Memorandum
Date: January 2010
To: Interested Persons
From: Lynn Paltrow and Irum Taqi
Re: **Utah Bill Creating the Crime of Criminal Homicide of an Unborn Child Will Affect All Pregnant Women**

Introduction

Utah Representative Carl Wimmer has proposed a bill, H.B. 12, which purports to make it a crime for a woman to solicit a non-physician abortion or to perform an abortion on herself, at all stages of pregnancy.[1] It permits certain abortions if performed by physicians. What the sponsor claims to want to accomplish with this legislation is to ensure that self-abortions may be punished as murder or attempted murder. The bill, however, is written in such a way as to affect all pregnant women including those who have no intention of ending a pregnancy. This bill, if enacted, would apply to any and all pregnancy losses even at the earliest stages of pregnancy and to all actions, inactions, conditions and circumstances that may be characterized or perceived as a threat to the life of an unborn child—regardless of the woman's intent.

Background

This bill has apparently been introduced in response to a case involving a 17-year-old girl who was seven month's pregnant and desperate to end her pregnancy. She allegedly hired a man to beat her in an attempt to terminate the pregnancy. According to news accounts, after her boyfriend told her he would leave her if she did not "get rid of the baby,"[2] the girl paid 21-year-old Aaron Harrison $150 to help terminate her pregnancy.[3] Charging documents and court testimony state that Harrison took the girl to his home where he kicked her in the stomach five times and bit her neck. Both the girl and baby survived the incident.

The girl was charged with second-degree felony criminal solicitation to commit murder and pleaded no contest to the charge. The 8th District Juvenile Court Judge Larry Steele initially ordered the girl placed in confinement until age 21. However, Steele reversed himself and released the girl after her attorney argued that under Utah law, a women cannot be held criminal liable for seeking to obtain an abortion for herself. The Utah County Attorney General's Office and Utah Attorney General's Office have appealed the judge's decision to dismiss the case against the girl. Harrison pleaded guilty to second-degree felony attempted murder.

Judge Steele's ruling appears to be what prompted state Rep. Carl Wimmer, (Herriman), to propose this bill.[4]

H.B. 12 Will Affect All Pregnant Women

H.B. 12 states that "Criminal Homicide of an Unborn Child" includes "the killing or attempted

killing of an unborn child by a person other than a physician" and
"the killing or attempted killing of an unborn child by any person through a procedure other than a medical procedure or through a substance used under the direction of a physician."[5]

The implications of the bill for pregnant women, non-physicians, including midwives and doulas, are enormous. If a pregnant woman uses a legal or illegal drug, refuses cesarean surgery, or insists on a vaginal birth after previous cesarean surgery, has a home or unassisted birth, regardless of her intent, this statute would provide the basis for charging her (and her doula, midwife, and/or supporting family member) with *attempted* killing of an unborn child and with *killing* of an unborn child if she should happen to suffer a miscarriage or stillbirth. If a pregnant woman engages in any work, activity, or action that could result in pregnancy loss or actually does result in pregnancy loss, this law would provide the basis for arresting her and charging her under H.B. 12. Similarly, evidence of drug use, legal or illegal and a coincidental pregnancy loss, or claim of harm to the unborn child would provide the basis for charging pregnant women and new mothers with the "killing" or "attempted killing" of an unborn child.

H.B. 12 will affect women who refuse to have cesarean surgery

That the law might be applied to punish women who refuse or delay cesarean surgery or any other physician recommendation regarding method of delivery is not hypothetical. We know from past experience that Utah's existing fetal homicide law[6] was what was used to justify the arrest and prosecution of Melissa Rowland, a woman who refused to have cesarean surgery when it was first recommended by physicians.[7]

Ms. Rowland was a twenty-eight year-old white woman in Utah who gave birth to twins by cesarean surgery on January 13, 2004. One of the twins was stillborn; the one who survived allegedly tested positive for cocaine and alcohol at birth. Ms. Rowland was arrested the day after the birth and charged with child endangerment relating to the surviving infant. That charge, however was eventually dropped. Instead, Deputy District Attorney Kent Morgan charged Ms. Rowland with criminal homicide, murder, a first-degree felony, in the death of the stillborn twin. Her alleged drug use was not at issue in the murder charge. Rather, the charge was based on Ms. Rowland's alleged refusal to follow doctors' recommendations and undergo a cesarean section on an earlier date. B. Kent Morgan, a spokesman for the Salt Lake County district attorney's office, explained:

> the decision came down to whether the dead child -- a viable, if unborn, being as defined by Utah law -- died as a result of another person's action or failure to take action. That judgment, he said, is required by Utah's feticide law, which was amended in 2002 to protect the fetus from the moment of conception.[8]

Advocates on behalf of Ms. Rowland and pregnant women in general argued that Utah's feticide law was not intended to reach and punish pregnant women in relationship to the fetuses they carry. These and other arguments helped push the state to accept a plea agreement to lesser charges that allowed Ms. Rowland to be released immediately from jail and to leave the state.

H.B. 12, however, if enacted, would provide direct grounds for prosecuting any woman who refuses cesarean surgery. It would also provide new arguments to force women to undergo the surgery in the first place.

It is clear that women who refuse cesarean surgery have no intention of ending their pregnancies. Such women may thus feel that they are different from women who seek to have abortions and they may believe that they would be protected from prosecution. This, unfortunately, is not true, as we have learned in the Rowland case and from other cases across the country.

Under the proposed law, "A person commits criminal homicide if the person intentionally, knowingly, *recklessly*, with *criminal negligence*, *or acting with a mental state otherwise specifie*d in the statute defining the offense, causes the death of another human being, *including an unborn child* at any stage of its development."

These statutory standards for the level of intent the state would have to prove do not require actually intending to end a pregnancy. "Knowingly," "recklessly," and with "criminal negligence" can be proven by showing that the person did the act (refused surgery) knowing what the result could be (knowingly). That, in her heart the woman wanted what was best for her and her baby, would make little difference to a prosecutor persuaded by doctors that her refusal was knowing. The statutory standards are applied in a way that leaves wide latitude for a prosecuting women regardless off their actual intent, as long as the did or refused to do something that is perceived to have endangered fetal health.[9]

This bill could be used not only to punish women who refuse cesarean surgery, but also as a basis for ordering it. In cases involving court-ordered surgery, it is clear that once the state has the power to decide what a woman's "intent" is, it does not really matter what her intent *actually is*. For example, in the Pemberton case, Ms. Pemberton's careful and well-informed decision to have a vaginal birth after previous cesarean surgery was viewed by the court as totally irrelevant to its decision to force her to undergo surgery. The court characterized her "intent" as "bravado." In the criminal context "bravado"[10] would be equivalent to acting knowingly and recklessly – sufficient intent to charge and convict a woman under H.B. 12.

In the Angela Carder case, the state forced a critically ill woman to have cesarean surgery designed to save the life of her unborn child. A lawyer appointed to represent the fetus argued that Angela was going to die anyway and that the court had an obligation to rescue the fetus. As a result of the surgery, both Ms. Carder and the baby died.[11] One of the organizations that defended the court order analogized her refusal of cesarean surgery to the decision to have an abortion – arguing that Ms. Carder had no right to "insist[] that her child die with her."[12]

H.B. 12 will affect women who take legal or illegal drugs or engage in a wide variety of legal activities.

Many drugs, legal and illegal, are believed to pose a risk to fetal life and health. For example it is common knowledge that drinking alcohol and smoking while pregnant can pose serious health risks to an "unborn" child. It might seem far-fetched that a prosecutor would charge a

woman under these circumstances, even if her actions fit the legal definition of homicide. But we know from cases in Utah and other states that women who have used alcohol while pregnant or who have used any amount of any illegal drug, including marijuana, have been arrested. These women did not intend to harm, much less kill their babies.

In the South Carolina Regina McKnight case, a woman suffered a stillbirth that the state alleged she caused by using cocaine. As a result of judicial activism, courts in South Carolina have, by judicial decision, essentially created a law much like H.B. 12. Ms. McKnight was charged with homicide by child abuse. Although everyone in the case, including the prosecutors, agreed that she had no intention of causing a stillbirth, she was convicted of homicide and sentenced to 12 years in jail. Ms. McKnight had no prior record and her cocaine use began as her way of coping with the death of her mother, who had recently been run over and killed while crossing a street.

Ms. McKnight's action – taking the drug – was enough to constitute "depraved heart homicide" – a reckless/knowing intent standard that allows the state to convict her based on the fact that an individual did the act, regardless of what her intentions were. Ms. McKnight served 8 years in jail before her conviction was overturned. After serving more than half of her sentence, the South Carolina Supreme Court ruled that Ms. McKnight had not received a fair trial and that her trial counsel was ineffective in the preparation of her defense. Specifically, the court found that the research the State relied on was "outdated" and that trial counsel failed to call experts who would have testified about "recent studies showing that cocaine is no more harmful to a fetus than nicotine use, poor nutrition, lack of prenatal care, or other conditions commonly associated with the urban poor."[13]

No state has passed a law making it a crime for a pregnant woman to continue to term (or to try to) in spite of a drug problem. This is in part because leading medical, public health, and child welfare organizations unanimously agree that threatening pregnant drug-using women with arrest will actually increase risks to both maternal and fetal health. For example, the American Medical Association has stated, "Pregnant women will be likely to avoid seeking prenatal or open medical care for fear that their physician's knowledge of substance abuse or other potentially harmful behavior could result in a jail sentence rather than proper medical treatment."[14] H.B. 12, as written, will create the basis for prosecuting drug-using pregnant women to the determinant of women and children's health.

In fact, many substances, activities, and conditions that occur during pregnancy pose risks that are more rigorously established and often of greater severity than those associated with ingesting illegal drugs. The most notorious are cigarette smoking and alcohol consumption, which are widely known to be associated with increased stillbirth risks (and risks of birth defects, SIDS, and developmental delays).[15] Other activities that threaten pregnancy loss (under certain conditions) include: being exposed to chemicals, *see Automobile Workers v. Johnson Controls*, 886 F.2d 877 (7th Cir. 1989) (Easterbrook, J., dissenting) (noting that an estimated 15 to 20 million jobs entail exposure to chemicals that pose fetal risk); having children at a relatively advanced age;[16] carrying "multiples;"[17] changing cat litter[18], and procreating with a man who was exposed to radiation.[19]

Under this bill, a pregnant woman who does any of these things, including taking legal drugs, could be charged with attempted killing, or killing if she happened to suffer a pregnancy loss. For example, it is known that "[l]arge doses of *aspirin* may result in delayed onset of labor, premature closure of the fetal ductus arteriosus . . . or neonatal bleeding"[20] (Legal, over the counter drugs would be included since they are not prescribed by a physician.)

Finally, because the bill prohibits the "killing of an unborn child" at any stage of pregnancy, it could be used to prosecute women who use Emergency Contraception. Emergency Contraception is available over the counter, and although it is a form of contraception, not abortion, many organizations wrongly insist it is an abortifacient.[21]

H.B. 12 will affect pregnant women who experience miscarriages and stillbirths for any reason.

This bill could apply in many other situations. For example, it could be applied if a doctor directs a pregnant woman to stay in bed to avoid a miscarriage, but she needs to go to work, or cook breakfast for her children.

Indeed, a horrifying incident in California could become commonplace in Utah under this bill. In California, a pregnant woman experienced a miscarriage at one-month gestation. Her doctor advised her to preserve the embryonic tissue in the freezer until she and her husband decided whether to request genetic testing or to take the remains to a mortuary. When they decided against testing, they called a mortuary. They were asked for a death certificate and were directed to the County Coroner to obtain one. The Coroner instructed them to call the police. When they complied, the police heard the words "human remains" and responded by descending on their home, entering without a warrant, and searching for what they assumed was the evidence of a crime against a person.[22]

While no California law supported this police response and the incident reflects miscommunication, families in Utah who experience miscarriages would have to expect such intrusions if this bill is passed.

Similarly, pregnant women who miss prenatal care appointments, do not take prenatal vitamins, or drink any amount of alcohol and happen to experience a miscarriage or stillbirth could be investigated for attempted killing of an unborn child.

A case from Louisiana provides another good example of what could become commonplace in Utah if H.B. 12 is enacted. In the MMG case, a twenty-six year-old mother of five suffered a miscarriage alone at her home on February 1, 2003.[23] A few days later, she disposed of the remains in the trash. On February 11, 2003, Ms. G. went to the Hospital complaining of bleeding and stomach pain. Doctors discovered that she recently had "given birth" and contacted the police. A sheriff's detective responded to Ms. G's hospital room and interrogated her. At first, Ms. Greenup said the baby was stillborn and that she did not know how far along her pregnancy was, although she guessed four to five months.

Later that day, Ms. Greenup was taken to the sheriff's office, where, without a lawyer present she was subjected to a coercive interrogation. According to the police reports, Ms. Greenup eventually "confessed" that she had been eight and a half months pregnant, the baby was born alive, that she "didn't give him the proper care to try to save him."[24] The next day, police records claim that Ms. Greenup "confessed" her motive – that she became pregnant by another man while her husband was incarcerated and feared her husband would beat her or the baby when he was released.

On July 29, 2003, a grand jury indicted Ms. Greenup for second-degree murder. The indictment alleged that Ms. Greenup "committed second degree murder of Baby Boy Greenup[.]"[25] She was arrested and held in the parish jail on a $250,000 bond. Although bond was later lowered, Ms. Greenup was apparently not able to pay bond and remained incarcerated for *over one year* while her case was pending. The Department of Social Services took custody of Ms. Greenup's children.

In August of 2004, the State dropped the second-degree murder charge. While her "confession" certainly seemed to make this a simple and straightforward case, Ms. Greenup's medical records eventually proved otherwise. First, the records established that the fetus could not have been older than fifteen weeks. Second, medical records revealed that approximately twelve weeks prior to the stillbirth, Ms. Greenup had been given an injection of Depo Provera, a long acting contraceptive. This contraceptive is known to cause miscarriages if mistakenly given to a woman who is already pregnant.

While the murder charge was dropped, it appears that defense counsel, the prosecutor and the court – in order to save face – persuaded her to plead guilty to a lesser charge, a misdemeanor violation of a public health law that regulates disposal of human remains. [26]

H.B. 12 would encourage cases exactly like these. In fact, even without such a law on the books in Utah, arrests without basis have already been made. For example, JDG, a twenty-six-year-old Utah woman, gave birth to a daughter on September 22, 1997.[27] The newborn was full-term but weighed less than three pounds. Ms. G. was arrested six weeks later and charged with third-degree felony child abuse, a crime punishable by up to five years in prison. She was taken into custody and held in jail for six days. The amended information stated that Ms. G. "recklessly inflicted serious physical injury upon [her daughter], a child 17 years of age or under, by causing the child to be born having the condition of fetal alcohol syndrome."[28] The Deputy County Attorney, however, decided to drop the charge against Ms. G. in April 1998, stating that, because the baby was doing well and showed no signs of fetal alcohol syndrome, it would be impossible to convict Ms. G. of child abuse.[29] By then, however, the charges against Ms. G. had been widely publicized in the press and she had suffered the experience/trauma of arrest and imprisonment.

The Promise of a "Fair Trial" Will Provide Little Protection to Pregnant Women and New Mothers Charged Under H.B. 12

Once an individual – rightly or wrongly – is charged with "attempted killing" or "killing," counting on the state to prove its case "beyond a reasonable doubt" will not necessarily

guarantee a fair trial, or a person's freedom. When people are charged with murder, they are unlikely to be offered bail. In other words, they may be held in jail for months or even years before going to trial. That is, if there ever is a trial. Most people cannot afford a private lawyer, and while some public defenders do brilliant work, many are totally overburdened. In addition most people are unable to find and afford quality expert witnesses who would be needed to challenge the state's medical claims.

These are some of the reasons why more than 95% of all felony charges are resolved without the case ever going to trial. Instead they are resolved by a plea bargain with the person pleading guilty to a lesser, but not insignificant, charge.[30] Rather than face a lengthy and public trial that could result in a long jail sentence (and under laws such as H.B 12, a life sentence, or even the death penalty,) most people agree to plead guilty to a lesser charge.

Our research demonstrates that what generally happens to women who have been wrongly charged with crimes relating to their pregnancies is that they plead guilty to a crime they did not commit, simply to get out of jail. While waiting in jail completely separated from the children they already have, the state typically offers them a deal. Desperate to get out of jail (many of which have hideous conditions) and to be home with their children, most women will take the deal.

Midwives, Doulas, and Family Members at Risk of Arrest

H.B. 12 makes very clear that only abortions/pregnancy losses that occur under the direction of a physician will be considered legal. This means that if a pregnancy loss occurs at a birth attended by a midwife or a doula, both the woman and her non-physician care providers could be charged with "killing" or "attempted killing."

Conclusion

For people who profoundly oppose abortion, it seems logical that legislation could be carefully crafted to distinguish between pregnant women who seek to terminate their pregnancies and those who do not. But because criminal laws depend on application of intent standards, are always enforced by police officers and prosecutors who have extraordinary discretion in deciding who will and will not be arrested and charged, and because everything a pregnant woman does or does not do can affect pregnancy outcome, we have been unable to find an example of a law that could be applied only to women who "truly" intend to end their pregnancies while ensuring that pregnant women who do not intend to terminate their pregnancies or risk harm to their fetuses are protected from police investigation, arrest, and prosecution.

It is clear, in any event, that H.B. 12 has not been carefully crafted. As a result it is about far more than abortion. If enacted, it has serious implications for the health, wellbeing, freedom and dignity of *all* pregnant women.

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[1] H.B. 12, 2010 Leg. Sess., (UT 2010), available at http://le.utah.gov/~2010/bills/hbillint/hb0012.htm.

[2] Melinda Rodgers, "AG's Office Appeals Dismissal of Case Against Teen Who Pain Man To Induce Miscarriage," The Salt Lake Tribune (3 December 2009), *available at* http://www.sltrib.com/justice/ci_13921092.
[3] Id.; Geoff Liesik, "Prosecutors Don't Plan to Drop Charge in Pregnant Woman's Beating Case Review," Desert News (21 December 2009).
[4] Id.
[5] H.B. 12, 2010 Leg. Sess., (UT 2010), available at http://le.utah.gov/~2010/bills/hbillint/hb0012.htm (Emphasis added).
[6] Utah Code Ann. § 76-5-201 et seq.
[7] Richard L. Berkowitz, *Should Refusal to Undergo A Cesarean Section Be A Criminal Offense?*, 104 OBSTETRICS & GYNECOLOGY 1212 (2004); Howard Minkoff & Lynn M. Paltrow, *Melissa Rowland and the Rights of Pregnant Women,* 104 OBSTETRICS & GYNECOLOGY 1234 (2004).
[8] Kirk Johnson, *Harm to Fetuses Becomes Issue in Utah and Elsewhere*, NEW YORK TIMES, March 27, 2004. (Emphasis Added).
[9] *See* Utah Code Ann. § 76-2-103(3). A person engages in conduct:

(1) Intentionally, or with intent or willfully with respect to the nature of his conduct or to a result of his conduct, when it is his conscious objective or desire to engage in the conduct or cause the result.

(2) Knowingly, or with knowledge, with respect to his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or the existing circumstances. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

(3) Recklessly with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

(4) With criminal negligence or is criminally negligent with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise in all the circumstances as viewed from the actor's standpoint.

[10] *Pemberton v. Tallahassee Mem'l Reg'l Med. Ctr.*, 66 F. Supp. 2d 1247, 1252 (N.D. Fla. 1999); See also Presentation by Laura Pemberton at the National Summit to Ensure the Health and Humanity of Pregnant and Birthing Women, held in Atlanta, Georgia January 18-21 (2007), available at http://vimeo.com/4895023.
[11] *In re* A.C., 573 A.2d 1235, 1253 (D.C. 1990) (en banc) (vacating a court-ordered cesarean section that was listed as a contributing factor to the mother's death on her death certificate); *see also*, George Annas, *Foreclosing the Use of Force: A.C. Reversed*, HASTINGS CTR. REP., July/Aug. 1990, at 27.
[12] Brief Amicus Curiae of the United States Catholic Conference in Support of Appellees, In re A.C., 573 A.2d 1235 (D.C. 1990) at 8.
[13] McKnight v. State, 661 S.E.2d 354, 358 n.2 (S.C. 2008).
[14] Report of American Medical Association Board of Trustees, *Legal Interventions During Pregnancy*, 264 JAMA 2663, 2667 (1990). *See also* American Medical Association, *Treatment Versus Criminalization: Physician Role in Drug Addiction During Pregnancy*, Resolution 131 (1990) (resolving "that the AMA oppose[s] legislation which criminalizes maternal drug addiction").
[15] *See, e.g.*, Joseph DiFranza and Robert Lew, *Effect of Maternal Cigarette Smoking on Pregnancy Complications and Sudden Infant Death Syndrome*, 40 J. of Family Practice 385 (1995) ("[e]ach year the use of tobacco products by women results in the deaths of 19,000 - 141,000 fetuses."); *see also* 15 U.S.C. § 1333 (requiring cigarette label warning that *Smoking By Pregnant Women May Result in Fetal Injury, Premature Birth, And Low Birth Weight*).
[16] S. Tough, et al., Delayed Childbearing and Its Impact on Population Rate Changes in Lower Birthweight, Multiple Birth, and Preterm Delivery, 109 PEDIATRICS 399-403 (March 2002); March of Dimes, Medical References: Stillbirth, available at http://www.marchofdimes.com.

[17] B. Steinbock, The McCaughey Septuplets: Medical Miracle or Gambling with Fertility Drugs?, in Ethical Issues in Modern Medicine 375, 376 (5th ed., J. Arras & B. Steinbock, eds. 1999) ("Even if they are born alive, 'super-twins' (triplets, quadruplets and quintuplets) are 12 times more likely than other babies to die within a year . . . . Many will suffer from respiratory and digestive problems. They are also prone to a range of neurological disorders, including blindness, cerebral palsy and mental retardation").
[18] Eisenberg et. al., *What to Expect When You're Expecting* 54-57 (2d ed. 1996)
[19] *See, e.g.*, L. Parker et al., *Stillbirths Among Offspring of Male Radiation Workers at Sellafield Nuclear Reprocessing Plant*, 354 Lancet 1407-1414 (1999) (infants fathered by men exposed to radiation in the workplace have elevated risk of being stillborn).
[20] Merck Manual at 1859; *see also* Van Marter et al., Persistent Pulmonary Hypertension of the Newborn and Smoking and Aspirin and Nonsteroidal Antiinflammatory Drug Consumption During Pregnancy 97 Pediatrics 658 (1996) (maternal consumption of aspirin during pregnancy found to be consistently associated with pulmonary
hypertension of the newborn, an important cause of respiratory failure in neonates).
[21] Emergency contraception works by stopping or delaying ovulation so the egg cannot be fertilized. Emergency contraception does not work once the fertilized egg is attached to the lining of the uterus (i.e., once pregnant) so it will not cause a miscarriage or an abortion. *See* American College of Obstetricians and Gynecologists, *Fact Sheet, Tool Kit for Teen Care, Emergency Contraception,* Second Edition, available at www.acog.org/departments/adolescentHealthCare/TeenCareToolKit/EmergContraception.pdf - 2009-03-24. *But see* United States Conference of Catholic Bishops, *Emergency "Contraception" and Early Abortion,* available at http://www.usccb.org/prolife/issues/abortion/fact1098.shtml (stating that emergency contraception "may in fact abort the developing embryo.").
[22] *See* Steve Lopez, *Couple's Attempt to do the Right Thing Brings More Grief*, LA TIMES, March 11, 2009.
[23] *See* State v. Greenup, No. 2003-300B (La. Dist. Ct. St. John the Baptist Parish Aug. 16, 2004).
[24] Voluntary Statement of Michelle Greenup on Feb. 11, 2003, 9:55 PM, at 3, State v. Greenup, No. 2003-300B (La. Dist. Ct. St. John the Baptist Parish Aug. 16, 2004).
[25] Indictment, State v. Greenup, No. 2003-300B (La. Dist. Ct. St. John the Baptist Parish Aug. 16, 2004).
[26] *See* Answer to Motion for Discovery and For Evidence Favorable to the Accused, State v. Greenup, No. 2003-300B (La. Dist. Ct. St. John the Baptist Parish Aug. 16, 2004); Application for a Search Warrant, State v. Greenup, No. 2003-300B (La. Dist. Ct. St. John the Baptist Parish Aug. 16, 2004); Criminal Investigative Report, State v. Greenup, No. 2003-300B (La. Dist. Ct. St. John the Baptist Parish Aug. 16, 2004); Docket Sheet, State v. Greenup, No. 2003-300B (La. Dist. Ct. St. John the Baptist Parish Aug. 16, 2004); Indictment, State v. Greenup, No. 2003-300B (La. Dist. Ct. St. John the Baptist Parish Aug. 16, 2004); Return on Search Warrant, State v. Greenup, No. 2003-300B (La. Dist. Ct. St. John the Baptist Parish Aug. 16, 2004); River Parishes Hospital Medical Records of Michelle Greenup, State v. Greenup, No. 2003-300B (La. Dist. Ct. St. John the Baptist Parish Aug. 16, 2004); Search Warrant, State v. Greenup, No. 2003-300B (La. Dist. Ct. St. John the Baptist Parish Aug. 16, 2004); Sheriff's Office Supplemental Narrative Report, State v. Greenup, No. 2003-300B (La. Dist. Ct. St. John the Baptist Parish Aug. 16, 2004); Transcript of Plea Agreement and Sentencing, State v. Greenup, No. 2003-300B (La. Dist. Ct. St. John the Baptist Parish Aug. 16, 2004); Voluntary Statement of Michelle Greenup on Feb. 11, 2003, 5:28 PM, State v. Greenup, No. 2003-300B (La. Dist. Ct. St. John the Baptist Parish Aug. 16, 2004) (transcript of interrogation at River Parishes Hospital); Voluntary Statement of Michelle Greenup on Feb. 11, 2003, 9:55 PM, State v. Greenup, No. 2003-300B (La. Dist. Ct. St. John the Baptist Parish Aug. 16, 2004) (transcript of interrogation at sheriff's office); Voluntary Statement of Michelle Greenup on Feb. 12, 2003, 5:51 PM, State v. Greenup, No. 2003-300B (La. Dist. Ct. St. John the Baptist Parish Aug. 16, 2004); Waiver of Constitutional Rights and Plea of Guilty, State v. Greenup, No. 2003-300B (La. Dist. Ct. St. John the Baptist Parish Aug. 16, 2004); JEANNE FLAVIN, OUR BODIES, OUR CRIMES: THE POLICING OF WOMEN'S REPRODUCTION IN AMERICA 84 (2008); Lolly Bowean, *Reserve Woman Indicted in Baby's Death; Cops Believe Suspect Disposed of Newborn*, TIMES-PICAYUNE (New Orleans), July 30, 2003, at 1; Leonard Gray, *Jones Counts Three Homicides*, L'OBSERSVATEUR (LaPlace, La.), Feb. 11, 2004; Leonard Gray, *Reward Boosted for Suspect*, L'OBSERSVATEUR (LaPlace, La.), Mar. 5, 2004; Gabrielle Maple, *Miscarriage Proof Frees Woman; She Faces Charges of Killing Her Baby*, TIMES-PICAYUNE (New Orleans), Aug. 18, 2004.
[27] State v. Garner, No. 971300388 (Utah Dist. Ct.-3d Apr. 6, 1998).
[28] Amended Information at 1, State v. Garner, No. 971300388 (Utah Dist. Ct.-3d Apr. 6, 1998).

[29] *See* Amended Information, State v. Garner, No. 971300388 (Utah Dist. Ct.-3d Apr. 6, 1998); Case History and Minutes, State v. Garner, No. 971300388 (Utah Dist. Ct.-3d Apr. 6, 1998); Minutes, Initial Appearance, Notice, State v. Garner, No. 971300388 (Utah Dist. Ct.-3d Apr. 6, 1998); Stephen Hunt, *Charges Dropped Against Mother Accused of Abuse*, SALT LAKE TRIB., Aug. 16, 1998, at B2; Brian Maffly, *Charges Dropped Against Mother Who Allegedly Drank While Pregnant: Tooele County Dismisses Child-Abuse Counts Because Baby Appears to Be Healthy*, SALT LAKE TRIB., Apr. 30, 1998, at B2; Brian Maffly, *Fetal Abuse? Booze, Pregnancy Don't Mix, Says Toole Prosecutor*, SALT LAKE TRIB., Nov. 20, 1997, at A1; Brian Maffly, *"Fetal Abuse" Charges Give Rise to Debate; Mothers-to-Be Need Help, Not Fear, Critics Say*, SALT LAKE TRIB., Dec. 1, 1997, at D1; Ben Winslow, *South Utah Woman Charged in Drug Death of Fetus*, SALT LAKE TRIB., Mar. 6, 1998, at B1.

[30] U.S. Department of Justice, Bureau of Justice Statistics, *Felony Sentences in State Courts*, 2002, available at http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=2152.