

March 7, 1969

Judge David L. Bazelon
U. S. Court of Appeals
3020 University Terrace, N. W.
Washington, D. C. 20001

Dear David,

I was interested to read the material from the American Heart Association.

The report seems quite appropriate and I have only a few comments.

The Harvard Report wisely points out that two conditions, hypothermia, or CNS inhibitors like barbiturates, may result in a misleading application of the stated criteria of death. I think it is important to highlight these reservations and to stress that the physician is still under the obligation to use his best professional judgement that the observed signs are in fact inconsistent with the possibility of recovery of the patient's brain function. This would require, at a minimum, that the physician have a well formed theory as to the nature and extent of the damage to the patient's brain. We may, after all, discover other circumstances which resemble hypothermia or drugs and it will in fact in some cases be quite difficult to make an affirmative exclusion of drug influence.

I do not have the text of the Uniform Anatomical Gift Act but from what I know of it I would endorse the recommendations as stated. I would be careful, however, not to support the possibility that the enclosed clipping suggests apply to Virginia that, under any circumstances, organs can be removed from a body without some explicit affirmative act, be it either the previously expressed intentions of the donor or the approval of qualified members of his family. There is in fact considerable pressure from some surgeons to make organs more freely available for what are, in their view, humanitarian purposes but the possibility of adverse rebound in public opinion is too ominous to approve such a direction. There are, furthermore, more general philosophical implications varying on the right *part* of the state to use parts of the body, involuntarily, that cannot be ignored in framing details of this law.

Otherwise I think the committee has done a very good job and I hope you will give them the benefit of your criticism and then approval.

over

D.
BAZELON

See you in a few weeks. I am, however, staying in a hotel downtown as I have a good deal of business that I will need to carry on from such a base while in Washington.

Sincerely yours,

Joshua Lederberg

Enclosure

JL/rr