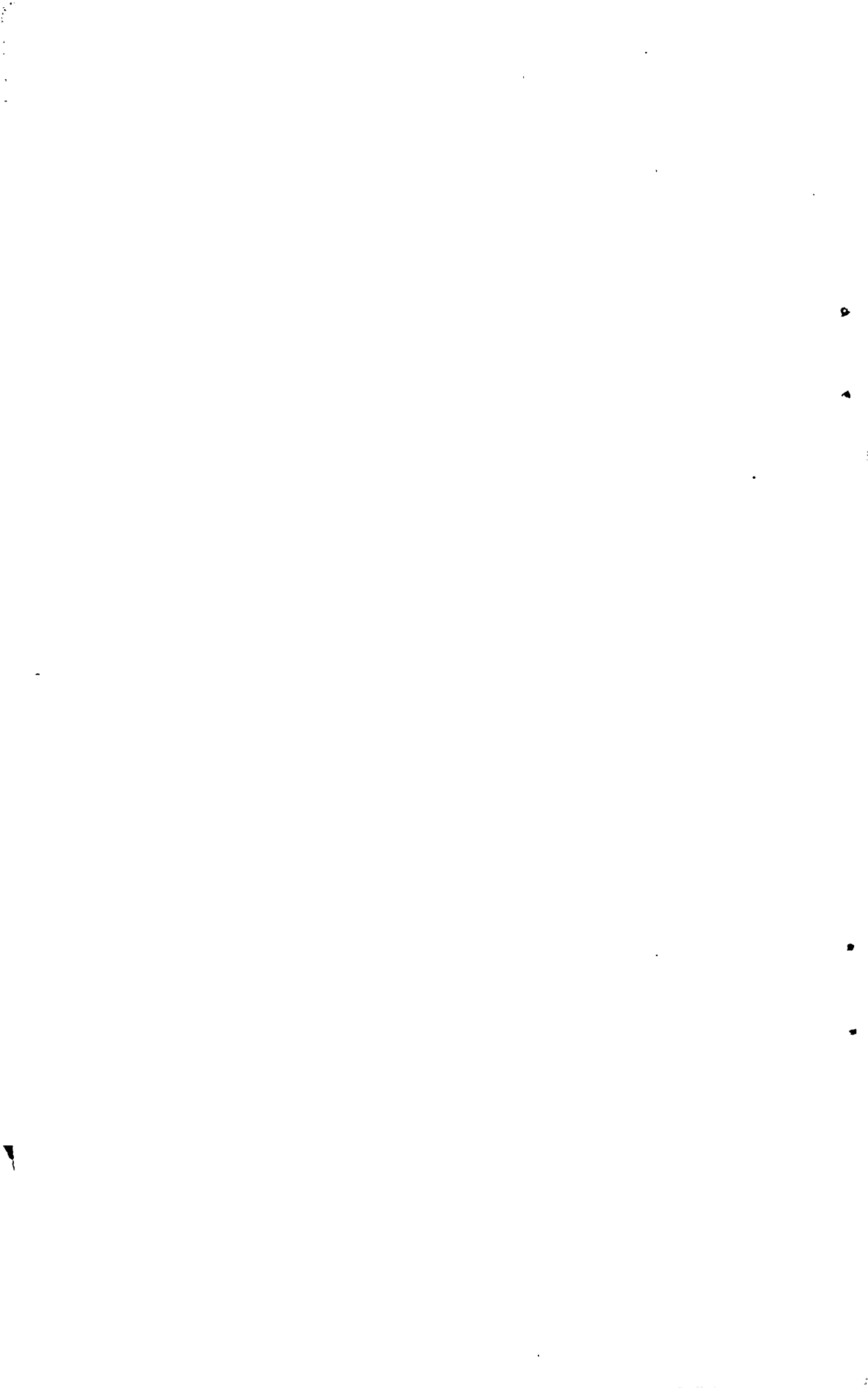
So thank you. And without further ado, this subcommittee is adjourned.

Mr. TREBILCOCK. Thank you.

Mr. BURGESS. Thank you, Mr. Chairman.

Mr. WILSON. Thank you.

[Whereupon, at 3:53 p.m., the subcommittee was adjourned, to reconvene Wednesday, June 28, 1995.]



TO CONSIDER THE ISSUANCE OF SUBPOENAS, WRITS OF HABEAS CORPUS AD TESTIFICANDUM, AND/OR OTHER MEASURES TO SECURE THE ATTENDANCE OF WITNESSES

WEDNESDAY, JUNE 28, 1995

**HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERNATIONAL RELATIONS,
SUBCOMMITTEE ON INTERNATIONAL OPERATIONS AND
HUMAN RIGHTS,
*Washington, DC.***

The subcommittee met, pursuant to notice, at 10:15 a.m. in room 2172, Rayburn House Office Building, Hon. Christopher H. Smith, (chairman of the subcommittee) presiding.

Mr. SMITH. The subcommittee will come to order.

The subcommittee on International Operations and Human Rights meets today in open session pursuant to notice to consider taking steps to secure the testimony of certain witnesses on coercive Chinese population control practices.

The subcommittee has been engaged in discussions with the Department of Justice about the availability of these witnesses who are now in Federal custody.

The Department had agreed to produce them to testify before us but then notified us at the last minute that it would not agree to produce the witnesses unless we held a secret session.

The chair has provided the members with documents relating to our discussions with the Department. Unfortunately, despite our extended exchanges with the Department, it has not shown any indication to make a reasonable response to our request.

We understand that the administration has requested an opportunity to explain why it does not want to present these witnesses. This request was not made directly to the subcommittee, but it was made to a member of the full committee staff.

And let me just say that we had decided that we would do that, that we would meet prior to this proceeding, to hear testimony in closed session from the administration; and at the last minute, again, even on this issue, they have failed to show up.

I would like to note that Clause 2(m)(1) of Rule XI of the Rules of the House of Representatives provides in pertinent part that: "For the purposes of carrying out any of its functions and duties under this rule and Rule X, any committee or any subcommittee thereof is authorized to require by subpoena or otherwise the attendance and testimony of such witnesses as it deems necessary."

The testimony of the people named in the motion that is about to be offered is essential for this subcommittee to carry out its functions and duties, under the Rules of the House, and of the Committee on International Relations.

In particular, this subcommittee has jurisdiction of matters about which those individual people are to testify under House Rule X(1)(i)(1), relating to, quote, "relations of the United States with foreign nations," and under Committee Rule 14(b)(1), which grants this subcommittee jurisdiction to oversee, quote, "international population planning and child survival activities."

Let me note for the record that the chair regrets that it will be necessary for the subcommittee to take action to compel testimony of these witnesses, but the eleventh hour stonewalling of the Department of Justice affords the subcommittee no other choice.

At this point, the chair would be in receipt of a motion.

Mr. GOODLING. Mr. Chairman, I have a motion at the desk.

Mr. SMITH. The staff director will report the motion.

Mr. REES. The motion is as follows:

"I move that the subcommittee adopt the following order:"

"Ordered by the subcommittee on International Operations and Human Rights of the Committee on International Relations, House of Representatives:"

"(a) That the Chairman of the subcommittee on Human Rights and International Operations or his designee, or, under their direction, the staff of the subcommittee, be authorized and requested, pursuant to the Rules of the House and of the Committee, to take all necessary steps to secure the testimony, at the earliest possible date, of—"

Mr. SMITH. Without objection, the resolution will be considered as read.

Mr. LANTOS. May I speak to the resolution, Mr. Chairman?

Mr. SMITH. The chair recognizes the distinguished ranking member, Mr. Lantos.

Mr. LANTOS. I want to thank the chair for recognizing it, and I want to acknowledge the enormous contributions that Chairman Smith has made to the cause of human rights during his tenure in the Congress. I have had the privilege of working with him shoulder to shoulder on a broad range of issues and look forward to doing so for many years to come.

It seems to me, Mr. Chairman, there are three issues entailed in this resolution. I think we need to separate the three issues.

The first is the issue of forced abortions perpetrated by the Government in Beijing. You and I are entirely of one mind on this issue. Both you and I have repeatedly expressed our outrage at this practice. There is no one in this body who is more adamantly opposed to forced abortions than you are and I am and, I am sure, every Member of this subcommittee is. So the issue is really not one of forced abortions; although, forced abortions are in the background of this discussion.

The second issue, Mr. Chairman, is the very serious problem of mafia-run, illegal immigration operations into the United States. I am sure I can speak for every Member of this subcommittee on both sides of the aisle in saying that we are united in opposing mafia-run, illegal immigration operations into the United States.

That is the reason why the individuals you are wishing to appear before this subcommittee are in this country. They came to this country because of mafia-run, illegal immigration operations. And it is an extremely important function of our government to prevent or at least to minimize the success of Chinese and other mafia gangs who are illegally transporting aliens to the United States.

You well remember, Mr. Chairman, as we all do that both on the East Coast and West Coast, ships were intercepted. In some cases, the people who travelled on these ships were traveling under, inhuman, unsanitary, cruel conditions. And it is one of the very important jobs of our government to restore control over our borders. No civilized country can long survive if it does not control its borders.

These people, as I understand it, came to this county under these circumstances.

The third issue that the resolution relates to is whether the hearing is to be public or closed. You used the term, Mr. Chair, "secret," and I do not think that is the appropriate phrase. The appropriate adjective is "open hearing" or "closed hearings." Hearings are not secret. They are either open to the media or the public, or they are closed.

The Department of Justice wishes these hearings to be closed hearings. During the course of closed hearings, as both of you and I have attended many closed hearings, witnesses have full opportunity to present their case to Members of the subcommittee. And I strongly favor, if you so choose, to having these individuals appear before the subcommittee in a closed hearing to make their case.

The Department of Justice maintains that by appearing at an open hearing, the individuals change their status. They change their status because they become publicly associated with denouncing the practices of the Government of China, which you and I have denounced many times; thereby, acquiring rights to remain in this country which, short of a public hearing, they would not have.

It seems to me, Mr. Chairman, it would be appropriate before considering this motion to provide the Department of Justice an opportunity in open hearing to make their case.

Mr. SMITH. Would the gentleman yield on that point?

Mr. LANTOS. I will be happy to.

Mr. SMITH. That request was made, and that request was accepted by the chair; and the administration was invited to be here this morning and told us again they just simply did not want to show up.

So I am baffled by their reluctance to be here this morning.

Mr. LANTOS. I would like to ask the chairman, if I may, whether Attorney General Reno or any other appropriate official of the Justice Department has been invited to appear at a hearing of this subcommittee to explain their rationale for preferring a closed rather than open hearing on this subject?

Mr. SMITH. Again, let me just say that the request was made via your staff, the Democratic staff, to be here this morning; and we—

Mr. LANTOS. We have issued no—we have no authority, Mr. Chairman, to issue invitations to—

Mr. SMITH. Well, we made it very clear we would be more than happy. But one of the things that concerns me is that these people are in a situation such that at any moment they could find themselves on their way back to China. And time is of the essence, and any potential stonewalling that the administration may engage in to preclude us from moving on this—this was 2 months of negotiations with Janet Reno, her people I should say, and people in the loop.

And it was not until the night before the hearing that they realized the importance, from their point of view, of closing the hearing—and in my view that is synonymous with being secret, because nothing that would occur inside the four walls could go outside of those four walls. And I think, if anything, this issue has suffered from lack of scrutiny and exposure rather than too much of it.

And these people, I would just say to my friend, if he would continue yielding, are very, very public people. This is the most celebrated refugee case in modern times. Every one of those people already have a target on their backs. They are well known to the government. They have been on nationwide network television, including CBS Network News. So they are hardly, by appearing here, going to all of a sudden make themselves known to the authorities in Beijing.

Mr. LANTOS. If I may reclaim my time, Mr. Chairman, we have no control over the procedures of CBS or any other private television network. We have control over and responsibility to the Congress of the United States.

When we were in the majority, we repeatedly honored the requests of various departments, including the Department of Justice, under appropriate circumstances to hold a closed hearing.

Following a closed hearing, nothing stands in the way, if the majority so chooses, to hold an open hearing. But I do not believe it is appropriate procedure, prior to allowing our Department of Justice to make their case in a closed hearing to this subcommittee, to issue a subpoena.

I certainly am delighted that we are privileged to have the chairman of the Judiciary Committee, my good friend from Illinois, sitting here with us. Because his legal expertise certainly towers over mine. And I would be most anxious to have his views on this subject.

I have no objections, and if I do have objections, clearly the votes are there, my objections will be overruled. But I believe that proper procedure calls for a closed hearing as requested by the Department of Justice for reasons that they deem sufficient, and I agree with those reasons. An open hearing may, then, follow the closed hearing. But it is, I think, appropriate for the chairman to issue an invitation to the Justice Department to make their case in a closed hearing after which the majority may act in any way it chooses.

I would be delighted to yield to my friend from Illinois if he would care to make his learned observations on this issue.

Mr. HYDE. People always yield to me even without my asking.

I stand with Mr. Smith. I just think courtesy would dictate more comity on the part of the Justice Department. If there are prob-

lems, why not come to Mr. Smith and discuss them? Why the absence today?

Mr. Smith tells us he has invited them, and they chose not to appear. There are telephones all over this town. They have a congressional liaison. I am really at a loss to know why the snub. I am loathe to think that it is an insult to this subcommittee, but I am concerned when invitations are extended that are summarily ignored.

So I—

Mr. LANTOS. If I may reclaim my time, Mr. Hyde, my information from the Department of Justice is that they neither snubbed the chairman nor ignored the invitation. They requested that the hearing be a closed hearing, and they are more than ready to testify at a closed hearing.

Now you know as well as I do, having served together on the Foreign Affairs Committee, that occasionally the State Department requested closed hearings. Occasionally the Justice Department requested closed hearings. I think the courtesy goes the other way.

I think subcommittees of Congress or committees of Congress should extend to responsible administration officials the courtesy of hearing their case in a closed hearing. If, after that, it is the judgment of the majority of a subcommittee that an open hearing should be held, clearly the majority has that privilege.

But there has been no scheduling of a closed hearing as yet despite written requests to the chairman by appropriate officials of the Department of Justice.

I am sure my good friend, the chairman, and Mr. Hyde and other Members have copies of the correspondence between Chairman Smith and the Department of Justice. The Department of Justice is fully prepared to appear at a closed hearing to present their case. And I believe, Mr. Chairman, they are entitled to do that.

Mr. SMITH. If there is no further—

Mr. GOODLING. Mr. Chairman?

Mr. SMITH. Yes.

Mr. GOODLING. I would just like to indicate that I hope you have greater success than I have had in dealing with the Justice Department on this issue.

In the prison in York County there are approximately 100 Chinese detainees. For more than a year I have tried to get the Justice Department to give me some indication as to why they are there, why nothing is happening, why they do not make a decision one way or the other as to what it is they are going to do. I have gotten very little in response to my inquiries.

My county loves it because, of course, as taxpayers, you are paying 48 bucks a day. It costs us \$24 a day to keep them. So we are balancing our county budget on the backs of people who are being incarcerated with no indication as to what their future will bring them.

So I just merely say, I hope you get more definitive answers to your inquires and your questions than I have been able to get over a year's period.

Mr. SMITH. Is there any further discussion?

Ms. MCKINNEY. Mr. Chairman, I have a question. I would like to know what happens to these women if we bring them here in an open session?

Mr. SMITH. I would be happy to answer that.

First of all, these women, their cases, the information concerning their cases is very well known to the Chinese leadership. I have maintained that when the administration callously and cruelly reversed the Reagan/Bush policy of providing asylum for those women and men who can show a well-founded fear of persecution because of forced abortion and forced sterilization, they would have to make their case; and during the Reagan and Bush years, approximately 150, maybe as many as 200 people, under that category, were able to procure asylum here in this country.

That was reversed in the first week of the Clinton administration. For 2 years, this particular Member (and now into a third year) has been trying to get the administration to clarify their position. I have done it in open hearings over and over again. Only recently have we discovered, de facto, without question, that they have reversed that policy and that people are going to be sent back.

These individuals probably have exhausted their appeals process. They are slated to be sent back or meet some other fate. And in terms of their cases, they have been heavily covered by the news media including, as I mentioned, CBS Network Television.

When I read the statement from Kent Markus, Acting Assistant Attorney General that the publicity surrounding a public hearing would only create the potential for new grounds for asylum where none currently exists, if the idea that they are well known is a concern and that they had made strong statements against the policy of the People's Republic of China, they have already done that. About that there is no question.

I hope that they get asylum. I think it is cruel, what the administration has done to these individuals. We hope, as a coequal branch with the executive branch, to get their testimony about this barbaric practice of forced abortion out in an open hearing.

To suggest it ought to be closed, secretive, to me is wrong. They have a right to be heard. And I think we have a right to hear them without censorship. And by closing this off, I think we at least give the impression that we want to do this behind closed doors.

I would like to say, without any further discussion, the motion by the gentleman from Pennsylvania is before the subcommittee—

Mr. LANTOS. I would like to make a point of order, Mr. Chairman, that a quorum is not present.

Mr. SMITH. A quorum is present.

We will call the roll.

And, again, I want to say to my friend—well, the chief of staff will call the roll.

Mr. REES. Mr. Smith.

Mr. SMITH. Here.

Mr. REES. Mr. Gilman.

[No response.]

Mr. REES. Mr. Goodling.

Mr. GOODLING. Present.

Mr. REES. Mr. Hyde.

Mr. HYDE. Present.

Mr. REES. Mr. King.

Mr. KING. Present.

Mr. REES. Mr. Salmon.

Mr. SALMON. Present.

Mr. REES. Mr. Funderburk.

Mr. FUNDERBURK. Present.

Mr. REES. Mr. Royce.

[No response.]

Mr. REES. Mr. Lantos.

[No response.]

Mr. REES. Mr. Berman.

[No response.]

Mr. REES. Ms. McKinney.

[No response.]

Mr. REES. Mr. Moran.

[No response.]

Mr. REES. Mr. Faleomavaega.

[No response.]

Mr. REES. Mr. Payne.

[No response.]

Mr. REES. Mr. Gilman.

Mr. GILMAN. Present.

Mr. HYDE. Mr. Chairman?

Mr. SMITH. The chair will recognize Mr. Hyde.

Mr. HYDE. Mr. Chairman, I have a parliamentary inquiry. Is it possible for a Member to make a point of order that a quorum is not present and then absent himself immediately following making that point of order so that he is not present?

Is that person counted as present inasmuch as he made the point of order or not?

Mr. SMITH. I think it is a very interesting question, and unfortunately it is the bizarre activity that has been engaged in today.

We will check that with the parliamentarian to determine that.

Mr. HYDE. I would just suggest when you call for the question it is who is in the room. And, obviously, a quorum was here. But whatever the chair wishes to do.

Mr. SMITH. Again, we have an inquiry with the House parliamentarian and should have a ruling on that shortly.

Mr. HYDE. That motion was made by Mr. Lantos—

Mr. SMITH. Yes, it was.

Mr. HYDE [continuing.] Of California, who was present. Certainly I was here, and I heard every word he said. And having made the motion, he then absented himself from the room with several of his fellows.

Mr. SMITH. Mr. Hyde makes an excellent point.

The chair would just announce to the Members that the one Member who will round out the quorum is on his way. He will be here momentarily.

Let me just bring to the attention of everyone, if you have not seen it, there is a wire story. The Amnesty International organization has done a very incisive piece on coercion in China which is probably their strongest statement to date on this barbaric practice. And I think it is important that many of the human rights or-

ganizations that, for years, simply did not recognize and pay attention to this issue have now put this right in the forefront of human rights abuses in the People's Republic of China.

As the UPI story puts it: "Amnesty International, in the strongest challenge yet to China's claims that coercion is not part of its one-child policy, said, 'Forced abortion and sterilization have been carried out by or at the instigation of people acting in an official capacity.'"

And as I think all of us know, one of the subterfuges routinely engaged in by the Chinese officials has been to say that they do not countenance any of this kind of thing. Everyone knows it is the big lie. And now, again, Amnesty International has stepped up to the plate and done a very fine report on that. And we are grateful that they have done this to help fill out the record.

We will just proceed momentarily as soon as the quorum is present.

Mr. REES. Mr. Royce.

Mr. ROYCE. Present.

Mr. SMITH. The chair will just observe that the roll call taken a short while ago indicated that a quorum for purposes of authorizing a subpoena was not present at that time.

In response to Mr. Hyde's inquiry, the House parliamentarian has advised me that a Member who makes the point of order that a quorum is not present is not counted as present if he leaves the room, which is what Mr. Lantos did, before his name is called.

At this time, I would ask if there is any further debate on the motion from Mr. Goodling.

Mr. GOODLING. Roll call, Mr. Chairman.

Mr. SMITH. Let me note for the record that a quorum is present.

The question is on the motion of the amendment of the gentleman from Pennsylvania, Mr. Goodling.

In his capacity as a Member of the subcommittee, the chair will request a roll call vote on this. And the staff director will call the roll. All those in favor will indicate so by saying aye. All those opposed will indicate in the negative.

Mr. REES. Mr. Gilman.

Mr. GILMAN. Aye.

Mr. REES. Mr. Goodling.

Mr. GOODLING. Aye.

Mr. REES. Mr. Hyde.

Mr. HYDE. Aye.

Mr. REES. Mr. King.

Mr. KING. Aye.

Mr. REES. Mr. Royce.

Mr. ROYCE. No.

Mr. REES. Mr. Salmon.

Mr. SALMON. Yes.

Mr. REES. Mr. Funderburk.

Mr. FUNDERBURK. Yes.

Mr. REES. Mr. Smith.

Mr. SMITH. Aye.

Mr. REES. Mr. Lantos.

[No response.]

Mr. REES. Mr. Berman.

[No response.]

Mr. REES. Ms. McKinney.

[No response.]

Mr. REES. Mr. Moran.

[No response.]

Mr. REES. Mr. Payne.

[No response.]

Mr. REES. Mr. Faleomavaega.

[No response.]

The vote is seven ayes, one nay.

Mr. SMITH. The motion is agreed to.

I want to thank the gentleman for their patience this morning.

The subcommittee is adjourned.

[Whereupon, at 11:12 a.m., the subcommittee was adjourned, to reconvene Wednesday, July 19, 1995.]



COERCIVE POPULATION CONTROL IN CHINA

WEDNESDAY, JULY 19, 1995

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERNATIONAL RELATIONS,
SUBCOMMITTEE ON INTERNATIONAL OPERATIONS AND
HUMAN RIGHTS,
Washington, DC.

The committee met, pursuant to notice, at 2:10 p.m. in room 2118, Rayburn House Office Building, Hon. Christopher H. Smith, (chairman of the subcommittee) presiding.

Mr. SMITH. The Subcommittee on International Operations and Human Rights will come to order.

I want to welcome our very courageous witnesses to this important hearing. Today, at long last, we will hear from the people who risked their lives in search of freedom. These are also people who can testify from their own personal experience about the horrors of forced abortion and forced sterilization under the coercive population control program of the People's Republic of China. Each of our four witnesses today have been found by a United States Immigration judge to have testified credibly that he or she was subjected to a forced abortion or to a forced sterilization or fled China under an imminent threat of being forced to undergo such a procedure.

Forced abortion was properly considered a crime against humanity at the Nuremberg war crime trials. Today it is employed regularly with chilling effectiveness and unbearable pain upon women in the People's Republic of China.

Human rights groups have universally condemned the People's Republic of China's coercive population control program. The Lawyers Committee For Human Rights in a letter last month to Chairman Ben Gilman of our House International Relations Committee said, and I quote:

"The forced abortion and sterilization of those who refuse to comply with coercive government policies violates the most fundamental of human rights—the rights of bodily integrity. These invasive and inhumane practices, imposed by Chinese Government officials, in our view clearly constitute persecution within the meaning of the Refugee Act . . . We applaud your efforts to correct this injustice and clarify the scope of the law."

Amnesty International USA, which issued a report this spring about two predominantly Catholic villages in China that were targeted for especially brutal enforcement of the coercive family planning policy, added the following:

"[I]f a person can show that he or she has resisted coercive family planning practices imposed by the authorities, that person is eli-

gible for protection under asylum law, as they are a member of a group which may be targeted for abuse . . . [A]ssuming that such persons do not qualify for protection under some interpretations of US asylum law, Amnesty International would endorse any effort to provide them with such protection . . . ”

Last month the House passed H.R. 1561, the American Overseas Interests Act, which contained a provision that would restore asylum protection under United States law for people who can prove that they are unwilling or unable to return to their home countries because of forced abortion, forced sterilization, or a well-founded fear of being forced to undergo such procedures or of being persecuted for resistance to them. This provision was endorsed not only by the Lawyers Committee and Amnesty, but also by the United States Catholic Conference, the Council of Jewish Federations, the Women’s Commission for Refugee Women and Children, and a wide range of other human rights groups, refugee advocates, and women’s organizations. Even the Center for Reproductive Law and Policy, a litigation center that vigorously supports the legalization of abortion—which I do not—has made it clear that it regards forced abortion and forced sterilization as persecution.

So our witnesses today are refugees. Unfortunately, they are also prisoners—detained for over 2 years under a bizarre interpretation of our immigration laws, which treats resistance to coercive population control policies as no different than ordinary lawbreaking, and regards resisters as illegal immigrants rather than refugees fleeing persecution. When H.R. 1561 becomes the law, perhaps they will be freed. The purpose of today’s hearing is not to explore the reasons for their detention in the United States or their treatment while in detention—although I would say parenthetically that I was somewhat surprised, and I would say shocked, that prior to coming out to this hearing, in the anteroom, each of our witnesses were handcuffed. Rather, the purpose of this hearing is to hear their stories, to bring home to Congress and to the American public the horrors to which they have been subjected and the brutality that they will face if the Clinton administration forcibly returns them to China.

On behalf of the subcommittee, I welcome our witnesses. We are honored to hear your testimony.

I would like to ask if any of the Members of our subcommittee or Members of the House who are here would like to say anything in opening?

I yield to my distinguished friend.

Mr. SALMON. Thank you, Mr. Chairman. I would simply like to say that we in America, for a long, long time, have represented freedom in this world. Many times when other nations have thrown in the towel and turned their back on those with a similar plight, we have stood as a beacon to represent freedom and to help people to pursue life according to the dictates of their own conscience.

I think it is unconscionable that at this time in America’s history we are turning our back on folks like the ones that are going to be testifying before us today who have a God-given right to bear children, to raise families, and to love those families. And I am deeply sorrowful that this administration chooses to turn its back on the people that are being persecuted.

And if you will indulge me, I would like to share just a few thoughts in, hopefully, their native tongue, Mandarin Chinese. I served a mission for my church and learned the Mandarin language, and I would just like to share my thoughts.

[Speaking in Chinese.]

Mr. SMITH. Thank you, Mr. Salmon.

Mr. Hyde?

Mr. HYDE. I have no statement. Thank you, Mr. Chairman.

Mr. SMITH. Mrs. Smith?

Mrs. SMITH. Thank you, Mr. Chairman. I am going to make my statement brief. I have been invited to join this committee today and welcome the invitation because I am very confused. I am confused by the current administration's policy, and I came to listen to you to see if my conclusions are inaccurate.

It appears our administration stands for the choice of women to choose whether they have children or not but is violating that very standard by sending you back to China because of your choice. It appears we have a schizophrenic administration, and I cannot understand it.

I also cannot understand something else—and I am new in politics, so there is a lot I have to learn—but I cannot understand why I first saw you come in in handcuffs. I do want to find out before this is over if any of you have ever harmed anyone or violated the law to be treated like that in a country that is supposed to be free.

I am sitting here today, and I am going to listen to everything I can hear to see what justifies as what I see is the cruelty of sending you back to what will be much more cruel from what I hear. But I want to listen carefully to what you say because America is free and we do have a free system that should give you justice. And if I cannot see that you are being given justice, I am going to join you in what will be one of the most outspoken, deliberate attempts to try to keep you here that I personally can do.

But, again, I want to listen to your stories.

Thank you, Mr. Chairman.

Mr. SMITH. Thank you.

The chair recognizes Mr. Faleomavaega.

Mr. FALEOMAVAEGA. Mr. Chairman, I want to thank you for calling this hearing this afternoon and certainly want to commend you for your leadership, especially on this very important subject as has been recognized throughout the world in human rights.

I think it is most appropriate. I do not have an opening statement, but I certainly have a very deep interest in wanting to know what the witnesses have here before us, what they have to share with us in the unfortunate experiences they have had in their lives. And hopefully not only to make it as a matter of public record but certainly something that the Congress ought to address very seriously and very forcefully.

Thank you, Mr. Chairman.

Mr. SMITH. Thank you. I thank the gentleman for his comments.

I would like to introduce our very distinguished witnesses. I want you to know how welcome you are. The vote in the Congress, for example, was overwhelming; and it was your case histories and the stories of what you have been through that largely motivated Members to vote in favor of restoring the asylum policy.

I would like to introduce Weng Kang Di, who will begin. And he and Chen Yun Fei are husband and wife. And I just would note parenthetically have been separated for 2 years. They are husband and wife, and this hearing provides an opportunity for the first time, in a long time, for them to see one another.

If you could proceed.

[Interpreter speaking in Chinese.]

Mr. SMITH. Please pull the microphone very close so we can hear the Translator as well as the witness.

[Interpreter speaking in Chinese.]

Mr. SMITH. If Weng would want to proceed with his testimony.

STATEMENT OF WENG KANG DI, ASYLUM SEEKER

Mr. WENG KANG DI. My name is Weng Kang Di. And Chen Yun Fei is my wife.

My wife will tell you what happened to us.

STATEMENT OF CHEN YUN FEI, ASYLUM SEEKER

Ms. CHEN YUN FEI. I am a woman from the countryside, so I do not know how to say those very polite languages. I would like you to forgive me for that.

I come to the United States because of the Chinese family planning program.

The reason I came to the United States is because the Chinese Government does not allow us to have more than one child.

Because I have more than one child, that is why they try to suppress me, oppress me; and that is why I escaped to the United States.

Shall I say something more specifically?

Mr. SMITH. If you could give the details about your situation, the treatment by the family planning cadres, for example, why did you feel so threatened, whether or not you were mistreated.

Ms. CHEN YUN FEI. The Chinese Government only allows us to have only one child, and I have three children. And that is why they want us, people who have more than one child, to have sterilization and also fine a certain amount of money.

If a person got pregnant, then they want you to bear the child before it is mature. If you are pregnant, they will force you to have abortion. So I am a woman from the countryside. I do not want to have sterilization.

I would like to tell you my story.

I have come to the United States. I consider the U.S. Government is a democratic government. And I believe that you will rescue us.

Now I am going to tell you my story.

In 1982, the second child of my husband and mine were born. And then the local government from the people's commune, from the sterilization group, they come to our home and noticed us, sent us notice to have me sterilized.

Because it is so imminent, I told them, yes, OK, I will go and have sterilization. And this is a way that I pushed them away at first.

I took the opportunity after they left, I escaped to other places.

I can only escape by telling them I agree that I will have sterilization. That is the only way I can get them away.

At that time, the sterilization campaign was just at the beginning, so they were not pursuing very tightly.

In 1986, the first part of 1986, when the sterilization program, the family program, was at its height and it is very unfortunate that I got pregnant again. It was like a two to 3 months pregnancy I was. And at that time, the cadres of the local government were trying to catch women every place. So you could hear the sound of crying, you know, everywhere. And they used the tractors to put on this big loudspeaker to tell people that those people who are pregnant, you have to go to have it born immature. And then if you are pregnant, you have to have abortion—early stage of abortion. And also, after you have abortion, you are going to have sterilization and be fined a certain amount of money.

I did not want to have sterilization, so I was very, very afraid. And also I was thinking even if I had sterilization, I have to be fined and I do not have money. I am a country woman. So I stealthily went to a place to find a medical student who learned to be a doctor to help me to have the abortion. This person is in private practice.

And this person, this medical student, he was very afraid. He did not dare to help me, because he said if the government found out he would be in trouble. It was a great risk. But I begged this person again and again. So finally he helped me to have this abortion.

Because he is a medical student, he did not have the full grasp of the technique to do this abortion, so after the abortion I got this very serious infection because we had done that in a hurry. From then on, I was in poor health.

Now after the abortion, I went home. But on my way home, I saw a baby girl which was only born like seven or 8 days, lying on the road, crying very hard, and it is very weak, this little girl. And a lot of people were watching, so I asked people around to help this child who can take this child home, otherwise, this child is going to die because she has nothing to eat. But those people around said, you are talking nonsense. You know this is the time that the campaign is at its height; who dare to have this child home? So if you want to rescue this child, you are the person who will bring this child home. So I was very angry because I thought, you know, you people did not want to help, this child is going to die. So I said, if nobody wants to help this child, I am going to help the child. If you are afraid of the government, I am not afraid of the government. So finally I took the child home.

People were talking that this child belonged to a family, the last name of the family was Sun. Because in China if you do not have a son, then people will look down upon you if there is no way for you to have a voice. So that is why the family abandoned this child on the roadside. And I remember what people, the last name is Sun. So I gave her a name called Sun Sisi, still using her own last name. So I adopted her.

So after I returned home, later the government, the cadres of the local government, found out. And then they came to my home saying that, you know what you did and you already have two boys

and you picked up another girl and so you have to have the sterilization.

So I did not want to have sterilization, and I begged them to let me have the child. And I said, what you said is really ridiculous because this child was not my own. I just picked her up from the roadside. But they said, since you picked up the child, it should be accountable among your family planning program. It belongs to you so you have to have sterilization since you have three children.

So I told them that the reason that women, after they have their child born, to abandon the child at the roadside was all due to the government policy. If I did not rescue the child, the child was going to die. And when they heard what I said, they were very angry.

So I did not want to have the sterilization, I told them, if you really want to have sterilization, then you go and ask this mother of the child to have sterilization, that is the Sun family, this girl's mother. But they said, since you picked up, you have to go to have sterilization. So we argued back and forth for a long time. And they came to my home insistent that I should have this sterilization. They came many, many times.

So they came to my home more than 10 times, and they said this woman who dares to counter the government; so they forced me to sterilization. I begged them that, since I had already had one abortion, I am in poor health. So they insisted that I am now going to have the sterilization. And then the cadres got very angry. They said this woman is very, very tough, very difficult to deal with; so let us have her husband to have the sterilization.

And when my husband heard that they wanted him to be sterilized, so he jumped out of the window and escaped. And so I begged them, saying that, please do not have my husband sterilized because the whole family relied on him to till the land. Because in China we use all manual labor. You have to carry water bucket by bucket. So everything—he is the mainstay of the labor in the field. So I was very, very frightened and while at the same time I was very angry. So I fainted, and the whole family was crying and I did not know what happened because I fainted.

That was in 1986. Now conditions are turning better. People are using tractors. At that time everything was manual labor. So after I came to, the whole family was crying and the cadres were gone and my husband was back. Then I said I would not let my husband be sterilized because I have to rely on him to till the land. Then I decided that we have to go because they will not let us off the hook. Either I will be sterilized or my husband will be sterilized. So we escaped to a place which is closed to where Mao Zedong had his headquarters. It is a very, very tough place, a lot of mountains and wild places, not much to eat.

That was a very barren place. I started to work mending other people's old shoes. It is a very, very deplorable place. The living condition is very, very little. People slept on this bed made of mud. And at the end of the bed, there was a stove. You put firewood in. Then the heat would go through under the bed. That is the heat you have to have in the winter. That is called a kang. And people all live in the cave. So I started to—because the people were very poor, they have to have their old shoes mended again and again. And I started to do this to make some money.

I would not dare to go back home, and I stayed at that place for 7 years. That place has a very, very hurricane kind of a big storm, windy and a lot of snow in winter. People eat, mainly, maize and sorghum.

I was very eager to back to visit to see my children and my family, but I was afraid if I went back home I would be caught again. So I stayed there for 7 years. But when I first went there, this place was deplorable; there was no family planning program going on. But after 7 years, they started having the family planning campaign. They came to the cave where we stayed to check so-called identification. Everyone has an identification. They checked the identification to see whether there is anything wrong.

I returned home in February 1993. And then shortly after that, the government got to know that I was back and so they came to my home saying that, OK, now you are back; we have been looking for you for several years; we could not find you. And then I begged them not to—I told them that I am not going to have more children, so please do not ask me to have sterilization. They said, no, you are among the list; you are still in the list; you have to have the sterilization. And then they said, this woman is very stubborn.

So even if you have sterilization, we are going to fine more the money that we are going to fine you. So I was very, very angry. I told them that the money you fine you should not use that money. If you use that money—because they divide the money among themselves—if you use the money to eat or something, then you will die. Then they started to bind me, you know, to force me to the sterilization place. And I told them that I did not do anything wrong. I was not a robber. I did not steal anything. The only thing I had done is to have more children than one child.

So I was very afraid because my husband, when we just returned, when people saw these cadres were coming, they shouted, they are coming again, they are coming again. So my husband left again. He escaped. I told him that, you escape; I will deal with them by myself. So he escaped.

I told the cadres that, do not, you know, bind me together using a rope or something. I will go and have sterilization by myself. So under such circumstances, I was forced to have sterilization done.

After the sterilization, five or 6 days later, I went home; but I was not—I did not agree with their policy. And they are going to—because I knew, they said, they are going to fine me more money than usual. So I thought that, I do not have the money. And then my family told me that my husband escaped because the relatives and friends thought it is very pathetic and they helped him to escape to a foreign country. And I thought to myself, what am I going to do by myself; I do not have the physical strength to till the land by myself and they are going to fine a lot of money. And I had three children. I did not have enough money.

So I escaped, too.

So I am here.

Mr. SMITH. I thank you very much for that testimony, and there will be some questions by members of the panel. But I would like to ask the other witnesses if they could testify before we go to that.

Hu Shuye, if you would not mind speaking next.

STATEMENT OF HU SHUYE, ASYLUM SEEKER

Ms. HU SHUYE. I do not speak very well Mandarin, so please forgive me.

I left China because of the family planning program.

I was pregnant 6 months and was forced to have an abortion.

In November I was told to have sterilization because I have two children and one abortion already. And I did not want to have this sterilization, and I left home for a month. And after I came home, they forced me to have sterilized.

I had no way out. They forced me. They dragged me to have this surgery done.

Mr. HYDE. Mr. Chairman, can counsel tell the story?

Mr. SMITH. Craig, would that be possible?

Mr. HYDE. Do you know her story?

Mr. WILSON. Mr. Chairman, unfortunately this lady's counsel is not present. We could for any of the others.

Mrs. SMITH. Mr. Chairman?

Mr. SMITH. Yes.

Mrs. SMITH. Could we let someone else testify and let her gain her composure, please.

Mr. SMITH. Yes, that is a very good idea.

I would like to ask Li Bao Yu if she could make her statement at this point.

STATEMENT OF LI BAO YU, ASYLUM SEEKER

Ms. LI BAO YU. I am a Chinese citizen, and my name is Li Bao Yu. I had a daughter born in 1990. Because I was afraid of the family planning program, I did not register her birth. Later the government found out, and they asked me to have an IUD put into my body; but I begged them not to do that. But they just approved. They insisted on having an IUD in.

So they forced me to put in this IUD. And after that, my health deteriorated. My doctor said, you have to take this IUD out before your health can return to normal. So my husband and I went to this family planning office to ask them to let me have this IUD taken out, but they did not. I promised them that I am not going to have more children.

They did not approve our request, and my husband was very angry; so he started to quarrel with the cadres. The cadres threatened him: "If you are going to continue to disobey us and quarrel with us, then we are going to sterilize you." So I persuaded my husband to go home. And then after that, my mother found a private doctor and had my IUD taken out. After that, my health began to improve.

In my native place, they have inspections of the family planning program every season; and I would not dare to have inspection because then they will find out that I had this IUD taken out by myself. But they kept on sending me notice telling me to have this inspection. I always gave them excuse, I am not home; but they came to my home many times. They could not find me, so they were very angry. In January I became pregnant again. After 3 months, they still could not find me. One day they came and I happened to be home, so they wanted me to go have an exam.

My husband at that time was not home because he was working. I said: "Let me wait until he comes home. Then I will go to have this exam." They disapproved. They did not agree. So several people dragged me to the place to have the exam. After the exam, of course, they go to know that I was pregnant and I had this IUD taken out. They wanted me to have an abortion. I begged them. They did not agree. They threatened me saying that, if you do not have this abortion, then your first child, your daughter, will forever not allow to have her identification registered. Because in China if you register a born baby, you have certain kind of coupons, whatever. They threatened me that if I do not agree to have this abortion, then my first child will forever have no chance of being a registered, normal citizen.

Mr. SMITH. If I could interrupt, does that mean denial of education or health care or job opportunities? What does that mean?

Ms. LI BAO YU. Yes.

So I was forced to have this abortion. And after that, my health was very poor. Because that was a hospital in the countryside, the hygienic conditions is not very good. I had a very negative impact on my health. I was bleeding profusely. And they wanted me to have sterilization following the abortion. But the doctor said since I was bleeding so much, it is not possible to have sterilization immediately.

I was not in a condition to return home, so I stayed in the hospital; and my husband came to visit me in the hospital. He was very angry and argued with the cadres. And the doctor had nothing—there is nothing that the doctor can do for my poor health. So the cadres from the family planning office, they kept on arguing with my husband. They have the power in their hands, so we are not in a position to fight with them. After I went home, they again said that, when your health improved a little, you still have to have the sterilization done.

Because I am a housewife in the countryside, I have to do everything at home. My husband was a worker at the time. But since my health was poor, I could not do so much. I felt burdened. Sometimes I went to my sister's place to see a doctor. And sometimes my husband stayed alone at home. And the family planning program office kept on telling me that when you have your health improved, you have to have the sterilization. Later my husband escaped to his relative's home and I escaped to my sister's home.

So none of us would dare to go home. Later, because of my husband's work—the need for his work, so he has to return home. Then the family planning office informed him to asked him to inform me to go and have the sterilization. They insisted on that. And my husband told them that, my wife was still sick. So they argued again. And then they said: "If you argue with us, then you go and have the sterilization." And then they started to struggle with each other, and he escaped later.

My husband thought at that time that under such circumstances it is not going to maintain peace any more. They will, anyway, come to force us to have sterilization. So through somebody's recommendation, my husband escaped to the United States.

After my husband left China, I was at home by myself. My health was still not very good—no, she was not at home at first. She would not dare to go home. But her health was not good.

In 1992, during the Chinese New Year, she wanted to go home to spend the New Year together with her family; so she returned. After a few days, she did not know how they found out. The family program cadres came to my home again and forced—pressuring me to have sterilization. At that time, I escaped through the back door.

I thought, since my husband was not home, they would not pursue me any more; but it was not the case. They kept on pressuring me. I would not dare go home. That means, even if I had had a home, I cannot go home. Under such circumstances, my mother and other relatives, they helped me to find a way to escape to the United States.

Mr. SMITH. The bells that you heard, just by way of explanation, means that there are votes again occurring on the House floor. We will take a very short break and then resume some of the questioning as Members do return.

Again, just let me say before we break for recess—and perhaps you could translate this for them—hearing you tell your stories—and I think I speak for everybody on this panel and I speak for Members of the Congress, both parties, Democrats and Republicans—you really represent the voices and the tears of the women of China. The crimes that have been committed against you and against the women of China are no less serious than the crimes that were committed by the Nazis.

It is even more appalling when we realize that the Clinton administration wants to send you back to your oppressors. And when we realize that groups like the U.N. Population Fund stand by and cheer as China achieves these targets in population control when every one of those numbers represents a person who has been injured, made sick, exploited, and hurt by their government.

The subcommittee is in recess for 10 minutes.

[Recess.]

Mr. SMITH. The subcommittee will resume its hearing. Again, I want to thank our witnesses for their very, very eloquent statements and for their willingness to tell us in such detail the difficulties that they have encountered and the exploitation that they have experienced.

It is my understanding that Hu Shuye, you might be willing to and able to, perhaps, proceed with some of your testimony. If you could tell us, and be as brief as you would like, some of the particulars about the government's coercive abortion that they inflicted upon you at 6 months.

The INTERPRETER. She said she does not know how to speak, so if you could ask questions, she will be able to answer.

Mr. SMITH. When the government found you were pregnant, what kind of means did they use to force you to undergo the abortion?

The INTERPRETER. Let me explain for us, because Ms. Hu said her Mandarin is not good enough to express herself.

Mr. SMITH. Right. I remember that from earlier.

The INTERPRETER. So she is using her own dialect. And Ms. Chen is translating her dialect to me, and I will translate to you.

Mr. SMITH. All right. Thank you.

Ms. HU SHUYE. They said—there were between 30 to 40 people that came to my home. And they said, since you have three children, you have to have an abortion since you are now, again, pregnant. So they dragged me to have an abortion.

Mr. SMITH. Did they literally drag her?

Ms. HU SHUYE. There was a car, and these 30 to 40 people dragged me onto the car and then drove away.

Mr. SMITH. Prior to that, were there attempts to persuade her to abort the child?

Ms. HU SHUYE. They did ask me to have this abortion. Then since I was not willing to, they moved all my furniture, whatever I had at home, to the government office.

I was forced to have an abortion in June when I was 6 months pregnant. And then in November, they came again to force me to have sterilization.

I escaped in November. And in December, my mother-in-law got cancer and passed away on December 17th. So I went home to attend the funeral. And then on the 20th, the family program office got to know that I was home; so they came and dragged me away to have an abortion.

I was forced to have an abortion when I was 6 months pregnant. And then after that, they wanted me to have sterilization. So I escaped in November. And then in December I went back for the funeral. And then I was forced to have sterilization. And then after a few years, in 1989, the family program office told me that, you have too many children, you should be fined a certain amount of money.

Mr. SMITH. So she was fined for the children that she had is what you are saying.

You know, I would like to yield to Mr. Hyde. He has a comment.

Mr. HYDE. Thank you, Mr. Chairman.

I wonder if I might ask both counsel to answer these questions:

We have heard heart breaking stories of oppression and torture and a denial of one of the primary human rights, civil rights, namely, the right to have children. And I am appalled at what I have heard.

But I am equally appalled at my own country at what state these women find themselves in the "Land of the Free," and the "Home of the Brave," "Give me your Tired, your poor, Your huddled masses yearning to breathe free."

I understand they are under arrest, they are under manacles. Now, I well know that for years Soviet Jewish people, who could get an exit visa, all came here as refugees because by definition they were persecuted, being Jewish people, in the Soviet Union. And they came here by the thousands. And many of them did not have family here, and it was not a question of reunification but under asylum. Because they were persecuted, they were permitted to come in here.

Now these women who are undergoing having their bodily integrity violated in many ways, not only by abortions but also from sterilization—I understand they are in chains. They are in handcuffs.

Can you explain to me why our country treats these people as criminals, counsel?

Mr. WILSON. Well, sir, I think you have correctly pointed out one of many dichotomies that exist in the immigration law. And I think that, originally, when these people told their stories to a judge, it was a closed hearing, an exclusion hearing in which just the judge and their counsel and the government were present—and this is really the first time that they have had the opportunity to take what has been just rhetoric and paperwork and show the human tragedy involved. And there is no explanation for that.

Mr. HYDE. You say they are in violation of the law. What law are they in violation of? Why are they incarcerated?

Mr. WILSON. That was not my statement.

Mr. HYDE. Well, why are they incarcerated? Do you know?

Mr. WILSON. Because our regulations permit the government to detain aliens who are excludable from the United States.

Mr. HYDE. And they are excludable because they have not been given asylum, they have not been considered as fitting the definition of refugee. And that means our government is giving full faith and credit to the Chinese law, of which they are in violation, the family planning coercive abortion, sterilization law. And we are respecting that as legitimate. And because they are in violation, they are to be held in handcuffs and deported.

Is that it?

Mr. WILSON. In effect, I believe that is correct.

Mr. HYDE. Can you add to this?

Mr. SMITH. Could counsel identify themselves for the record, please?

Mr. WILSON. I am Craig Wilson.

Mr. HYDE. Thank you, Mr. Wilson.

Mr. TREBILCOCK. Mr. Hyde, I am Craig Trebilcock. I one of the attorneys in York, Pennsylvania. I am currently representing the 108 detainees who have spent over 2 years in the York County Prison.

I think I can answer your question with some precision as I have been involved in litigation with the Department of Justice for the past 2 years over why are these people still in jail.

The answer is, at the time the Golden Venture arrived in this country in the summer of 1993, June 1993, the Clinton administration made a policy decision. That policy decision was that if they took these Chinese refugees, maintained them in prison from the day of their arrival until the day they were deported to China that that would accomplish a deterrent impact on what the Clinton administration considered would be a "magnet" affect if they treated these people with any humanity.

Mr. HYDE. But is there not a difference between an economic refugee, as many of these people were, just looking for a better life, God knows, and people who are in danger of imprisonment and persecution having already undergone that course of treatment?

Did our government not make that distinction?

Mr. TREBILCOCK. Absolutely. The Department of Justice has been deciding these case as a matter of semantics. The Bush administration and the Reagan administration, of course, recognized that in-

fliction of forced abortion and forced sterilization on women is a systematic form of violence against women.

They recognized that in China, an act of defiance, such as these ladies have demonstrated by trying to save their children is not only considered a family planning choice, it is considered an act of political defiance against a totalitarian communist regime.

So the Bush and Reagan administrations recognized that, indeed, this was a political expression, their resistance in China.

The Clinton administration has redefined that. They say, oh, this is simply a matter of private family planning; and, therefore, this is not grounds for asylum because it is not political or religious grounds, which are two of the five grounds for asylum.

So they have simply changed the definition so that they can deport these people.

Mrs. SMITH. Would the gentleman yield?

Mr. HYDE. I yield.

Mrs. SMITH. I guess I want to ask a question of you as counsel. Often you get supportive documents, groups, especially in this kind of a case. Has the National Organization of Women weighed in heavily with you? I would assume they would, being this is forcing women against their will. Have they come to your defense?

Mr. TREBILCOCK. There has been an organization, that is the Center for Reproductive Rights, which is a women's organization advocating pro choice, that has been involved in this litigation early on.

I would welcome a lot more support from the women's movement. I think this is a bi-partisan issue, and it is a bi-ideological issue. Certainly a system of forced sterilization and forced abortion is no choice at all. And certainly this forced abortion is repugnant to the pro life constituency as well. There has not been as much activity, to tell you the truth—on the organized activity, on the pro choice front as with pro life front.

Mrs. SMITH. Has the National Organization of Women stood and said: "President, you're wrong"?

Mr. TREBILCOCK. Not that I am aware of.

Mrs. SMITH. The other question I want to ask you is, has there been any organization from the White House recently? What is the action right now? How quickly is the timing on their deportation?

Mr. TREBILCOCK. The three women who are sitting before the committee have, currently, no stays of deportation upon them from any court in this country. They could be put on a plane this evening and deported to China.

Mr. Di is physically separate from his wife, and he is in York, Pennsylvania. We have a stay of deportation in place from our Federal district judge. But these three ladies could go at any time.

Mrs. SMITH. So it is urgent that the women of America stand up now, or we could have three women sent back to be treated worse than they have been treated before, drugged for abortions, imprisoned, having their property taken. And that could happen any moment.

So it would be helpful, then, if the Congressional Delegation of Women, both sides of the aisle, pro abortion, pro choice, pro life, all together, approach the President rapidly and say: "We do not

care about the abortion issue. But we do not want these women's right to choose violated." Would that be helpful?

Mr. TREBILCOCK. Absolutely. I think it is essential at this point. These three young ladies are representative of 13 women from the Golden Venture who are currently in that status. They could be deported at any time.

Mrs. SMITH. I would have to say that America's women would never accept women being forced into stirrups or dragged in for abortion. I do not care what they think about abortion.

And I will say I think I can speak for America's women and say the President is just wrong; but if they do not stand up right now around America and do something about it, these women are going to be sent back to a country and treated like not one woman in this Nation would accept.

And I tell you, when I think about the children, I go home every weekend just to see my grandchildren. And I think about what these women are put through. It looks like we are putting them through more here than they went through there.

So I will help do what I can as quickly as possible. But I would say that we should bring out America's women's movement rapidly. And I will also formally ask them to take a stand, and now, or to sit down and shut up, because they stand up for women or they do not.

Mr. TREBILCOCK. That is right. Thank you.

Mr. HYDE. If I may just summarize, so I am clear, these women have been declared deportable, excludable because they are not entitled to claim persecution as a grounds for refugee status because we, the United States, does not recognize the coercive family planning program and your failure to comply with it as coercive?

Mr. TREBILCOCK. That is exactly correct.

These women had their cases reviewed by Immigration judges, the Port of Immigration Appeals, and by INS trial attorneys. They have been found credible. There is no question but that they are telling the truth.

Mr. HYDE. How does this policy get enunciated that has changed the Reagan-Bush policy? Is this an opinion issued by the Justice Department? Is it the INS? What is it?

How does this change in policy, that now makes them outlaws and deportable—how did that happen?

Mr. TREBILCOCK. The problem is that it is being handled as an executive matter. It has not been dealt with by statute. And so it is subject to change with administrations.

During the Bush administration, the INS would, in many cases, voluntarily terminate exclusion proceedings against a women if they believed that she had a credible account of forced sterilization or forced abortion. So the cases simply went away. It was, in fact, the INS stipulating to these people getting asylum.

In 1989, there was this Board of Immigration Appeals decision, which is the appellate body within the Department of Justice who hears cases on appeal, asylum cases, they issued an opinion called "Mater of Chang." That opinion states that forced abortion or forced sterilization alone is not grounds for asylum in this country.

One month after that opinion was issued was the Tiananmen Square massacre. And the Bush administration never really en-

forced *Matter of Chang*. President Bush issued an executive order, Executive Order 12711, that recognize that people with claims of forced abortion or sterilization should get enhanced consideration for asylum.

But what happened when the Clinton administration came into office, was they simply elected to ignore the Bush executive order. They did not revoke it. In fact, a conscious policy decision was made not to revoke it because that would attract too much attention.

Mr. HYDE. Could I have that number again? Executive Order?

Mr. TREBILCOCK. Yes, sir. It is 12711.

And what they chose to do instead was to reach back in time, at that time, 3 years, and say, "Oh, here's this case matter of Chang. This says forced abortion and sterilization is not grounds for asylum. We like this decision better."

And so the INS, under the Clinton administration began enforcing "*Matter of Chang*" and arguing *Matter of Chang* in asylum hearings beginning with these Golden Venture passengers.

And that is the difference. And as it went up through the appellate system, the Immigration judges—or, excuse me, starting at the beginning, the Immigration judges who first heard their cases said: "Oh, yes. *Matter of Chang* is still on the books. We believe you. Case denied. You are going back to China."

It then went up to the Board of Immigration Appeals. The Board of Immigration Appeals said: "Yeah, *Matter of Chang* is their decision. We believe you. Case denied."

And the attorneys in New York; York, Pennsylvania; California; and New Orleans have been fighting for 2 years to try to get *Matter of Chang* overturned in the courts. We have been less than successful. Because the standard, unfortunately, says the district court has to defer to the Board of Immigration Appeals' interpretation of the immigration statute.

Mr. HYDE. Well, there is a legitimate concern about people coming to this country who are not refugees or are not admitted in some orderly fashion. There are people who want to live here. I mean, the world would like that, more or less.

But there is a definite category of refugee who is in reasonable fear of persecution. And these women fit that, and many others do. And our country fails to make that distinction.

I think Congress has been derelict in letting this stay in the executive by fiat. These are matters we ought to legislate. And I salute the Gentleman from New Jersey for undertaking to do that.

I thank the gentleman, and I yield back my time.

Mrs. SMITH. Mr. Chairman.

Mr. SMITH. Thank you, Mr. Hyde.

The Chair recognizes Mrs. Smith.

Mrs. SMITH. I need a clarification. I have had more experience at the state level with the Governor and the issue of what the Governor can do. I know that we have had stays of execution and that the Governor does that in our state.

Does the President have these people's lives in his hands? I mean, can he say today, they have gone through enough pain, they have gone through enough torture, separated from their families and their children, and today I will set them free?

Because they are different. They are not here for any reason other than to save their lives.

Can he do that?

Mr. TREBILCOCK. He absolutely can.

Mrs. SMITH. He has their lives in his hands.

Mr. TREBILCOCK. The statute would officially say that their lives are in the hands of the Attorney General. But, obviously, the Attorney General takes her direction from the President and, in fact, has done so in these cases up to this day.

So if the President—

Mr. HYDE. Well, if the gentlelady will yield, that might offend the Chinese Government. After all, they did not like it when the President of Taiwan wanted to stop off here. And we just, oh, we threw up our hands. If we were to treat these women as human beings and entitle them to some decency, that might offend the government. And we have economic interests over there, so that is not to be countenanced.

That what the problem is. The President has parole authority under exigent circumstance to let people come in. The Cubans, for years, were just welcomed, anyone that could get over the Caribbean. They have changed that now, whimsically. And now this.

We have defaulted, I think. We have to legislate.

Mrs. SMITH. I guess that I am going to make a statement that this is really disturbing that we are going to have, with the President's wife excited about it, the Fourth World Conference on Women in China.

I was thinking as I looked at Chen, she is a Chinese Susan B. Anthony. I mean, she is tough. If she were in America, she would be a congressman or corporate head or somebody organizing something. This tough gal is more than I could imagine, sitting there saying what she has said and what she has gone through.

But the reality is women like her fighting in China for their very rights that women in most countries take for granted—we would not put with anybody even taking one of our children much less a baby being put by the road because she was a little girl. This Nation watched as a little girl fell into a well, and the whole Nation watched as we fought for that little girl. And we fought, until they got that baby out, for days. And we fight for every little person's life.

And here is a nation that would take a little girl, throw her beside the road, and we are going to put the U.N. Conference on Women there and we are going to smile and act like it is all OK, as long as they do not let any of the participants walk the roads, it sounds like.

I am, today, formally protesting that conference. I am going to ask every woman in Congress to protest that conference. And I am going to ask every woman in Congress to go the President and say: "Unless there is some movement that is real in China for women and children and little baby girls, we are playing games with lives we do not have any right to play."

This is very serious. I do not care what he thinks about abortion, but he should not be using abortion in this. He should be using these women's rights to choice. Let him be for abortion, but let

them choose. And he has to stop playing this game he is playing with their lives.

And I am going to formally get a hold of him and talk to him about not playing with this conference and ask him to move it. He wants to keep these people here, they want to let their political prisoners out, then we will move onto the U.N. Conference on Women.

I was asked to go in and be a part of that conference. Absolutely not. I will not be any part of giving it credibility. And I thank you, ladies—and I would like this translated—for coming today. I am very proud of you for what you have done. It is not easy to stand in a foreign country, before people you do not know, and tell what you have told. But you are probably going to be the women that make it easier for other women because you are telling your story.

And I do want to tell you thank you. And there are American women all over that are going to fight for you.

Thank you.

Mr. SMITH. I just want to thank my colleagues for their very eloquent statements.

I understand we have someone from the Public Information Office from INS here with us; and since Mr. Hyde did raise the question, I think it is certainly deserving of an answer. And I wonder if he could identify himself.

The gentleman from the INS, if you would not mind coming to the witness table.

Mr. BERGERON. My name is Russell Bergeron. I am a Public Affairs Officer with the INS.

Mr. SMITH. Thank you. Could you tell us why these individuals need to be handcuffed?

Mr. BERGERON. Congressman, with all due deference, we were not asked to present any testimony today. And we do not have any statements prepared.

Mr. SMITH. I would appreciate, for the record, whatever procedure needs to be followed.

I was frankly appalled when I saw these fragile women handcuffed the way they were only to be released coming into this room.

Mr. BERGERON. With respect to the issue of handcuffing, the Justice Department, Justice Department-wide, follows the same procedure as is followed by law enforcement agencies nationwide, in that individuals who are in detention, when they are removed from a detention facility, are placed in handcuffs.

Mr. SMITH. In your view, do they represent a risk, these individuals?

Mr. BERGERON. Congressman, I would not venture to comment on that issue. You asked me to explain the policy, that is the policy, sir.

Mr. SMITH. You probably feel you are being put on the spot, but I think the record should be very clear on this. We have gone through several months to have these great people, people who have suffered tremendously simply because they wanted to have children. And I for one feel it is the People's Republic of China who needs to apologize to them; and our own government, in this case the Clinton administration, who needs to apologize for mistreating them, especially since their individual stories have been found to

be credible and the policy change by the Clinton administration is absolutely, non-ambiguously, anti-woman.

Mr. HYDE. Mr. Chairman, in all candor—and I could not agree with you more—I do not think the INS is to blame for any of this. They are executing policy. They are doing what they are supposed to do. They do not have to like. I am surprised more of them do not quit.

But I will say this, you cannot blame people for following orders. But I think where the orders emanate from is where we ought to direct our inquiries.

I intend to—tomorrow the head of the civil rights division is going to appear before the Constitutional Subcommittee for some oversight hearings, and I wonder how he squares having a whole department concerned with civil rights and what is going on here.

But I do not think this gentleman should take the heat for that at all.

Mr. SMITH. Clearly there is nothing personal here, but it is a policy that is having great repercussions on persons.

Mr. HYDE. Well, it is a horrible policy.

Mr. SMITH. And I just want to ask—and this could, perhaps be provided for the record—but it is my understanding that INS Administrative Manual forbids handcuffs unless there is a special risk. And in my view, I do not see a special risk in front of me.

So I would appreciate, for the record, if that could be provided.

Are there any other questions? I do have a few final questions I would like to pose.

I would like to ask our witnesses—I need to wait for the translator to return—and if any or all of you would like to answer this, that would be fine.

Do you believe that your treatment by the birth control authorities in China was solely because they are concerned about the number of people in China? Or did they also regard your desire to have more than child as a form of opposition to government policy that must be suppressed?

Ms. CHEN YUN FEI. We do not understand the function of government. We were just ordinary citizens. So that is the way they treated us.

Mr. SMITH. Did they seek to make an example of someone who might resist that somehow if one person resisted and had the baby, for example, that then that would undo their coercive program?

The INTERPRETER. Can you rephrase the question?

Mr. SMITH. Does the government seek to make examples of people who show any resistance to aborting when they say—in order to affect what the others will do, to terrorize the rest of the other people?

Mr. WENG KANG DI. This is a fact, a reality in China. It is not the government using these examples to threaten other people or impact other people. This is really happening with every woman.

Ms. CHEN YUN FEI. This is really true if anybody who does not obey this policy, then sometimes it could happen that your house would be dismantled, pulled down. And sometimes they would move all your property away. Sometimes they will grab your parents to be housed in another place rather than your home, not letting them eat.

These are true happenings.

Mr. SMITH. The State Department says that forced abortion and forced sterilization are rarely inflicted in Fujian Province where most of the Golden Venture passengers and most of the Chinese boat people come from.

Is this consistent with your experience?

Ms. CHEN YUN FEI. I am not from Fujian. I am from Wenzhou. So I do not know what happened there.

Mr. SMITH. Is anybody on the panel from Fujian?

Ms. LI BAO YU. I do not think this statement is correct.

Mr. SMITH. So what you are saying, just to be very clear, is that forced abortion and forced sterilization are common place in Fujian?

Ms. LI BAO YU. I have seen many.

Mr. SMITH. Yes?

Mr. WILSON. Mr. Chairman, even if a small percentage of the abortions performed were compulsory by dragging people away, it does not take into account the fear that would accompany many people doing it, quote, unquote, "voluntarily." That is what the State Department opinion does not mention.

Mr. SMITH. I appreciate that.

Are any of you familiar with punishments having been inflicted on family members—and there was a reference to that just a moment ago—of persons who violate the population control policy?

I mean, do they target other family members?

Li, you mentioned, I believe it was your daughter they threatened that she would not be registered and she would, then, be deprived of basic education and other kinds of things.

How prevalent is that?

Ms. LI BAO YU. It is true.

It is true that if you have more than one child, then they would not let you register.

Mr. TREBILCOCK. Mr. Chairman, if I might add, also from my client's personal experience, who is not here today, whose statement was read at the last session of this subcommittee, Mr. Lin, who was found credible by the Immigration Judge, his father was dragged away and locked up for 10 days as a virtual hostage to induce Mr. Lin and his wife to return for a sterilization.

They tore up the house. They stole all their appliances. They cut up the beds. They tore the door off the house. And they kept the gentleman, Mr. Lin's father, in prison for 10 days until the mother paid a fine equivalent to 6 month's pay.

Mr. SMITH. I appreciate that.

Do you have any information about how people have been treated who have returned to China after fleeing because they feared persecution for resistance to the population control program?

Ms. CHEN YUN FEI. No.

Mr. SMITH. You do not have that information? OK.

Let me just conclude. And, again, thank you. And I say to you—and I know I speak for Members on both sides of the aisle, Democrats and Republicans, that we think of you as very special people.

We are deeply concerned—I am deeply concerned—about your welfare and your well being.

I have worked on human rights issues for 15 years as a Member of Congress, both in China and in Europe and in the Former Soviet Union.

It would be a travesty of justice, a gross injustice, if the Clinton administration were to send any of you back.

I say this especially of House passage, passage by the House of Representatives, of an amendment that I offered—it was agreed to without any dissent in the House—that would restore the Bush policy under which I believe you would receive asylum.

Your human rights have been violated in a gross and humiliating way by your government. I am ashamed of what the Clinton administration has done to you. And I give you my word that I—and I know I am joined by Democrats and Republicans—will work night and day—you heard Linda Smith earlier say this—to see that you get asylum and that people like you are not sent back to the oppressors in China.

I often think—and I have said this in debate on the floor—with regards to China's one-child-per-couple policy that my wife Marie and I—and my wife Marie is sitting right here—have four children. We love them dearly. If we lived in China, three would be dead.

So my empathy is with you. And we will try to continue to raise the human rights violations of China so that they will change their policy. And I do ask that the INS and the Justice Department, in no way, shape, or form, take any action to send you back.

And I can assure you that, again, Members on both sides of the aisle, and I will be out there as well, will make—let us put it this way, we will make life very miserable for them if they were to perpetrate that terrible injustice upon you.

Let me also say how inspiring it is that so many people from the communities support you. And some are here today. It shows that Americans are touched by your story. And we will fight to see that justice is done and that you get asylum.

God bless you. And if you have any final word you would like to say, or your attorneys, otherwise I will end the hearing.

[Ms. Chen Yun Fei through interpreter.]

The INTERPRETER. She wants me to tell you that, on behalf of all the people present here, she wants to thank you for your care and your help. And she says she is very happy to be here, for one thing that she has a chance to see her husband, and also knowing that the United States—everybody in the United States is so good to them. So she says she loves the United States. She loves everyone here with high morality.

Then she used English and said: "I love you."

Mr. SMITH. This hearing is adjourned.

Thank you.

[Whereupon, at 5:35 p.m., the subcommittee was adjourned, to reconvene subject to the call of the chair.]

APPENDIX

Human Rights and U. S. Reactions to the Chinese Family Planning Program

John S. Aird

Testimony presented to the House Subcommittee on International Operations and Human Rights

May 17, 1995

(73)

Human Rights and U. S. Reactions to the Chinese Family Planning Program

John S. Aird*

Concern for human rights is widely shared among the American people, including members of the Congress, presidents, and government officials. The United States has played a major role in promoting the idea of universal human rights not only through the United Nations but in its own relations with other countries. But our own policies and actions have not always matched our words. Human rights considerations sometimes come in conflict with the objectives of various domestic interest groups, who try with some success to get the government to strike compromises that serve their own agenda.

Such conflicts are most likely to arise in relations with countries like the People's Republic of China, an economically and politically important country whose human rights record is among the worst in the world. China has a long history of abusing its citizens, denying them freedoms supposedly guaranteed under the Chinese constitution, imprisoning them without charges and without trial, subjecting them to cruel and unusual punishments and torture, exploiting prison labor for economic purposes, suppressing speech and the press, and punishing dissidents on false charges. The Chinese government insists, much evidence to the contrary notwithstanding, that its human rights record is very good, in some respects better than that of the United States, but, paradoxically, it tries to prevent foreign human rights organizations from examining that record, claiming that they are meddling in China's internal affairs with "ulterior motives." China's posture is that of a government that has much to hide, as indeed it does.

* Former senior research specialist on China at the U. S. Bureau of the Census.

Reproductive Freedom

In addition to its abysmal record on civil liberties, for the past 25 years the Chinese government has conducted a highly coercive family planning program that also shows a conspicuous disregard for human rights. Among the rights widely recognized in the rest of the world is the right of individuals and couples to determine how many children they will have and when they will have them. This right assumes special importance because it relates to matters that are intimate and personal and is closely associated with the right of privacy, with the sanctity of the family, and with the pursuit of happiness.

The right of reproductive freedom is included in the United Nations declaration of human rights and has been endorsed by leading non-government organizations promoting family planning, including the United Nations Population Fund (UNFPA) and the International Planned Parenthood Federation (IPPF). The world population conferences of 1974, 1984, and 1994 all espoused reproductive freedom in declarations adopted by most of the attending delegations. The 1994 conference reaffirmed it in these words: "All couples and individuals have the basic right to decide freely and responsibly the number and spacing of their children and to have the information, education and means to do so." The UNFPA is ostensibly committed to this principle and is prohibited by its charter from providing assistance to coercive family planning programs.

However, the consensus about human rights in the family planning sphere is by no means as unanimous as public declarations imply. The government of China has for the past quarter of a century implemented a family planning program that attempts to limit couples to one child each, two in exceptional circumstances, and demands the termination of pregnancies begun without official permission and the sterilization of couples with two or more children. The program represents a blatant violation of the principle of reproductive freedom, yet it has

incurred surprisingly little condemnation even from within countries with strong human rights traditions. Most foreign governments have taken little notice of Chinese population policies while seeking closer relations with China. Many have contributed funds for the UNFPA even though that agency has been supporting the Chinese family planning program for the past fifteen years, and some governments have refused to grant asylum to Chinese refugees who claim persecution under the program.

U. S. Funding for the UNFPA

The record of the U. S. government regarding international support for compulsory family planning in China has been somewhat ambiguous. Our government has often condemned other human rights violations in China and has sometimes threatened to withdraw "most favored nation" status for China if its record does not improve. Members of the U. S. Congress have been particularly outspoken in criticizing China's disregard of human rights and specifically the coercive practices in the Chinese family planning program. In 1993 several officials of the Clinton Administration were also quite forthright on the subject. As word of a new escalation of family planning pressures and an upsurge in coercive tactics was making international headlines in May 1993, Secretary of State Christopher attacked coercion in the Chinese program, the Administrator of the U. S. Agency for International Development (AID), Brian Atwood, told Congress the Administration was "appalled" by reports of coercive abortion in China, and the U. S. delegate to the United Nations Development Programme, Warren Zimmerman declared that "we must condemn such abuses" and "do what we can" to stop them. What the Administration actually did, however, sent a rather different signal. It restored funding for the UNFPA, withheld in 1985 by the Reagan Administration because of UNFPA support of China's coercive program, with the proviso that U. S. funds would not be used in China, a gesture that did little to impede UNFPA assistance to the program.

In August 1993 AID Administrator Atwood, in reply to a question from a senator, cited with apparent approval a legal opinion that before U. S. funding could be withdrawn from an agency supporting a coercive family planning program "it would be reasonable to require evidence that the organization knowingly and intentionally provides direct support for or helps to manage people or agencies who are clearly engaged in coercive abortion or involuntary sterilization." The use of such restrictive terms as "knowingly," "intentionally," "direct," and "clearly" was obviously intended to make actionable evidence of agency involvement virtually impossible to establish. It meant that the U. S. government could continue funding organizations that support China's coercive program so long as those organizations were careful about appearances. What this seems to say is that the Clinton Administration is not sufficiently troubled about coercion in family planning to do more than deplore it. The Chinese leaders probably read the change in the U. S. position on UNFPA funding as a U. S. retreat on the coercion issue and indeed that is what it was.

The "Population Crisis"

Why this mismatch of word and deed? What lies behind it? The most obvious explanation is that some people within the Administration see a value conflict between the principle of reproductive freedom and the idea that world population growth threatens human welfare. This conflict troubles many people outside of government, not just family planning advocates, but other people who are concerned about world population growth but abhor inhumane tactics in population control. Some have become convinced that the world is faced with a "population crisis" that is imminent and serious enough to justify extreme measures, but they are aware that they cannot openly advocate such measures without inviting the condemnation of people more deeply committed to human rights. Rather than confront the issue openly, they pretend to accept the principle of reproductive freedom, but tacitly approve of coercive restrictions in

China and elsewhere. They tend to ignore or deny the evidence that China's family planning program is highly coercive and sometimes try to excuse the Chinese program on the grounds that China "has no choice" but to take extreme actions.

There is a certain superficial plausibility to the "crisis" argument that makes it easy to grasp and popularize, but the argument becomes more dubious on closer examination. The relevant empirical evidence is equivocal at best, suggesting that there is no simple, direct, strong relationship between population growth and human welfare, either positive or negative. As long as that is the case, there can be no logically compelling basis for urgent and extreme family planning measures or for disregarding reproductive freedom in the haste to reduce population growth rates.

Before important human rights can be sacrificed to avoid greater dangers to human welfare, the need for such action must be established beyond reasonable doubt. Human rights should never be overridden on the basis of convictions, however strongly, widely, and sincerely held, that are not supported by incontrovertible evidence. Under no circumstances can the analysis and interpretation of the evidence be entrusted to professions, organizations, or individuals who have conflicts of interest in the matter. Moreover, proposals for action in such instances must be subjected to thorough democratic discussion and debate before implementation is considered. The "population crisis" view has not yet attained that level of credibility. In fact, it has been under serious challenge by some eminent demographers and economists since the 1960s and still lacks a firm empirical basis.

Adherents of the "crisis" view sometimes express gratitude to the Chinese leaders for making what they regard as a major contribution to slowing the growth of the world's population. There is no question that the decline in the Chinese birth rate since the early 1970s is largely responsible for the decline in the world birth rate during those years. Whether the decline was worth the price the Chinese people have been forced to pay for it is another matter

that is far from resolved. The whole issue of the consequences of population growth needs further systematic exploration on the basis of experience throughout the world, and the hypotheses of "crisis" advocates and their opponents need to be put to the test of that experience. However, for that purpose the experiences of individual countries need to be reported accurately and honestly.

Unfortunately, supporters of the "crisis" view have often shown a culpable lack of candor in their descriptions of the Chinese experience and the Chinese family planning program. Some ignore or gloss over the coercive aspects of the Chinese program. Some repeat and help disseminate official cover stories from the Chinese government that are manifestly improbable or false or engage in egregious misrepresentations of their own devising. Some representations of the Chinese program are so patently slanted or distorted that they seem to be deliberate attempts to deceive.

Among family planning advocates and the organizations promoting their cause, acceptance of the principle of reproductive freedom often seems half-hearted at best. They seem to feel strongly about the right of couples not to have unwanted pregnancies but not about their right to have more children than the advocates think they should. When reports of coercive family planning tactics in various places are being widely condemned, family planning advocates and demographers often remain silent or try to cast doubt on the evidence.

The UNFPA and the Chinese Program

The UNFPA has always maintained that its principles prevent it from becoming involved in supporting a coercive family planning program, but in 1979, when China's coercive one-child policy was initiated and vigorously prosecuted, the agency negotiated its first five-year, multi-million-dollar assistance program for "population activities" in China, including family planning. In September 1983, the year the Chinese program reached its all-time peak in

coerciveness, and family planning work teams fanned out across the country carrying out 21 million sterilizations, 18 million IUD insertions, and 14 million abortions, many of them involuntary, the United Nations gave one of its first two annual population awards to Qian Xinzong, the Minister-in-Charge of the State Family Planning Commission (SFPC) who directed the mass surgery drive. In the following year the UNFPA negotiated its second five-year program with China. The next renewal came early in 1989, a few months before the crushing of the student demonstrations in Tienanmen Square.

What had become of the UNFPA's commitment to the principle of reproductive freedom? It had been quite deliberately rendered inoperative. In 1985 the UNFPA executive director, Raphael Salas, said that his organization was guided by three principles: respect for national sovereignty, reproductive freedom, and the requirement that population policies be "integrated with national development plans." However, Salas made it clear that the principle of "national sovereignty" took precedence over the principle of reproductive freedom. He said:

Countries are and must remain free to decide on their own attitudes and responses to questions of population. The United Nations system is not equipped, either by law or by practice, to go behind this principle and judge the moral acceptability of programs... The relationship of individual freedom to the needs of society as a whole is a matter for each country to decide.

Thus the UNFPA disclaimed any responsibility for ascertaining whether or not a given national family planning program violated the principle. Letting "each country" decide the scope of individual freedom in population matters meant that reproductive freedom was no longer a universal human right. It also meant that in countries ruled by authoritarian regimes the exercise of that right would depend upon the whim of those most likely to infringe on or abrogate it!

When Dr. Nafis Sadik succeeded Salas as executive director in 1986, she insisted that "any limitations on the exercise of personal and voluntary choice" in selecting birth control methods was "a violation of the right to have access to family planning," but she also said that

"judgments about what constitutes free and informed choice must be made within the context of a particular culture and the context of the overall government programme for social and economic development." Thus she also seemed to subordinate choice in reproductive matters to the will of the national government. The UNFPA position on reproductive freedom had reduced it to a government option. In its modified form, the principle would never deter the UNFPA, or any other agency, from assisting a coercive family planning program.

The UNFPA went further, however. Its representatives heaped praise on China's coercive program and commended it as a model for other countries to emulate. In 1981 Salas called it "a superb example of integrating population programmes with national goals of development." In 1983 the UNFPA's deputy in Beijing said the one-child policy was "the only choice for a country with such a large population." In April 1984 Salas said his agency had no evidence of "abuses" in the Chinese program, although such evidence was not hard to find. In February 1985 the UNFPA sent a "briefing note" to AID asserting that compliance with the one-child limit in China "can only be on a voluntary basis." In April Salas told Chinese leaders in Beijing that he had come to "reaffirm our support of China in the field of population activities" and that "China should feel proud of the achievements made in her family planning program," and in the same month he told a Chinese reporter that "China has done an outstanding job in her population problem." In May 1989, Sadik told a meeting in Washington that the Chinese program was "totally voluntary," and in April 1991, as the program was being sharply escalated, she said that China had "every reason to feel proud of and pleased with [its] remarkable achievements" in family planning in the previous ten years. She added that she was going to "popularize China's experiences" in other countries.

In May 1993, as the Clinton Administration was about to resume funding of the UNFPA, the media began to report rising coercion levels in the Chinese program, embarrassing both the Administration and the UNFPA, which was said to be considering withdrawing its support from

the Chinese program. But shortly thereafter the Administration went ahead with its plans to refund the UNFPA, which continued to support the Chinese program. In July Sadik wrote to Atwood that the UNFPA found coercion "morally abhorrent" and promised that the agency would dissociate itself from any program that deviated from "the principles of voluntarism," but she also repeated the Chinese government's claim to oppose coercion and said the SFPC had promised to review abuses in the program. Sadik said that the SFPC had also agreed to keep her agency informed about any corrective action taken in regard to specific instances of coercion and would hold "working level consultations" with UNFPA whenever either party deemed it necessary. "From these agreements," Sadik assured Atwood, "you can conclude that indeed the Chinese government is willing to address seriously the problem of alleged or reported abuses, and with [UNFPA] assistance, to make improvements, where necessary."

Thus the UNFPA, which in the previous 13 years had found no evidence that the Chinese program was coercive, denied that it was capable of making such a determination, then claimed to have determined that the program was voluntary, now proposed to help monitor coercion in the program. At the same time, the UNFPA continued, ostensibly at least, to trust misleading assurances from the Chinese government about coercion and invited the Clinton Administration to share its trust.

Evidence of Coercion

Meanwhile the evidence on coercion in the Chinese program steadily accumulated until it became a formidable mass. Some of it was obtained by foreign reporters in interviews with victims of the program in various parts of the country. Some came from the personal histories of individuals who sought refuge outside China, among the latest and most detailed the story of Chi An in Steven Mosher's 1993 book *A Mother's Ordeal*. But considerable evidence also came directly from the Chinese media, which relayed strongly worded instructions to lower levels

demanding attainment of population targets and threatening penalties for local administrators who failed. These directives made it clear that the reason why local cadres resort to coercion is that they are held accountable by higher levels for the fulfillment of their state-assigned family planning targets and penalized by loss of bonuses, promotions, and even their jobs if they fail to reach them.

Popular resistance to the one-child policy remains strong, especially in rural areas, and reprisals are often carried out against family planning cadres who have imposed punitive measures on program violators. These include setting fire at night to the cadres' fields and houses, physical assault, and occasionally murder. Family planning cadres often complain that their task is "the most difficult under heaven," and the authorities concede that "the work is arduous" and that it is like "sailing against the wind." Still the higher levels will not accept excuses from local leaders for failure to reach targets. Lack of results is taken as prima facie proof that the locals neglected to "strengthen their leadership" over family planning work.

The reasons for the continuing resistance are partly cultural and partly circumstantial. Chinese traditions going back thousands of years emphasize the importance of having children as an act of filial piety. These values have largely eroded among the urban population but are still widely shared among rural Chinese. In the villages they are reinforced by the fact that Chinese farmers have no social security system and are dependent upon their children for care in their old age. Since, also in accordance with Chinese tradition, daughters join the families of their husbands upon marriage and are seldom able to offer support for their own parents, it is especially important to rural couples to have at least one son to look after them in their waning years. The one-child policy imposes serious hardship on parents whose only child is a girl, and this is one of the major reasons why rural couples sometimes resort to infanticide if their first child is a daughter, or use ultrasound to determine the sex of the unborn and abort the pregnancy if it is female, or conceal unauthorized pregnancies and endure heavy penalties for unautho-

rized births in their desperation to have a son. For these reasons "persuasion," even when backed by veiled threats, often fails to secure compliance with official policies and targets. For local officials, under intense pressure from above, coercion often seems to be the only practical alternative.

Despite what they may tell foreigners, including officials of the UNFPA and the IPPF, the central authorities are not averse to the use of coercive tactics at the grass-roots levels as long as they succeed and do not evoke too much hostility from the masses. In fact, in their exhortations to lower levels, the central authorities encourage the use of coercive measures by issuing open-ended demands that they "grasp the work firmly," "resolutely implement the policies," "take immediate action," "adopt practical and effective measures," "[use] powerful measures," and "take every effective measure." Even more explicit invitations have been issued from time to time by top leaders in the Party and government. In 1981 Deng Xiaoping himself was quoted by Vice-premier Chen Muhua as saying: "In order to reduce the population, use whatever means you must, but do it." In June 1983, as the mass surgical campaign was under way, the then premier Zhao Ziyang told a national Party congress that it was necessary to "prevent additional births by all means." Injunctions like these are obviously intended to spur recourse to extreme measures, and, not surprisingly, they often have that effect.

Some central directives openly advocate use of measures that are clearly coercive in nature and intent. For example, since the 1980s the provinces have been encouraged to set up what are called "qualified birth control villages," in which couples eligible to have children under family planning regulations may only do so if no one in the village has an unauthorized pregnancy or birth. The purpose of this arrangement is to generate coercive social pressures on those not in compliance by penalizing the whole village for their deviations. This device was again recommended by the SFPC as recently as February 24, 1985 as part of a general outline for family planning work in the next five years. Other instructions urge the imposition of

extreme fines for unauthorized births, which reportedly often exceed a family's total income. Others advocate the harassment of women pregnant without official permission by family planning cadres and activists, who visit them in their homes repeatedly until they can no longer take the strain and submit to unwanted abortions. Still others call for the "mobilization" of people eligible under the policies for sterilization and abortion to see to it that the operations are performed. As long as individuals coerced by these means walk to the clinics on their own legs, the surgeries they undergo there are officially considered "voluntary" no matter what means were used to compel compliance.

Sometimes the Chinese media drop all pretense that the Chinese program is voluntary and openly condone the use of coercion. An April 1993 article in a legal journal deplored the lack of uniformity among provincial family planning regulations because it meant that "some forcible measures that could have been legal have become illegal." The article added that

family planning work needs to be backed by forcible measures provided for by the law. ... It is necessary to have legal rules providing for relevant forcible, restrictive measures...such as ...forcible termination of pregnancy, forcible abortion, or induced abortion. It is necessary to forcibly sterilize those couples who have failed to be sterilized...after having...had two births.

In June 1993 an article in a major population journal conceded that "so far the reduction in China's rural fertility has been the result of external constraints; that is, the mechanism involved has been a coercion-based reduction mechanism." That China's controlled press would print these articles without disavowal (both journals are published in Beijing) suggests that the authorities did not object to their contents.

When coercive tactics escalate beyond a certain point, provoking strong popular resistance and causing the "alienation" of the people from the Party, the central authorities disavow the coercive measures and claim that the local cadres misunderstood their instructions and became "excessively zealous." When the local cadres react to the criticism by relaxing their efforts, they are charged by the higher levels with negligence and failure to "exercise

leadership" over the program. The tactics for which they had been criticized are again encouraged and the pressures are resumed. These cycles of escalation and remission have occurred several times since the 1970s.

What the evidence indicates is that the main impetus for coercion in the Chinese program comes not from the lower levels but from the top leadership. Despite official denials, coercive family planning is central policy.

Asylum Claims and U. S. Immigration Law

The use of coercive measures first became widespread in the Chinese family planning program early in the 1970s. However, since the borders of China were virtually closed to emigration, legal or otherwise, until very recently, it is only since the late 1980s that refugees have begun to seek asylum in the U. S. because of China's family planning policies. This phenomenon was not contemplated when the Immigration and Naturalization Act of 1982 was adopted. According to this law a foreign national may be granted asylum in the U. S. if he can show that he is subject to persecution or has a well-founded fear of persecution on grounds of race, religion, nationality, membership in a particular social group, or political opinion. None of these five categories quite fits the circumstances of refugees from the Chinese program. They do not constitute a distinct "social group" (though they are certainly treated by their government as a distinct category) nor does their action represent what in the U. S. would be considered a "political opinion."

Under current policy regarding the application of this law, as laid down by the Board of Immigration Appeals (BIA) in its Decision of May 12, 1989, known as "Matter of Chang," the terms of the law were interpreted in such a way that few Chinese seeking asylum because of China's coercive family planning program would be able to qualify. "Persecution" was defined as occurring only in situations in which a harsh policy was applied selectively to the members

of a particular group and not to the rest of society. Implementation of coercive family planning measures, according to the BIA, cannot be considered "persecutive" of noncompliant families so long as other families are subject to the same rules. A person penalized for violating the one-child rule cannot claim he was punished as a member of a social group unless he can show that the penalties were imposed for some reason other than population control, or unless he can show that he was given unusually severe treatment because he had opposed the policy publicly.

Clearly, "Matter of Chang" was meant to construe the Immigration Act of 1982 so narrowly that most, if not all, applicants seeking to escape from the Chinese family planning program would be denied asylum.

Why did the BIA take such a restricted view of the intent of the Act? Perhaps in part because it wanted to curb immigration from China or immigration in general, but there is nothing in the text of "Matter of Chang" that suggests that. However, the document explicitly concurs with the stated objectives of the Chinese program and attempts to represent it in a benign light. It provides a description of the program that is selective, inaccurate at many points, and seriously misleading in its overall characterization of the way the program is implemented. For example, "Matter of Chang" states that couples are "urged" to undergo birth control operations when in fact they are often compelled to do so. It repeats the official claim that coercion is not approved by the Chinese government without noting that there is plenty of evidence to suggest that this claim is false. It quotes an allegation from a secondary source that "punishment in the form of sterilization is not provided for in Chinese law" but does not cite the official circular of the Party Central Committee and the State Council of November 1982 that mandates sterilization for couples with two or more children. This circular sparked the mass sterilization drive of 1983; it is still official policy. The fact that the circular was not technically a "law" is of no real significance; China is not yet a country of laws.

"Matter of Chang" then goes on to imply that coercive abortion is something that affected

significant numbers of women only "in the past," but official data on abortions in China show that the annual total number of abortions increased between 1985 and 1990, and the presumption is that the numbers of abortions that were coercive, though not reported, rose also. The text cites without reservation claims by the Chinese government that it "does not condone forced abortions or sterilizations," that it "takes measures" against local officials who "violate the government's policy," and that it tries to "prevent the imposition of rigid quotas" at the local level, claims which are either misleading or palpably false. Based partly on this misinformation, "Matter of Chang" concludes that "We do not find that the 'one couple, one child' policy of the Chinese government is on its face persecutive."

But the BIA also offers as justification for its conclusion the official rationale for the Chinese policy, which is essentially the same as the "population crisis" argument advanced by other apologists for the Chinese program to excuse or condone its coercive measures:

China has adopted a policy whose stated objective is to discourage births through economic incentives, economic sanctions, peer pressure, education, availability of sterilization and other birth control measures, and use of propaganda. Chinese policy-makers are faced with the difficulty of providing for China's vast population in good years and in bad. The Government is concerned not only with the ability of its citizens to survive, but also with their housing, education, medical services, and the other benefits of life that persons in many other countries take for granted. For China to fail to take steps to prevent births might well mean that many millions of people would be condemned to, at best, the most marginal existence...

The population problem arising in China poses a profound dilemma. We cannot find that implementation of the "one couple, one child" policy in and of itself, even to the extent that involuntary sterilizations may occur, is persecution or creates a well-founded fear of persecution "on account of race, religion, nationality, membership in a particular social group, or political opinion." ...

Thus an asylum claim based solely on the fact that the applicant is subject to this policy must fail.

"Matter of Chang" asserts that "The issue before us is not whether China's population control policies...should be encouraged or discouraged to the fullest extent possible by the United States and the world community," but it also notes, apparently in defense of those policies, that "China was in fact encouraged by world opinion to take measures to control its population." The

latent implication seems to be that we therefore have an obligation to support the Chinese effort. In any case, it is clear that, on the premise that China faced acute population problems, the BIA considered China's birth control measures as reasonable and did not wish to grant asylum to Chinese fleeing from them. The BIA's sympathies were all on the side of the Chinese government.

The Statement from the Office of Asylum Affairs

So, it would appear, were those of the Office of Asylum Affairs (OAA) in the U. S. State Department's Bureau of Human Rights and Humanitarian Affairs, which issued several versions of a five-page statement in December 1992 and May and August 1993 casting doubt on the validity of the claims of asylum applicants from China's Fujian Province. The OAA statement, entitled "Asylum Claims Relating to Family Planning in Fujian Province, China," was ostensibly intended "to facilitate evaluation of individual cases on their merits," but some of what it had to say about family planning practices in China in general and Fujian in particular was as inaccurate and misleading as the assertions in "Matter of Chang." Like the BIA document, the OAA statement seems to counsel the denial of asylum.

Ignoring much of what had been published on the subject of coercion in the Chinese program, the OAA relied heavily on a 1992 report put out by the Population Crisis Committee, a Washington-based population control advocacy organization which, like most such organizations, tends to downplay the coerciveness in the Chinese program. Its statement repeats and apparently accepts the Chinese government's claim that it "does not authorize physical compulsion" and adds that the number of instances of forced abortions and sterilizations is "believed to be well below the levels of the 1980s." However, the official data on birth control surgeries, which are not cited in the statement, tend to contradict this "belief," showing an upward trend in IUD insertions, tubal ligations and vasectomies, as well as abortion, between

1985 and 1990 to levels higher than in any year in the early 1980s except 1983, the year of the mass surgery drive. Official data on birth control surgeries are not available for years after 1990, but the reported declines in birth, natural increase, and total fertility rates since 1990 also suggest that compulsion is increasing, not moderating.

The impression conveyed by the OAA statement that coercion in the Chinese program has been declining is inconsistent with official data. It is also inconsistent with the evidence already available in December 1992, and certainly by the time of the May and August 1993 versions of the statement, that family planning efforts throughout the country were being sharply escalated.

In regard to Fujian Province, the OAA statement implies, on the basis of data from the late 1980s, that it is less strict than other provinces in enforcing family planning policies. This ignores recent evidence that, since the current escalation began in 1991, Fujian has mounted an all-out family planning effort and is pulling ahead of other provinces. In April 1992 at a Fujian family planning conference it was announced that in 1991 Fujian had for the first time fulfilled its "state population quota." Later it was revealed that in 1992 all the provinces of China met their quotas. In April 1995 at a Fujian family planning "work meeting" was told that in 1994 Fujian had "fulfilled the state-assigned population control target" for the fourth year in a row! That these efforts affected fertility in Fujian is also evident from provincial population statistics. In 1990 Fujian's birth rate was 24.44 per thousand population, 16 percent above the national average of 21.06 per thousand, but by 1992 Fujian's birth rate had fallen to 18.18 per thousand, slightly below the national average of 18.24 for that year.

Thus the OAA's inference that Fujian is lax in enforcing family planning requirements and hence asylum claims by refugees from Fujian lack merit is also contradicted by the relevant evidence. It is regrettable that an agency of the Department of State concerned with human rights should issue inaccurate statements about human rights violations in China that could prejudice the judicial process against people seeking asylum on those grounds.

Administrative Remedies

Whatever influence the OAA statement may have had, as a result of "Matter of Chang," immigration judges have been refusing claims of asylum from Chinese nationals based on persecution under the Chinese family planning program and their appeals to the BIA have been dismissed. The Congress made an attempt to legislate specific relief for Chinese refugees after the Tienanmen slaughter of June 1989, but that law was vetoed by President Bush on the grounds that it encroached on executive authority, and Congress was unable to override the veto. In his veto message President Bush asked instead that the Attorney General provide for "enhanced consideration" of asylum seekers fleeing forced abortion or sterilization in their home countries. In 1990, Attorney General Richard Thornburgh issued an "Interim Rule" containing those provisions, which was supported by Bush in an executive order in April 1990. However, Thornburgh's "Final Rule," issued in July 1990 made no mention of coercive family planning.

On the last day of the Bush administration, January 22, 1993, Attorney General William Barr signed a new "Final Rule" which again included provisions for asylum for refugees from coercive family planning, but it was not to take effect until published in the Federal Register. On that same day, publication of the Barr rule was canceled under a Clinton Administration order prohibiting publication of any regulation approved by an agency chief not appointed by Clinton. In 1993 Attorney General Janet Reno first agreed and then declined to review two cases involving requests for asylum based on coercive family planning in China, leaving "Matter of Chang" in force. In August 1994 the Deputy Commissioner of the Immigration and Naturalization Service promulgated a new policy directing that consideration of a stay of deportation be granted to Chinese refugees facing forced abortion or sterilization or other severe harm if deported back to China.

As a result of these confused and sometimes contradictory actions, the official U. S. position regarding asylum for people facing coercive family planning policies remains somewhat ambiguous. It needs to be resolved, preferably by new legislation that expands the bases for asylum to include forms of persecution not encompassed by the existing immigration law, specifically including persecution under coercive family planning policies. Some such remedy is needed, for the problem of what to do with refugees from the China program is not likely to go away soon.

Current Developments in the Chinese Program

Contrary to the claims of some apologists for the Chinese program, it continues to rely on coercive measures to reach its objective, and therefore victims of these measures will probably continue to seek asylum in other countries. Since early 1991, as noted above, a major escalation of family planning efforts has been under way, and reports of increasingly coercive measures have come out of China. The first indication that a new crackdown was imminent was a letter in January 1991 from Peng Pelyun, the current Minister-in-Charge of the SFPC, to family planning workers throughout the country saying that they must "unwaveringly use the basic [family planning] practices that have been effective for many years." In February she demanded that the country's total fertility rate be reduced from the 1990 level of 2.3 children per woman of completed fertility to 2.1 by 1995 and 2.0 by the year 2000. The latter figure is a little below the replacement level. In March 1991 Party General Secretary Jiang Zemin and Premier Li Peng announced that family planning policies would remain unchanged for the rest of the century and must be implemented "with no wavering whatsoever."

Officially the new drive was launched at a national family planning symposium in April 1991 at which Jiang called for all-out efforts to get population growth "under control." In May a formal directive was issued by the Party Central Committee and the State Council, the

highest authority in the land, after which signs of escalation were widely reported from the provinces. By the end of the year the number of sterilizations in China had increased by 18 percent over the total for 1990 and the national natural increase rate had fallen to a level 1.69 per thousand lower than the official target! The next year, when it was announced that in 1992 for the first time all provinces had fulfilled their state-assigned population plans, it was also reported that the natural increase rate had dropped a startling 1.38 per thousand below the 1991 level.

Later it was revealed that an official survey had shown a 1992 total fertility rate in of 1.65 children per woman, far exceeding the target announced a year earlier for the year 2000. For Beijing, Shanghai, and Tianjin and seven of the provinces the rate was said to be under 1.5! These figures were later disavowed; the extreme pressures for family planning achievements had apparently corrupted the survey and biased the results downward. Estimates of 1.8, 1.9, or 2.0 have been put forward in place of the defective survey results, but even these more modest claims imply a sharp drop in fertility. As in previous family planning drives, coercion seems to be getting the intended results.

The 1991 crackdown is continuing as of the latest reports from China. On February 24, 1995, in its new "outline" of family planning work for the next five years, the SFPC reaffirmed the May 1991 directive and set a target natural increase rate of "under 10 per thousand by the year 2000." On March 19, 1995, at a national family planning forum in Beijing, Jiang Zemin warned that "under no circumstances" could efforts be relaxed, and Li Peng said that current policies, including the already announced population targets and the requirement that leaders at all levels take personal charge of the work, would remain unchanged to the end of the century. Obviously the Chinese leaders intend to continue their coercive policies at least until the year 2000.

Whether they will be able to do so is another question. One factor that could intervene is

the widely reported progressive political demoralization in China, which may suddenly get much worse when Deng Xiaoping dies. Succession is always an uncertain matter in a country like China, and none of Deng's potential successors can equal his prestige or his claim to legitimacy as a ruler. Among the people of China and even among the Party rank and file, belief in Communist ideology and respect for the Party leadership have given way in recent years to widespread disillusionment, cynicism, and corruption, especially in urban areas. This has resulted in a general weakening of the administrative command structure, making policy enforcement more difficult at all levels.

At some point this tendency must inevitably impact the enforcement of China's extremely unpopular family planning policies, but it is not clear what effect it will have. There have been indications in the past that many local officials are not in sympathy with their country's family planning program, see no need for it, or begrudge the time and effort its implementation requires. As central control is further attenuated, enforcement in many areas will probably lapse. On the other hand, local officials still seeking advancement by pleasing their superiors may be more inclined to resort to physical force instead of the more time-consuming indirect forms of compulsion to fulfill their targets. Local expedients in population control may become even more variable than they are now and asylum claims correspondingly harder to evaluate.

U. S. immigration laws need to be adjusted to recognize legitimate claims of asylum based on persecution under coercive family planning programs. Obviously we cannot offer asylum to all the hundreds of millions of people subject to persecution under the Chinese program, but that is not a challenge we are likely ever to face. Very few victims of the program presently have any chance of leaving China and reaching our shores. We are directly responsible, however, for what we do with those who do arrive here. If we send them back without giving adequate consideration to their asylum claims, we make the U. S. government an accomplice of the Chinese family planning program. This situation urgently requires legislative remedy.

Conclusion

There is obviously a limit to what the United States or the world in general can do to discourage or moderate human rights violations in a country like China. We could not afford the kind of intervention that would be needed to guarantee the Chinese people the same measure of human rights that our own citizens enjoy. But we certainly have an obligation to make sure that our policies and actions do not lend support or encouragement to Chinese human rights violations. With respect to China's coercive family planning program, there are two things we can and should do now. We can lower the barriers to asylum for Chinese fleeing the family planning program, which would cost us relatively little, and we can deny funds to the UNFPA and other agencies that support the Chinese program, which would actually save money. Hopefully the Congress will give serious consideration to both matters.

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U.S. House of Representatives****May 17, 1995**

Mr. Chairman, Members of the Committee, distinguished co-panelists and esteemed guests: it is a pleasure and a privilege to appear before you.

Today's hearings address an important--and unfortunately, a very timely--issue: the phenomenon of coercive family planning programs in the world today. I know that my friend and co-panelist, Dr. John S. Aird, will be describing China's current population control policies in some detail this morning. What I hope to do in this statement, and in the accompanying materials I have submitted for the record, is to place the phenomenon of coercive population policies in a broader international perspective. It is only by means of such a perspective, I submit, that the full gravity of the situation, and its implications for American policy, can be appreciated. For the use of government pressure against parents for the purpose of altering their fertility is not unique to China, nor is Beijing the only government today supporting such practices.

Four particular points, I suggest, merit your consideration this morning.

First: while questions and ambiguities concerning China's population policies remain--and, indeed, may never be completely resolved--the weight of evidence by now is so overwhelming that no reasonable and open-minded observer can today deny the coercive aspects of the Chinese population program, or the deliberately coercive manner in which the program has been implemented. At this late date, there can be no honest dispute about a central fact: that intimidation, harassment, official punishments, and physical force that have been deployed widely and recurrently by the Chinese state against its own people as an integral element of that country's ongoing anti-natal population policies.

The coercive practices embraced by China's population planners have been depicted in news accounts by journalists around the world for many years. For nearly a decade and a half, eye-witness testimony about these practices has been accumulating, available to anyone willing to read it. Those coercive practices have been documented in scholarly studies and detailed reports by demographers and China specialists including Dr. John S. Aird¹, Dr. Judith Banister², Professor Steven W. Mosher³, and others.

Despite this grim preponderance of evidence, however, many international voices have been strangely reluctant to criticize these terrible edicts and acts by the Chinese government. Indeed: many international organizations and institutions that ordinarily protect the rights and champion the wellbeing of distressed and vulnerable groups in low-income countries are uncharacteristically reticent about even acknowledging the violations that have been, and remain, integral to China's population program.

Human rights groups around the world have been conspicuous in their silence about China's population control policies. With a few honorable exceptions, the international human rights community has devoted little attention to, and indicated little concern about, the avalanche of allegations that has piled up over the past decade and a half about abuses in the official Chinese population program. I cannot explain that silence. I can only testify that it is peculiar and unseemly. And in the years to come, I believe, many will regret it.

International population groups have also been unexpectedly quiet about the issue of coercion in China's population policies. By and large, these groups are today strongly supportive of women's rights in general, and women's reproductive rights in particular. Yet with only a few honorable exceptions, international population groups have yet to criticize the Chinese

government for its documented instances of forced abortions, or its physical destruction of the homes of mothers with "over-quota" births, or its practice of insisting upon the insertion of IUDs into women who do not want them. They too, I believe, will regret their silence in the years to come.

The reaction of responsible authorities within the United Nations Organization to the evidence of coercion in China's population program has been particularly noteworthy. The U.N.'s Declaration of Universal Human Rights notwithstanding, neither the United Nations itself nor any of its subsidiary institutions have as yet evidenced any significant reservations or concerns about China's population program. Instead, the UN family of organizations has subsidized, and even celebrated, Beijing's population control program.

The United Nations Population Fund (UNFPA) has been an abiding source of financial and technical support for China's population policy since the very announcement of the "one child norm". The UNFPA has honored the head of China's State Family Planning Commission with a special award to commemorate the program's achievements--this in 1983, well after reports of widespread coercive abuses in China's population program had reached the international media. This very year, moreover, Beijing is preparing to serve as host for the UN's upcoming Fourth International Conference on Women, to be convened late

this summer. Why the United Nations should have chosen to favor the Chinese government with this particular distinction--a conference on the rights of women!--is not immediately obvious. But here again, I believe that the decision will prove to be a source of regret for the United Nations in the years to come.

Second: what we have seen to date in China suggests that the introduction and official acceptance of coercion in family planning programs paves the way for ever more terrible human rights violations under the banner of population policy. The birth quotas, forced contraception, and involuntary abortions that have been part and parcel of China's population program attract considerable international comment. But non-voluntary birth control has inexorably extended to other practices that are perhaps less familiar.

One of these is eugenics. In principle, the Chinese state today reserves for itself the prerogative to determine who is "fit" to procreate, and who is not. In principle, the state now reserves the right to sterilize the "unfit". State-directed eugenics was quietly introduced into China's population program more than a decade ago. China's new regulations on eugenics were introduced in 1994. They were temporarily shelved after an international outcry--but only temporarily. By 1995 they had been formally codified into law. Fearful as its history may be, state-sponsored eugenics is a completely logical corollary to

China's extant program of state-directed birth control.

Then there is infanticide. In a society where the preference for sons is strong and longstanding, the "one child only" campaign has quite predictably resulted in the surreptitious killing of baby girls. Anecdotal reports about the practice, depicted to have occurred in many different regions of rural China, have circulated in the international press for more than a decade. For obvious reasons, an accurate figure for the total number of infanticides in China is hard to come by. By the late 1980s, however, 111 babies boys were counted for every 100 baby girls in China as a whole⁴--a disparity far greater than would be expected in a naturally constituted human population. Selective abortion may have accounted for much of that disparity, but given rural China's limited access in the late 1980s to technology for identifying the sex of a fetus, it is hard to imagine that selective abortion could have accounted for all of the disparity.

Sadly, there may be more. Just recently, for example, journalists from Hong Kong have alleged that, with the help of family planning cadres, fetuses are being harvested in China, and that their parts are being sold: for "medicine", even for food.⁵ At the moment, these are unsubstantiated assertions. Hopefully, we will learn more about their accuracy in the months to come.

Modern China's experience with population control underscores a simple but fundamental fact: human rights cannot be compartmentalized within family planning programs--respected in some areas while being completely disregarded in others. Human rights are indivisible. Abrogating those rights, as China so deliberately has done in its population program, tends quite naturally to lead to ever greater abominations.

Third: while China may offer the most extreme contemporary example of coercive birth control policy, China is not the only government in the international community to use pressure, punishment and force as regular instruments in local population programs. Far from it. Mounting evidence suggests that other governments have studied China's population control effort, and have chosen to emulate its most objectionable aspects.

In Vietnam, a country of over 70 million people, the government has promulgated an anti-natal population policy, featuring a "one-or-two child norm" self-consciously styled after China.⁶ Like China's program, Vietnam's includes severe financial penalties for mothers who violate "birth norms". And although the evidence on the matter may still be judged inconclusive, there are indications that intimidation and coercion figure in the official effort to lower the country's fertility level.

China and Vietnam, of course, are ruled by Communist governments, and Communist states are particularly disposed to embrace human rights violations as a matter of principle. But human rights violations through national population policies are not today delimited to Communist countries.

Indonesia--the world's fourth most populous country--has a non-Communist government that embraces an anti-natal family planning program. According to many reports, that program has repeatedly crossed the divide between enthusiastic agitation or persuasion and official intimidation, or worse.

Here, for example, is an item from a 1991 issue of The Far Eastern Economic Review:

...problems arose [in Indonesia] in 1987 when the government began mass insertion of Norplant as part of its longstanding "safari" programme. The "safari" represents an intensive effort to meet fixed targets of new acceptors. A team of government health workers--accompanied by local Muslim leaders, teachers, and sometimes military personnel--descend upon a village and gather all the women together for a lecture on the benefits of contraception. By the end of the day, they recruit anywhere from tens to hundreds of women to adopt IUDs, pills, or other methods. Individual counselling and information on side-effects tends to be minimal on these occasions....

Norplant removal continues to be a particularly troublesome issue. Up till now, health worker training has focused almost entirely on insertion rather than removal, the latter being far more difficult....

The other main problem lies in screening acceptors. Officially, Norplant is supposed to be used while a woman is menstruating, to ensure that she is not pregnant. This has proven impractical during the one-day "safari"....

BKKBN [the Indonesian National Family Planning

Coordination Board] recently changed the name of "safari"...to get away from the image of hunting for acceptors...⁷

And here is an assessment of the Indonesian family planning program by Ines Smyth, a scholar who has studied it:

In the early period of the programme, the promotion of mothers' and children's health was included in the aims of the programme, though purely for strategic purposes. Now, however, this has completely disappeared from the programme: the protection and improvement of women's health is not counted among its concerns, either in principle or in practice...The priorities of the programme, its method of operation and delivery of services, follow international trends which leave no room for providing women with the means to autonomously regulate their own fertility, through safe access to freely chosen contraceptive and related services....

Undoubtedly, the most alarming aspect of the Family Planning Programme is the incidence of coercion. The root causes have been identified in the target system, which increases the likelihood of officials at various levels resorting to unacceptable methods of persuasion towards subordinates and towards eligible couples and individuals, in order to ensure that the ambitious targets set by the programme are met. Such methods infringe on the most basic rights of individuals, especially women.⁸

It is no accident that these facets of Indonesia's population program are so reminiscent of China: Indonesian authorities are quite familiar with China's program, for they have followed it closely.

Under current circumstances, it may no longer be entirely accurate to describe China's coercive population policy as an aberration. We must recognize the possibility that, for a growing number of governments, China's methods of population control may represent a kind of norm.

Some governments with favorable estimates of the Chinese "model", of course, in all likelihood have neither the inclination nor the capacity to implement a population policy as forcefully as has Beijing. But that is a matter of practice, not of principle. The principle is whether a government guarantees that parents will be the ultimate arbiters of their own family size and contraceptive behavior--or whether instead it views this question as open to continuing negotiation.

This observation brings me to a fourth and final point: that population programs today in many non-Communist countries--even in countries that enjoy genuine civil and individual rights--are characterized by a profound and troubling inconsistency. For even in settings where individual rights are relatively secure, and where governments proclaim that parents are properly the ultimate arbiters of their own fertility, there operate family planning programs which are explicitly anti-natal in nature, and which adhere to numerical population targets: for contraceptive acceptance, or for fertility reduction, or for the growth of total national population.

An anti-natal population policy is one that intends and deliberately attempts, through its interventions, to bring a society to a lower level of fertility than would otherwise prevail. Some interventions that might be intended to lower fertility--such as improving health services, or extending

educational opportunities--can be justified entirely on their own merits, without regard to their possible demographic consequences. In any event, in free and open societies, the actual demographic impact of incontestably beneficial social policies tends to be quite unpredictable in the short run, or even over a somewhat longer horizon.

This is precisely why population targets are so troubling. As a practical matter, such numerical targets can only coincide with the voluntary choices and decisions of millions of parents by complete chance--no matter what policies a government is implementing to persuade its people to alter their fertility behavior. In other words, if a family planning program is indeed truly voluntary in nature--if the program is intended to extend the choices of parents, rather than alter them--such population targets would be almost completely useless from a policy perspective. It is therefore striking that so many family planning agencies around the world insist on continuing to devise and update population targets--and to use such population targets as a compass for their ongoing activities.

Indeed: population targets continue to be widely embraced by the international population community. Global population targets were handed down by the UNFPA at the 1994 International Conference on Population and Development in Cairo. Population targets are regularly set by the World Bank in its lending for

family planning. And population targets have long been used by our own government. We have help to set such targets, and financed programs built around them, through the US Agency for International Development; in fact, USAID was an early proponent of the concept of the population target, and has encouraged many Third World governments to introduce such targets into their local programs.

Today's hearings are intended to focus primarily on China. That focus is entirely appropriate: the type of abuses in China's family planning program today are more egregious than those witnessed in any other country, and affect more people. But as we contemplate the phenomenon of coercive family planning, I urge you to remember that official disregard for parents' own family preferences is a continuum.

I believe that a slippery slope that today ends in Beijing begins with state-established population targets. I believe that free peoples and open societies should have no use for, or tolerance of such population targets. And I submit that the American imprimatur should not grace and legitimize, nor should American public funds underwrite, efforts to imprint population targets on other lands.

FOOTNOTES

1. For example, John S. Aird, Slaughter Of The Innocents: Coercive Birth Control In China, (Washington, DC: AEI Press, 1990).
2. For example, Judith Banister, China's Changing Population, (Stanford, CA: Stanford University Press, 1987); Karen Hardee-Cleaveland and Judith Banister, "Fertility Policy And Implementation In China, 1986-88", Population And Development Review, June 1988.
3. For example, Steven W. Mosher, A Mother's Ordeal: One Woman's Fight Against China's One-Child Policy, (New York: Harcourt Brace Jovanovich, 1993).
4. See, for example, Sten Johannson and Ola Nygren, "The Missing Girls Of China: A New Demographic Account", Population And Development Review, March 1991.
5. See, for example, Yojana Sharma and Graham Hutchins, "Chinese Trade in Human Foetuses for Consumption is Uncovered," The London Daily Telegraph, April 13, 1995.
6. For more information, see Judith Banister, Vietnam Population Dynamics And Prospects, (Berkeley, CA: University Of California Institute Of East Asian Studies, 1993), and Daniel M. Goodkind, "Vietnam's One-Or-Two Child Policy In Action", Population And Development Review, March 1995.
7. Margot Cohen, "Success Brings New Problem", Far Eastern Economic Review, April 18, 1991, pp. 48-49.
8. Ines Smyth, "The Indonesian Family Planning Programme: A Success Story For Women?", Development And Change, October 1991, p. 799.

Statement of Pin Lin
before the
House Committee on International Relations
Subcommittee on International Operations and Human Rights
June 22, 1995

I was told that America is a good place. There were freedom and rights for everyone who lives there. It is a democratic country and besides I have had the "one child one family" policy problem in China. On April 5, 1991, my son Wei Wei Lin was born. This was my second child. (My daughter was born on May 10, 1989). My wife was born on November 16, 1965. Because my uncle was the governor of the village at the time, then he was impeached because he has supported the "movement of the students". He has encouraged people to fight for their rights and he has encouraged people to endow the money for supporting students. Because of this they hated my family and have intended to make trouble for our family.

It was just a few days after my son was born (April 15, 1991) officials came from the birth control department. In due time we were told that we had too many children. They started to catch my wife without any condition. By seeing that, I got a bit nervous because my wife had a very difficult delivery with my son and lost a lot of blood. She was very weak by the time. As you know how the government is! They insisted that either my wife or I must be sterilized. This argument got very hostile and turned into a pushing match. By that time, some friends of mine heard the noise of argument. They came to help me with the matter. They joined the pushing and hitting. Finally, the officials left our home. According to the action of government, my parents and my friends told me that we must leave home immediately because they won't forget that what I have done. I took my parents and my friends advice and fled. The next day the sterilization officials with some policemen returned to our home to get us. (There were about 14 people). They surrounded our house and they found that we were not in the house. Then, they asked my parents if they knew where we were. When my parents refused to talk about it, they arrested my father and destroyed things in our home.

I knew because of my fight with the officials and against the policy and my uncle's political activities that I would be put in jail if I was caught by them and the punishment would be more severe. (So) I decided to try to escape from my government's harsh policies. I wanted to go somewhere where have our family free from government interference. Meanwhile, I learned that it was possible to take a ship from the port of Fu Chow to the United States. Then I was arranged by my relatives and friends and other people if I am returned to my country I will be placed in prison for a number of years. I will also be beaten and tortured for embarrassing my government by leaving without permission and because of fight with the officials and against the policies and my uncle's political activities in public against the government such as talking to many press even the congressmen of the U.S.

Statement of John M.A. Burgess
before the
House Committee on International Relations
Subcommittee on International Operations and Human Rights
June 22, 1995

The attached writing was prepared by John M. A. Burgess and Tay Sarguis, *pro bono* attorneys, practicing in San Francisco, for inclusion as a section of the brief filed January 13, 1995, in support of a Petition for Writ of Habeas Corpus, brought on behalf of Qu Ai Yue, and eight other Chinese detainees currently being held in maximum/medium security prison for deportation in Bakersfield, California. They, along with thirteen other women more recently transferred, comprise a group of twenty-five of the approximately 300 passengers from the Golden Venture, which ran aground near New York City on June 6, 1993.

The nine Petitions for Habeas Corpus were consolidated for hearing on May 25, 1995 before U. S. District Court Judge Vaughn R. Walker of the Northern District of California, whose decision is still pending.

This effort is part of a larger ongoing, cooperative legal effort joined in San Francisco by a number of volunteer lawyers from the law firm of Brobeck, Phleger and Harrison (Jonathan Palmer, Theresa Stricker, Renate Hesse among others) under the auspices of Sara Campos, director of the Lawyers Committee for Civil Rights and joined by Susan Lydon, Associate Director of the Immigrant Legal Resource Center, both of the San Francisco Bay area. Individual lawyers and firms in New York, Pennsylvania, Washington, D.C., and New Orleans are part of a nationwide network of volunteer attorneys representing the Golden Venture passengers.

The central issue in all of the petitioners' cases is whether or not their persecution for opposition to the family planning issues of the Peoples' Republic of China constitutes a legal basis for asylum as refugees in the United States, as against the assertion and rulings by the Immigration and Naturalization Service (I.N.S.) that it does not. Another major issue in all of the cases is whether or not President Clinton's executive staff denied all the Golden Venture petitioners due process of law and a fair hearing by transmitting improper *ex parte* communications to I.N.S. officials and the immigration judges hearing the cases, directing that their claims be denied and they be deported from the United States as quickly as possible as part of an administration policy to deter similar future flight by Chinese citizens.

The attached section of the brief argues essentially that the right to reproductive self-determination is both an international and U.S. Constitutional Right. It is submitted that the recently adopted "Torture Convention" (which entered into force for the United States in November, 1994) specifically outlaws by its terms forcible abortion/sterilization: that under (1) international customary law, (2) numerous federal court decisions which incorporate parallel provisions of other human rights covenants; and (3) Article VI of the U. S. Constitution, ("...all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby..."); the "Torture Convention" is binding on the Executive Branch and by necessary legal implication, the Immigration and Nationality Service--- prohibiting the forcible, inhumane return of the Golden Venture refugees to China.

**REPRODUCTIVE SELF-DETERMINATION IS A FUNDAMENTAL
INTERNATIONAL HUMAN RIGHT PROTECTED AND RECOGNIZED UNDER THE
UNITED STATES CONSTITUTION**

- A. The Right to Reproductive Self-Determination is an International Human Right and Coerced Sterilization and/or Abortion is a Cruel, Inhuman or Degrading Treatment or Punishment Prohibited by the "Political Covenant" and "Torture Convention," Treaties Formally Adopted by the United States and Binding on the Executive Branch.**

Reproductive self-determination is an essential element of individual freedom, autonomy and bodily integrity. Rights to liberty, privacy, and to found a family are an integral part of the set of internationally protected human rights.¹ Thus, the right to reproductive self-determination limits governmental interference with an individual's efforts to promote or limit his or her own fertility. Similarly, an individual's right to privacy and to found a family incorporate a right to choice on matters as fundamental and personal as the decision whether to bear or beget a child.² Finally, there is little doubt that freedom to choose the number and spacing of children in accord with economic, medical, familial and social factors enhances health.³ Hence, the right to health also supports recognition and protection of reproductive autonomy under international human rights law. International human rights law obligates state parties to refrain from arbitrary

¹Rebecca Cook, International Human Rights and Women's Reproductive Health, *Studies in Family Planning* 1993; 24,2: 73-86; see generally Rebecca Cook, International Protection of Women's Reproductive Rights, 24 *N.Y.U. J. Int'l L. & Pol.* 645 (1992); and Jordan J. Paust, On Human Rights: The Use of Human Right Precepts in U.S. History and the Right to an Effective Remedy in Domestic Courts, 10 *Mich. J. Int'l L.* 543, 599, 604-06 (1989) (hereinafter On Human Rights).

²Cook, *supra* note 1, at 700-01; and Paust, *supra* note 1, at 605.

³Karen O. Mason, The Impact of Women's Position on Demographic Change During the Course of Development: What Do We Know? Paper presented at the Rockefeller Foundation Workshop on Women's Status and Fertility, Bellagio, Italy (June 6-10, 1988).

interference with the right to self-determination on matters of reproductive health and choice.

The United States is a party to and has agreed to be bound by the provisions of Articles 55 and 56 of the United Nations Charter, which state in part:

Article 55: "the United Nations shall promote... universal respect for, and observance of, human rights and fundamental freedoms for all without distinctions as to race, sex, language, or religion."

Article 56: "All members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55."

The Universal Declaration of Human Rights (the "Universal Declaration"), G.A. Res. 217, U.N. Doc. A/810 at 71 (1948), the first comprehensive human rights instrument proclaimed by the United Nations, explicates Articles 55 and 56 and sets forth a series of individual rights, including the right to liberty, privacy, to found a family and to health. See Articles 3, 12, 16(1) and 25. Although the Universal Declaration is not a treaty, it has been acknowledged as a normative instrument that reflects legal obligations under the U. N. Charter for the member states of the United Nations, including the United States.⁴ The United States is thus bound to respect and ensure respect for the standards set forth in this instrument. Indeed, United States courts have accepted human rights standards enumerated in the Universal Declaration as customary

⁴See U. N. Charter, arts. 55(c), 56, 59 stat. 1031, T.S. No. 993; Louis Henkin et al., International Law in Theory and Practice 989 (2d ed. 1987) (quoting Restatement (Revised) Foreign Relations Law of the United States Section 702, Introductory Note to Part VII); Myres M. McDougal, Harold D. Lasswell & Lung-chu Chen, Human Rights and World Public Order 272-74, 302, 325-30 (1980); Paust, On Human Rights, supra note 1, at 570 n.182, 595-96 & ns. 369-370.

international law enforceable in and against the United States.⁵

The International Covenant on Civil and Political Rights (the "Political Covenant"), G.A. Res. 2200, U.N. GAOR, 21st Sess., Supp. No. 16, at 52 U.N. Doc. A/6316 (1966), which has been ratified by the United States,⁶ imposes legal obligations on state parties to guarantee the rights to liberty, privacy, and to found a family. Articles 9(1), 17 and 23(2). The Political Covenant requires that the more than 127 nations that are party to it guarantee an individual's right to reproductive self-determination and requires that they implement family planning policies in a manner which ensures respect for human rights.⁷

[T]he right to found a family implies, in principle, the possibility to procreate and live together. When State parties adopt family planning policies, they should be compatible with the provisions of the Covenant and should, in particular, not be discriminatory or compulsory.

United Nations, Hum. Rt. Comm., General Comments, CCPR/C/21/Rev.1/Add.2 (1990) (emphasis added). Thus, the use of compulsion to implement family planning policies is perforce a violation of the rights guaranteed by the Political Covenant.

It should be noted that even prior to the ratification of the Political Covenant by the United States, a series of Federal judicial decisions have recognized, and thus indirectly incorporated

⁵See *Filartiga v. Pena-Irala*, 630 F.2d 876, 882 (2d Cir. 1980) (prohibition against torture "as evidenced and defined by the Universal Declaration of Human Rights" accepted as part of customary international law and as human right guaranteed to all by the U. N. Charter); *Fernandez v. Wilkinson*, 505 F. Supp. 787, 797 (D. Kan. 1980), *aff'd*, 654 F.2d 1382 (10th Cir. 1981) (the "Declaration has evolved as an important source of international human rights law"); L. Henkin, *supra* note 4, at 995-96 (human rights recognized as customary international law are law in the United States and enforceable against the United States).

⁶The Political Covenant entered into force for the United States on Sept. 5, 1992.

⁷S. Rep. No. 23, 102d Cong., 2d Sess. 1, 3 (1992).

provisions of the Covenant into the law as a basis of fundamental human rights and minimum standards of fairness and due process guarantees. Beginning with the landmark opinion in Filartiga v. Pena-Irala, cited above, the Second Circuit used the Political Covenant as one of several human rights documents reflecting the customary prohibition of torture, as well as the treaty-based rights and obligations in the U.N. Charter.⁸ The Covenant was also used in the Second Circuit in United States v. Romano,⁹ to exemplify due process guarantees for those charged with a crime under the customary "denial of justice" standard. The Ninth Circuit, in Lipscomb ex rel. DeFehr v. Simmons,¹⁰ affirmed that "[t]he constitutional right to associate with family members...is so fundamental that it has been recognized in...[among other instruments,] the International Covenant...." More generally, the Fourth Circuit recognized that "[d]ocuments detailing minimum standards of human rights...include...the International Covenant...."¹¹ In Fernandez v. Wilkinson,¹² an appellate court recognized the Covenant as a principal source of "fundamental human rights," including the customary prohibition of arbitrary detention, and that it is "indicative of the customs and usages of civilized nations" which federal courts are bound to apply.¹³ And in Forti v. Suarez-Mason, another appellate court used the Covenant as an aid in

⁸Id. at 882-84; see also Siderman, 965 F.2d at 716-17 & n.15 (relying upon the Covenant in holding that the prohibition against official torture has attained jus cogens status).

⁹706 2d 370, 375 (2d Cir. 1983).

¹⁰884 F.2d 1242, 1244 (9th Cir. 1989).

¹¹M.A. A26851062 v. U.S. INS, 858 F.2d 210, 219 n.7 (4th Cir. 1988).

¹²505 F. Supp. 787, 797 (D. Kan. 1980).

¹³Id. at 798-800.

the identification and clarification of customary prohibitions of summary execution and the international "tort of 'causing disappearance.'"¹⁴ The Covenant was also used by a federal district court in California to demonstrate that "[o]ne of the essential requirements of fairness in international law is that persons may not be subjected to laws that make criminal, actions which were innocent at the time"¹⁵ they were committed. The foregoing decisions recognize customary human rights norms which are directly incorporable as supreme federal law regardless of the status of the particular treaty in which they are enunciated, i.e., whether or not the treaty is self-executing or has even been ratified by the United States.¹⁶

Under these holdings, it is submitted that whether or not it was a crime at the time in Fujian province for the Petitioner and her husband to conceive more than one child, it is clearly violative of fundamental, universally recognized human rights to make conception and birth of a child a crime at all, let alone the "punishment" of coerced sterilization and/or abortion. While it is true that the U.S. stated formal reservations in its adoption of the treaty, "the United States considers itself bound by Article 7 to the extent that 'cruel, inhuman or degrading treatment or punishment' means the cruel and unusual treatment or punishment prohibited by the fifth, eighth and/or fourteenth amendments to the Constitution of the United States".¹⁷

¹⁴694 F. Supp. 707, 710 (N.D. Cal. 1987).

¹⁵*Handel v. Artukovic*, 601 F. Supp. 1421, 1436 (C.D. Cal. 1985).

¹⁶See Jordan J. Paust, Avoiding "Fraudulent" Executive Policy: Analysis of Non-Self-Execution of the Covenant on Civil and Political Rights, 42 DePaul Law Review 1257, 1274-78 (1993); see also Paust, Customary International Law: Its Nature, Sources and Status as Law of the United States, 12 Mich. J. Int'l L. 59 (1990).

¹⁷See Senate Comm. on Foreign Relations, Report on the International Covenant on Civil and Political Rights, S. Exec. Rep. No. 23, 102d Cong., 2d Sess. 6-20, 22 (1992),

More recently, the United States has adopted the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the "Convention Against Torture"), G.A. Res. 39/46, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1985),¹⁸ which, together with the Political Covenant are binding on and enforceable against both the Executive Branch and the Justice Department (including the Immigration and Naturalization Service as an administrative agency of the United States) under Articles II and VI of the U. S. Constitution as "the supreme law of the land" the provisions of which should be judicially noticed by this Court.¹⁹

In Part I, Article 1, the Convention Against Torture defines torture as

"any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."

Article 3 of the Convention states:

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable,

reprinted in 31 I.L.M. 645, 651-57, 659 (reservation no. 3).

¹⁸The Convention Against Torture entered into force for the United States on Nov. 20, 1994. Implementing legislation was adopted by Congress in the passage of the State Department Authorization Bill of 1994 (H.2785 of April 26, 1994).

¹⁹ See generally Jordan J. Paust, *The President Is Bound by International Law*, 81 *Am. J. Int'l L.* 377 (1987); Paust, *Paquete and the President: Rediscovering the Brief for the United States*, 34 *Va. J. Int'l L.* No. 4 (1995)(forthcoming).

the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights."

The laws and policies of the People's Republic of China that mandate or coerce sterilization or abortion violate international human rights law. By adopting the human rights treaties and recognition of the principles in the Universal Declaration discussed above, by its own commitment to the Constitution's protection of individual rights, and consistent with its world leadership in domestic and international protection of human rights, the United States is committed to respecting and applying these principles in implementing its asylum laws and refugee policies.

Article 16, paragraph 1, subparagraph (e), of the 1979 Convention on the Elimination of All Forms of Discrimination Against Women, reprinted in 19 I.L.M. 33 (1980), affirms that State Parties "shall ensure, on a basis of equality of men and women...(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights...." Although China is one of more than 100 signatories to the treaty, it is obvious that it does not fully abide by its treaty obligations. The U. S. Senate has recently given its advice and consent to ratification of this treaty. It would not be appropriate for U. S. institutions to participate in similar violations or denials of right on the eve of ratification by our President. Further, the 1979 Convention can be used as an interpretive aid to clarify more detailed content of rights already protected under customary international law and other treaty law of the United States, as documented above.

B. Reproductive Self-Determination is a Fundamental Right Protected by the United States Constitution and Numerous Supreme Court Rulings.

United States law and policy mirrors these basic principles of international human rights. United States constitutional law has long recognized that reproductive autonomy is implicit in

basic constitutional principles of liberty and privacy. The rights protected by these constitutional principles include the choice to have a child as well as the choice never to conceive or bear a child or not to do so at a particular time.

In Skinner v. Oklahoma, 316 U.S. 535 (1942), the United States Supreme Court invalidated a state statute that provided for sterilization of men convicted two or more times of felonies involving moral turpitude, stating that the right to reproduce is one of the "basic civil rights of man." Id. at 538. The Court noted that

[t]he power to sterilize, if exercised, may have a subtle, far-reaching and devastating effect...There is no redemption for the individual whom the law touches....He is forever deprived of a basic liberty.

Id. at 541. Decision of lower courts have also consistently recognized forced sterilization as an extreme measure that implicates basic constitutional rights. See, e.g., Avery v. County of Burke, 660 F.2d 111, 115 (4th Cir. 1981) (coerced sterilization implicates constitutionally protected right); Downs v. Sawtelle, 574 F.2d 1, 15-16 (1st Cir. 1978) (guardian's sterilization of minor without consent is deprivation of constitutional right), cert. denied, 439 U.S. 910 (1978).

In a long list of cases including Griswold v. Connecticut, 381 U.S. 479 (1965); Roe v. Wade, 410 U.S. 113 (1973); and, more recently, Planned Parenthood of Southeastern Pennsylvania v. Casey, 112 S. Ct. 2791 (1992), the Supreme Court has invalidated state statutes banning or restricting the means of choosing not to have children (i.e., contraception and/or abortion) on the ground that this choice is similarly protected. Thus, coercive family planning programs subordinating the individual's choice whether or not "to bear or beget a child" to the state agenda violate the United States Constitution.

In summary, it is beyond argument that reproductive self-determination is a fundamental,

universally recognized international human right and is protected under our Constitution as a basic civil right of man and woman. It seems equally clear that forced sterilization and abortion violate international customary legal norms enunciated in the Universal Declaration of Human Rights, and are inherently prohibited by the provisions of the International Covenant On Civil and Political Rights and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ratified by the United States. These provisions are in force and binding on the Executive Branch and the Immigration and Naturalization Service, both under the treaty making power of our Constitution as the supreme law of the land, and under international law, even though not self executing. Beyond question, forced sterilization and abortion constitute "cruel and unusual treatment" prohibited under the fifth, eighth and/or fourteenth amendments to the United States Constitution.

Thus, counsel for the Petitioner urge that the U. S. Constitution and the facts of this case, the foregoing treaties, international standards of universal human rights, and customary international law, require a finding that Petitioner be granted asylum because of her opposition to the family planning policies of the People's Republic, her past persecution on account thereof and the near certainty of her forced sterilization, imprisonment and other punishment should she be compelled to return China. It is respectfully submitted that only by holding that the Universal Declaration of Human Rights and the forementioned treaties have no legally binding effect on the United States in implementing its asylum policies and by holding that forced sterilization and abortion are not cruel, inhuman or degrading treatment or "or cruel and unusual punishment" could this Court rule otherwise.

**Opening Statement
CONGRESSMAN TOM LANTOS**

**Hearing of the
Subcommittee on International Operations and Human Rights
July 19, 1995**

Mr. Chairman, I want to join you in condemning the human rights practices of the Government of China, including the abhorrent use of forced abortion as a method of population control. This is a horrendous and unacceptable practice, and I join you in denouncing it as a gross violation of human rights. I commend you, Mr. Chairman, for your leadership in opposing this practice, and I join you in calling for forceful action by the United States to make known to the Chinese government our strongest opposition to their practices.

I look forward to hearing the testimony of these women today for the insight that they may be able to provide into the barbaric practices of the Chinese government. I also look forward in the near future to hearing representatives of the Department of State and of the Immigration and Naturalization Service on the broader policy question of the conditions under which the United States can and should grant political asylum to refugees like those who are appearing before us here today.

While I join the Chairman in opposing human rights violations, I also want to express my concern for the necessity of controlling the borders of our country. The individuals who are appearing here today were taken from the Chinese ship, the *Golden Venture*. This episode was an effort by Asian organized crime syndicates to smuggle illegal aliens into the United States. It had little of anything

to do with forced abortion in China and a great deal to do with illegal entry into the United States for economic reasons.

Alien smuggling exploits these would-be immigrants. They pledge to pay as much as \$30,000 — which is substantially greater than the economic penalties that are generally imposed by the government of China for violating the one-child policy. These migrants travel under deplorable conditions, and they are placed in slave-like conditions of indentured servitude here in our country until they are able to pay their obligation for being illegally smuggled to our shores. These illegal migrant smuggling schemes are carried out by Asian criminal organizations which reap enormous financial gain. Such activities are an important element in the continuation of their illegal activities.

The United States must take appropriate action to secure our borders against illegal aliens. At the time of the *Golden Venture* episode, there were a number of other ships that were found off the coast of California that were attempting to bring large numbers of illegal aliens into the United States. At that time, many Members of Congress called on the President to take strong action including use of the Coast Guard and our military forces, if necessary, to secure our borders.

While I am second to none in my support for human rights, I also am firmly convinced that the United States government must assure the defense, protection and control of our borders. We must determine through an orderly and legal procedure who will be granted entry into the United States.

What Is Population Policy?

Nicholas Eberstadt

Just what is "population policy"? Immigration, public health, and communication policies have always had demographic effects. To the extent that individuals make calculations about future childbearing on the basis of their current and expected levels of prosperity, policies that lead to the enrichment of persons around the world have demographic effects. But population policy is supposed to be quite different. Population policy presumes to shape the demographic contours of affected societies in the name of bringing social and economic betterment to its citizens.

Governments of very different ideological inclinations and organizational capabilities have expressed enthusiasm for the general idea of a population policy. In large part, the favor that population policy enjoys today in the corridors of government derives from the presumption that it is a tested and scientifically grounded instrument at the disposal of the modern statesman. Five distinct, if not always clearly identified, premises underlie this belief: first, that a body of knowledge known as population science exists that is capable of explaining and, to some extent, predicting population change and its relation to socioeconomic changes; second, that there is such a thing as overpopulation and that its effect on human welfare is demonstrably adverse; third, that there is a huge unmet demand for modern contraceptive services in the developing world; fourth, that filling this need would lead to significant and sustained fertility decline in the less developed countries today; and fifth, that active popu-

lation policy can achieve worldwide lowering of birth rates through entirely voluntary means.

None of these premises is demonstrably true. To the extent that any of these premises can be empirically tested, each one appears to be demonstrably false.

Population "Science"?

Let us start with the notion that population science is capable of explaining and predicting relationships between population change and socioeconomic change. For some time, demographers have been attempting to improve the quality of their predictions about population change. This has been a totally futile exercise. Over the past century, population *predictions* have been renamed population *projections* out of consideration for the reputations of those making the forecasts. The distance between the predictions and the results has often been dramatic, and the gap has not been closed appreciably by any of the improvements in applied demographic or mathematical theory in this century. The reason is fairly clear: There is no scientific method by which one can predict how many children a person or a couple will choose to have in the future, much less in the distant future.

Even some very recent population projections have become obsolete remarkably quickly. The projections for 1990-1995 by the demographers at the United Nations, which were set down in the 1992 edition of *World Population Prospects*, are completely outdated for Eastern Europe and the former Soviet Union. This

is because this team of demographers—whose reputation is deservedly excellent—simply could not anticipate that birth rates would have collapsed and that death rates would have shot upward with the demise of the Soviet bloc. While other misprojections in this study, only two years old, are already evident, none are so glaring as these. After all, in this instance some of the world's best demographers failed not only to anticipate future demographic shocks, but they even failed to recognize current ones, which were already well underway in 1992!

Predictions are by their very nature demanding and risky. Explaining the past is usually less taxing. Yet as anyone familiar with historical demography can attest, the difficulties in explaining population changes in the past in an unambiguous way are formidable, and these problems cannot be resolved by current theories on population and socioeconomic change.

Historian Charles Tilly put it well when he examined the theories about fertility decline in Western Europe in the nineteenth century (which happens to be one of the most intensely garden-ed areas in the field of historical demography): "The problem is that we have too many explanations which are individually plausible in general terms, which contradict each other to some degree, and which fail to fit some significant part of the facts." That description obtains generally to the project known as population science. There are many interesting, innovative, and provocative items within this great literature, but it offers nothing like a theory of demographic change or a unified theory of the interrelationships between demographic change and socioeconomic change.

The state of our knowledge about the socioeconomic impact of population change is provided, albeit inadvertently, by two separate studies by the U.S. National Academy of Sciences on the contemporary phenomenon of rapid population growth in Asia, Africa, and Latin America. The first report, issued in 1971, was almost alarmist: It depicted rapid population growth as a serious impediment to economic progress in the developing countries and counted among its consequences the spread of poverty, the elevated risk of mass malnutrition, and the heightened political instability in the Third World. The next report, issued in 1986, offered a radical contrast to the first. This report suggested that rapid population growth might hinder economic development efforts but that on the whole its net impact was rather slight—in any case, slight compared with the impact projected by particular development policies embraced by local governments. We need not argue here about which of these assessments

is closer to the mark. The point is that they cannot both be right simultaneously. Whatever else may be said about them, the fundamental discrepancies between these two reports underscore the absence at present of any stable corpus of knowledge about even the broad relationships between demographic and socioeconomic changes.

The Myth of Overpopulation

We have all heard about overpopulation for so long that we may not have stopped to think about whether an unambiguous definition exists. The fact of the matter, however, is that there is none. No matter what demographic indicators one uses to define overpopulation, it is possible to offer examples that fit the definition but do not seem "overpopulated."

Rapid population growth is often used as the proxy for overpopulation. But rapid population growth is not the defining characteristic of overpopulated countries (as the term is generally used). If it were, we would have to say that the United States in 1790 and 1800 was an overpopulated country because its rate of population growth was much higher than today's rates in India, Bangladesh, virtually all of Latin America, and most of sub-Saharan Africa. Frontier America is not what most people bring to mind when they think of "overpopulation."

Suppose we say instead that the demographic indicator that can identify overpopulation is the birth rate. The same problem obtains. The U.S. birth rate in the Revolutionary War era and shortly thereafter was very high—probably in the area of 50 or 55 births per 1,000 population, which is higher than nearly any current figure offered by the World Bank in its annual *World Development Report*. The same general problem holds true for total fertility rates.

If we discuss instead densely crowded populations, the United Kingdom as of 1981 would have been slightly more overpopulated than India; Japan today would be more overpopulated than Indonesia; the continental United States would be considerably more overpopulated than Africa; and the most overpopulated country in the world would be the kingdom of Monaco.

We could continue this exercise, but what is apparent from these examples is that overpopulation is a problem misdefined. What most people are talking about when they refer to overpopulation is poverty. Poverty is a human characteristic—it cannot be viewed or identified apart from individual units of population. But it is an elementary lapse in logic—a fallacy of composition—to conclude that poverty is a popula-

tion problem simply because it is manifest in large numbers of poor people.

Because the concept of overpopulation is impossible to define unambiguously, it lends itself to amazingly casual and open-ended interpretation, even by well-informed and reasonable people. Two recent examples come to mind. In March 1993 an earnest column appeared in the *Washington Post* arguing that what the turmoil in Russia today really showed was that the country was overpopulated. What the writer overlooked, or didn't know, was that Russia's population is actually shrinking: It is registering many more deaths than births. In May 1994 a letter in the *New York Times* stated that the ongoing massacre in Rwanda was a consequence of overpopulation. Apparently believers in overpopulation dogma can convince themselves it is the cause of many things, including historical tribal hatreds and individual acts of savagery.

Unmet Demand?

The argument that there is a large unmet demand for modern contraceptives in the developing world appears repeatedly in the position papers of the World Bank, the Agency for International Development, and other aid-dispensing organizations. Sometimes the phrase "unmet demand" is slightly changed into the less falsifiable formulation "unmet need."

The ostensible basis for the assertion comes from two separate sets of surveys—the World Fertility Survey, which was begun in the 1970s, and the Demographic and Health Survey, which is more recent. Both have shown that some proportion of women of childbearing age in all developing countries surveyed say that they are not currently users of modern contraceptives, but that they wish to have no more children. Depending on how inventive one is, other groups—including teenagers or people who are judged to have imperfect contraceptive coverage—can be added to expand the figure for unmet need, as indeed it has been expanded, to well over 100 million couples in the Third World: The World Health Organization, for instance, has put the figure at 300 million!

There is an obvious problem with this sort of maximizing definition of unmet need. This view seems to cast poor people in low-income countries as helpless captives of their animal appetites, incapable of regulating their own fertility without modern contraceptives. (Official pronouncements, of course, couch the view more diplomatically; thus the World Bank's *World Development Report 1990*: "In the poorest countries... strong family planning programs are necessary to slow population growth.") It is a view of low-

income peoples that is, at the very least, highly condescending. It is a view, moreover, that has been dramatically contradicted by demographic trends over the past century. In the nineteenth century, for example, many parts of Europe that were by modern standards extremely poor were regulating births and experiencing fertility decline. Despite a wholesale lack of modern contraceptives, a number of countries in Europe hit subreplacement fertility levels in the decade before World War II.

For reasons that cannot be quickly explained, the theory of the vast unmet need for modern contraceptives has not been treated with the sort of rigorous scrutiny that one would ordinarily expect for a proposition in the social sciences (to say nothing of the medical sciences). Earlier this year, however, an interesting and important examination of this hypothesis was published by Lant Pritchett, a World Bank economist, and Lawrence Summers, who was director of research at the World Bank at the time. Their study may actually be the first impartial assessment of the unmet need hypothesis utilizing the past two decades of World Fertility and Demographic and Health Surveys. Their findings are worth quoting at length:

Ninety percent of the differences across countries in total fertility rates are accounted for solely by differences in women's reported desired fertility.... This strong result is affected neither by *ex post facto* rationalization of births nor by the dependence of desired fertility on contraceptive access or cost.... Actual fertility increases almost one-for-one with desired fertility.... Large "unmet need" figures [as "unmet need" is currently defined] are consistent with very small numbers of fecund women wishing to limit childbearing but not using contraception.

In short, the differences in fertility levels across the world have to do with a factor not always considered in population policy—the desired fertility level of the parents in question. This brings us to our fourth premise.

Voluntary Planning?

If Pritchett and Summers are correct, then perfecting the ability of parents throughout the Third World to achieve precisely their desired number of children—if such a thing can be precisely determined—would have at best a marginal impact upon current levels of fertility in the less-developed countries. For modern contraceptives to evince further reductions in fertility, they would have to trigger a revolution in attitudes

toward children and the family on the part of prospective parents. Proponents of modern family planning methods have claimed many properties for their programs, but this (as yet) is not among them.

If fertility levels in developing countries depend critically not on the imperfect marketing of modern contraceptives but on the family size desired by parents, we come to a problem with the final premise—that an active population policy can achieve a worldwide lowering of birth rates through entirely voluntary means.

And here is where the slope gets slippery. The preliminary papers for the Cairo conference advertise, endorse, and repeatedly praise voluntary family planning. None of them extols involuntary family planning, much less coercion. But the proposition of promoting voluntary family planning is broadly inconsistent with the goal of achieving a targeted and sustained reduction in fertility. These two results can only occur together by complete coincidence. And many governments seem to recognize this, for at the same time that voluntarism is being praised, population programs not premised upon voluntarism are proliferating.

We hear a lot about what is occurring in China, and rightly so. The People's Republic of China has gone through cycles of increased direction and relaxation of population policy, but the involuntary nature of its policy

is beyond dispute. And China is no longer alone. Vietnam now has an active and even militant antinatal population policy based on the same premises as China's policy. A similar policy is in force in North Korea.

Vietnam and North Korea may be political outliers on the modern map, but this is not true of Indonesia, the fourth most populous country in the world today. Indonesia's aggressive antinatal population policy has not received the attention China's policy has, but the degree of involuntarism by which it operates is staggering. As in China, Vietnam, and North Korea, population targets are stipulated down to the regional, village, and hamlet level. And as in China, population education takes place by gathering villagers into meetings with soldiers, police, and other law enforcement officials and announcing target levels for births. This is not an approach designed to evince a voluntary response.

To my knowledge, virtually the only Western writers who have criticized Indonesian population policy have been radical feminists in fringe journals. These official Indonesian practices deserve a much broader examination. My fear is that the Indonesian model may provide a foretaste of the future.

Nicholas Eberstadt is a visiting scholar at the American Enterprise Institute and a visiting fellow at the Harvard Center for Population Development Studies.

To: Cliff Sloan/Alan Krezcko
 From: Phyllis Coven
 Re: Asylum Questions
 Date: 12/16/93

Here are some preliminary answers to the questions you raised today. Talk to you both soon.

Q: How many people from the Golden Venture applied for asylum.

A: 254

Q: How many were granted asylum?

A. EOIR reports that 18 people from the Golden Venture were granted asylum. There is a slight discrepancy between this number and the number that INS has. The range is between 18-25. Not all of these cases were granted on the family planning grounds.

Q: Of those denied asylum, how many involved adverse credibility determinations/ how many were found credible but were denied asylum solely on the basis of Matter of Chang?

A: Giving a precise number requires that we review each of the approximately 275 files. We can undertake this review, but it will take some time because the cases are in a variety of places. However, our litigator estimates that approximately 60% of the people who have pursued their claims in court were determined to be credible. Keep in mind: credibility in these cases is difficult to dispute -- and it may be that in many cases the judges ruled to the effect that even if credible, they would be denied on the basis of chang.

Q: Since 1989, how many individuals from China have applied for asylum.

How many were granted asylum.

Of those denied asylum, how many involved credibility determinations.

How many were found credible, but were denied asylum solely on the basis of Matter of Chang.

A: See attached statistics.

INS is undertaking an extensive review of its Chinese asylum statistics and the exact status of all Chinese claimants and detainees. We should have this information in good form by Monday.



U.S. Department of Justice
Immigration and Naturalization Service

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CO 208

Office of the General Counsel

425 Eye Street N.W.
Washington, D.C. 20536

OCT 8 1993

OCT 18 1993

Craig T. Trebilcock, Esq.
Stock and Leader
35 South Duke Street
Post Office Box 5167
York, Pennsylvania 17405-5167

Dear Mr. Trebilcock:

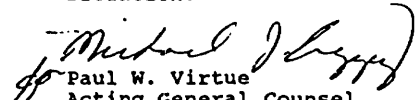
Your letter of September 14, 1993, to Mr. Francis Sobol, Special Counsel to the President, concerning your request for new hearings for your client Pin Lin, as well as, the other aliens incarcerated in the York County Prison who were on the Golden Venture has been referred to the Immigration and Naturalization Service (the Service). As you may know subsection 236(a) of the Immigration and Nationality Act (the Act) provides that an exclusion hearing be closed to the public. Subsection 236.2(a) of Title 8 of the Code of Federal Regulations states the hearing is to be closed unless the alien, not the alien's attorney or a member of the press, insists that the public be permitted to attend. A review of the transcript for your client's hearings disclosed that neither he nor anyone else made a request to have the June 15 or August 19, hearing open. Hearings at the York County Prison for those individuals who arrived on the Golden Venture commenced in June, however, the issue of press access did not arise until late August after all but a very small number of cases had been completed. The Service never imposed any type of rule prohibiting public or press access. The pleadings in the case in the York County Court of Common Pleas cited in your letter state it was County Prison personnel, not Service policy that prevented attendance by members of the press.

We do not believe the absence of representatives from the press at the hearings prevented the aliens from receiving a fair hearing and, therefore, do not believe that the individuals should be given new hearings. All of the individuals were represented by counsel or an individual accredited by the Board of Immigration Appeals. Additionally, in the vast majority of the cases the alien's testimony was found to be credible, however, the request for asylum was denied as a matter of law because the individual had not establish a well founded fear of persecution on one of the grounds delineated in section 101(a)(42)(A) of the Act.

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The contention that the individuals would be persecuted upon their return to the People's Republic of China on account of the articles in press is speculative. No evidence has been presented to support this position. Moreover, the courts have held that political activities in the United States of a far more active nature have been insufficient to support a claim for asylum.

Your interest in this matter is appreciated, however, the Service does not believe that new hearings are appropriate in this situation.


Paul W. Virtue
Acting General Counsel

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