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## Keynote Address: Reproductive Rights Under Siege: Responding to the Anti-Choice Agenda Conference. University of Michigan Law School. March 5, 2004

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KEYNOTE ADDRESS  
REPRODUCTIVE RIGHTS UNDER SIEGE:  
RESPONDING TO THE ANTI-CHOICE AGENDA  
CONFERENCE  
UNIVERSITY OF MICHIGAN LAW SCHOOL  
MARCH 5, 2004

*Nancy Northup\**

It is great to be here with a new generation that is advocating for reproductive rights and responding to the extraordinary anti-choice agenda we currently face. I am not going to talk about that agenda directly tonight because I know that you know it. You know about the judicial appointments, you know about the parental consent laws, you know about the denial of funding for low-income women, you know about the global gag rule.

In thinking about what to talk about tonight, I went to an even younger generation—I asked my kids what they thought I ought to talk about. I have a nine year old and an eleven year old. Those of you who are overextended working parents will recognize right away this multi-tasking tactic—trying to have “quality time” with your children, while meeting a professional obligation. I told them that I would be talking to pro-choice law students and asked them what do you think I should talk about? My daughter Natalie jumped right in, “Mom, don’t talk about all of the usual abortion stuff because that can get, you know, a little boring.” I responded, “Well, I have to talk about something Natalie, OK?” She thought about it a little more, and said, “Why don’t you tell them how they can help defend what they think is right.” How can you help defend what you think is right? That pretty much gets to the heart of it, so that’s where I’ll focus my remarks tonight.

Since we’re here in an academic community, let’s deconstruct that very simple statement. How do you help defend what you think is right? It has two components. The first component actually comes second, but it is the one we need to start with. It is what the academy calls the *normative* question: What do you think is right? And the second component, which I bet all of us are much better at—I hope, because we want to be effective out there—is the *strategic* piece: How do you defend it?

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I want to start with that normative part, because if we are going to go marching through a forest, cutting our way through, we want to be sure, of course, that we are going in the right direction. That is the normative “What is right?” part. Law school is not designed to help you sharpen your intuitive sense of morality and justice. Quite the opposite—as I recall from law school, you spend your time honing skills that cut against your own intuitive sense of morality and justice; you become a technical expert at case analysis, at drafting contracts, and at drafting legislation, to put to the service of clients. An analytic machine—that was the way I felt when I got out of law school. Give me a legal problem and I’ll analyze it, give me any case and I’ll prosecute or defend it. But analytic skills do not help answer the question of what it is that you want to be pouring your heart, and your soul, into. And all of the reading of cases, and all of the talking to your constitutional law professors and your excellent clinical professors, all of that is not going to help you answer that question of commitment. That answer is going to be from your own values, your own passions, your own drive, and your own sense of justice.

Now you are all sitting here thinking, yeah, you came to the conference, you already know what’s right, you already know that advocating for reproductive rights is right. What is she talking about? What I am talking about for you, who already share these values and commitments, is to give some thought while you are here this weekend to your starting place as an advocate for reproductive rights. What is your moral center as you come to do this work? Why are you here? The answer is what is going to be unique and different for each one of you.

What is that starting place that you come from? That’s often the question I ask supporters. How did they get interested in working in reproductive rights. The answers vary. Sometimes I get what may be cover-up answers: “Oh, I don’t know, you know, just always been there.” Other times people are very forthright. I remember meeting with a woman for the first time, and I asked that question about a minute and a half after meeting with her: “So how did you get interested in reproductive rights?” And she looked at me and said, “Well, I was sexually active as a fifteen year old.” That is a good starting point. Others will talk about their personal experiences with unplanned pregnancies. Most women do not talk about their abortion experiences. But when I began my work at the Center for Reproductive Rights, all of a sudden people opened up and talked in ways I’d never heard before: friends whom I didn’t know had had abortions, let alone that they are still struggling with their feelings of guilt years later. Or my mother telling me about a

lifelong family friend, “Oh, well, you know, Susy had an abortion on a kitchen table in Harlem in 1947.”

People come from different places when they come to reproductive rights advocacy. So you want to think about where your starting place is. For me, it is my religious faith. Not in spite of, but *because* of my religious faith. I teach Sunday school every week, and then of course, on Monday, Tuesday, Wednesday, Thursday, Friday, Saturday, and sometimes Sundays too, I go to work as an advocate for reproductive rights, and I find those things are of a piece. I was raised in, and still adhere to, a liberal religious faith that stresses the inherent dignity of each person, compassion, justice, and a deep commitment to finding one’s own religious truths. I believe deeply that compassion and justice are on the side of choice. I see this struggle that we are in and, of course, it manifests itself in many political ways as a struggle between a fundamentalist view that everybody must agree on one set of beliefs about sexuality, marriage, conception, and abortion and a view that is more open and tolerant about individuals’ capacity to make those decisions themselves.

That is what it is to be human—to wrestle and make decisions about how we live our lives. So, if you have a chance, between all the engaging panels that are going on tomorrow, spend some time to reflect on what brought you here, what it is that drives you to be a reproductive rights advocate. Because finding that core will make you more effective in talking to others about why you do this work. The other side has claimed the moral high ground, and unless we talk about our sense of vision, of justice and compassion, we cannot win back the hearts and minds of the American people. That is the normative piece.

We still need to get to the second piece, which is also the heart of this conference. How do you defend, work on, promote what you think is right? There are a lot of ways to respond to the assault on reproductive rights, but my assumption here is that we want to respond in ways that are effective. So whatever you’re doing, ask, “Is this getting us from A to B, and are we moving forward or spinning our wheels?” Obviously, there are legal responses, political responses, healthcare responses, religious responses, and community based responses. I am not going to sort out their relative merits. I just want to give you some big strategy tips to remember: make it real, be creative, build bridges, and don’t give up.

I will start with “make it real.” Doing justice is always about seeking to address real harm to real people. Now maybe that’s wrong to say in an academic environment. Principles are certainly important, to be sure, but people care about real harm to real people. And I think if we look at what has happened in this extraordinary year on the struggle for

gay and lesbian equality, we see how real harm to real people is at the center of persuading people when you are seeking to do justice. It has been a breathtaking year—from the *Lawrence v. Texas* case, to the Massachusetts Supreme Court case, to the Canadian decision, to the marriages in San Francisco, and New Paltz, New York. An amazing, amazing change in how Americans are seeing this issue.

The struggle is nowhere near over; the President is up in arms promoting a constitutional amendment to establish marriage as between a man and a woman. But the shift from the Supreme Court, to the shifts that we are seeing in public opinion, didn't happen because of some abstract principle, they happened because real people, with real love, with real families, with real issues have become visible. The treatment of gays and lesbians as second class citizens has now become apparent of real harm to real people.

To come back to my earlier point, one of the difficulties we have in guaranteeing reproductive rights is that people do not talk about abortion. They don't talk about their own abortions; they tell pollsters they don't want to talk about abortion at all. It is very hard to protect a right, or to have people understand the justice behind that right, if you are not going to talk about it.

To make this fight real, to yourselves, and to those who work with you, there are a couple of things you can do. One is to build from facts and use them.

Here's a few to keep in mind. First, if women did not have control over their reproductive lives, they would have between 12 and 15 pregnancies. Second, in the United States, one in three women will have an abortion by the age of forty-five. One in three. That means that abortion is not an extraordinary experience. The phrase that President Clinton used saying that abortion "ought to be rare"—makes people think it is rare. Obviously labeling abortion "murder" makes you think it must be rare. Abortion is not rare. It is a common medical experience for one in three American women. When people talk to you about opposing the right to abortion, they are talking about opposing a medical procedure that one in three women believe is necessary to control their lives and their health.

Another fact to keep in mind, as people get crazed by the rhetoric on the other side, is that most abortions are in the first trimester—90 percent—and the ten percent that are in the second trimester are when women find themselves in hard places. Anti-choice advocates give the false impression that there is abortion on demand for nine months. It is also important to know that 80 percent of women having abortions are not teenagers. This number often surprises people: sixty-one percent of

women who have abortions have given birth already. They are not naïve or uninformed about what it means to have a child. 61 percent have had one already.

The last statistic is global. Across cultures, across laws and across the world, abortion is a common experience. There are about 46 million abortions world-wide. About half of those are in countries where it is illegal, which means half of those are where it is unsafe. In Peru, where abortion is illegal in every circumstance, there are six abortions for every ten live births. These are some basic facts to keep in mind, to make it real for people when they want to get into a doctrinal debate about *Roe v. Wade*.

The release of Justice Blackman's papers this week supports that notion about "making it real." His experience writing and then defending the decision—he became the lightning rod for the anti-choice forces—launched Justice Blackman on a journey that moved him from a skeptic about women's rights to a champion. It is experience and reality that changes people's minds.

Besides being real, be creative. Do not let the fact that you are a lawyer limit your vision about how you can be effective. Yes, you can draft briefs, you can draft contracts, you can represent clients, you can draft legislation, and you can run for public office. There is an important role for the legal niche, but don't let that niche limit you. Think broader. Do not leave your political organizing skills behind when you get your law license.

I was an organizer before I was a lawyer, a background that I share with many panelists at the conference. Twenty years ago, I was running a door-to-door fundraising canvas for the National Organization for Women. Ringing doorbells taught me critical lessons. If you don't ask, you don't get. Don't presume that you know what people think before you talk to them. Someone opens the door and you think, "Oh God." But you never know, you have to jump in there and engage. It's the great thing about canvassing. Listen to what others have to say, not just to yourself. And the most important thing of all, just keep on truckin'. If this door's not opening, there's another one. So again, do not abandon your organizing skills when you take that law license.

I had one idea when I was coming in today. As law students, use your leverage on the job market to push for pro bono support for reproductive rights issues. We do partner with outstanding law firms on our cases. But some firms will turn us down who do a lot of other progressive law reform work. So I thought, get a student group to do a survey of firms. Call them up, and ask them: Have they done reproductive

rights cases? Do they have a policy about doing reproductive rights cases? Are they willing to do reproductive rights cases? Publicize the results. Firms want to recruit top law students and they respond to the market demands. Barbara Black, the dean at Columbia Law School during my student years, used to tell us all the time to stop acting like sheep. Firms are recruiting you, they want you to join them, ask for what you want in return. So there is one little idea about being creative.

Build bridges. Your classmates tomorrow are going to be leaders in law, in business, and in politics. Don't alienate them, educate them. And build those bridges so you can use them tomorrow.

And finally, of course, don't give up. It can seem daunting, but don't give up. Let's take where we are right now, in Michigan: NARAL's Pro-choice America just released their annual survey of states and Michigan got an "F" on reproductive rights. Some states got "A's," but Michigan got an "F." So don't give up.

Last week in *The New York Times*, the lead article in the Week In Review was on the "culture wars", and it ended with a quote from Dr. Richard Land, president of the Ethics and Religious Liberty Commission of the Southern Baptist Convention. He said, "We're in this for the long haul, and the people on the other side had best understand, this is not for dilettantes, not for weekend warriors. We've been at it 30 years now on abortion, and we're winning, and the other side knows we're winning." Well, this may be a weekend, but we are not weekend warriors. The struggles for human justice, equality, freedom of conscience, dignity, and autonomy are lifelong ones, and I look forward very much to working with all of you in the years to come. Thank you. ❀