

U.S. officials ignore disabled babies' plight

First in a series

By Carlton Sherwood
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Dozens of so-called "Baby Doe" cases are being ignored by top officials at the Justice Department and Department of Health and Human Services, who appear to have adopted a hands-off policy on prosecutions and even investigations into the questionable deaths of handicapped newborns, The Washington Times has learned.

Despite an April 1982 presidential order to "vigorously enforce" federal laws that prohibit discrimination against children born with physical or mental handicaps, the civil rights offices of HHS and the Justice Department — the agencies responsible for enforcing federal "Baby Doe" regulations — have all but declared a moratorium on any prosecutions, failing in recent months even to investigate complaints of suspicious multiple infant deaths.

Baby Doe: THE POLITICS OF DEATH

Internal HHS records obtained by The Washington Times and interviews with officials at HHS, the Justice Department and the White House confirm that, since February alone, federal officials have been formally notified of at least 38 infant deaths relating to decisions to withhold all medical care. To date, however, neither agency has authorized any investigations into those deaths.

Those same records show that high-ranking HHS officials, aware of their own civil rights division's unwillingness to deal with "Baby Doe" complaints, pressed for the creation of an "autonomous" special enforcement unit to handle

future investigations. HHS Secretary Margaret Heckler authorized the establishment of that special office in February, but has not appointed any personnel to the unit.

In the two years HHS has been keeping files on reported mistreatment of handicapped infants, at least 200 cases have been referred to the federal government for action, complaints filed in many cases by hospital personnel themselves. More than half of those reported incidents — some two years old and involving reports of starvation and injection deaths — continue to be listed by HHS as under investigation. So far, no doctor or hospital has been prosecuted by the federal government for depriving a handicapped child of medical care.

Past and current administration officials attribute the lack of enforcement to sharp inter-departmental disagreements with administration policy and a too

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Suspicious infant deaths are not being investigated

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close relationship between HHS officials and the medical institutions they're supposed to be policing.

The reluctance of federal law enforcement officials to act on "Baby Doe" cases comes at a time when an increasing number of doctors are publicly endorsing or admitting to the practice of withholding routine medical treatment from infants with birth defects.

In fact, several of the more recent complaints filed with HHS and the Justice Department this year are based on articles published in medical journals — authored by the physicians themselves — detailing the process by which certain children are selected for non-treatment and death.

In the October edition of the medical journal *Pediatrics*, for example, a team of Oklahoma physicians said they were influenced by a mathematical formula based on financial, social and quality of life components in deciding which children would receive medical care.

"The untreated survivor has not been a significant problem in our experience," the doctors wrote.

A similar article, authored by a group of Detroit Children's Hospital physicians and published in the prestigious European medical magazine *Kinderchir*, described a program that initially targeted 31 handicapped newborns for non-treatment. But, the doctors reported, that program ran into trouble when the "selection process became known in the community" and other hospital personnel began treating the babies.

Consequently, the physicians reported, the "mortality rate was unexpectedly low."

Although formal requests for federal probes into the Oklahoma and Detroit medical programs were filed with HHS and the Justice Department months ago, neither

agency has begun any investigations — or even acknowledged the complaints.

While Reagan administration officials are apparently backing away from the "Baby Doe" issue — once considered the exclusive province of conservative and so-called "pro-life" groups — the subject is gaining wider attention and new-found support among civil rights activists and leading liberal members of Congress.

Late last month, for example, a rare coalition of six liberal and conservative legislators, headed by Sen. Orrin Hatch, R-Utah, and Sen. Edward Kennedy, D-Mass., co-sponsored an amendment to the 1974 Children Abuse Prevention and Treatment Act that would make it a federal offense to withhold "medically indicated treatment from disabled infants with life-threatening conditions."

Virtually all the most influential civil rights disabilities organizations, including the Association for

afraid to do anything about this because they thought it would do something to hurt the sacred right of abortion," Mr. Lottman said. "The fact is this and the abortion issue have nothing to do with each other. We're talking about a person who's born alive with all the rights you and I have. No one's allowed to kill a baby because they don't want it."

Under current laws — Section 504 of the 1973 Rehabilitation Act — HHS is responsible for ensuring that none of the 7,000 Medicaid-funded hospitals within its jurisdiction is depriving patients of treatment because of a handicap. Federal regulations require HHS to conduct "prompt" investigations into all complaints of violations and to forward its findings to the Justice Department for criminal or civil action.

Other federal civil rights laws provide the Justice Department with sweeping authority to investi-

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— President Reagan in 1982.

Retarded Citizens, the National Down's Syndrome Congress and the National Spina Bifida Association, have assumed a leadership position on the issue, calling for criminal sanctions on those who discriminate against handicapped newborns.

Michael Lottman, a Washington civil rights lawyer and former Justice Department prosecutor, said he and an increasing number of his colleagues now see the matter as an "urgent civil rights issue."

"Initially, some people were

gate and criminally prosecute any physician or hospital that discriminates against a patient for reasons of race or handicap.

In April 1982, following the death of a Bloomington, Ind., infant born with Down's syndrome, President Reagan stepped in and issued an executive order to HHS directing the agency to notify hospitals that federal laws under Section 504 "will be vigorously enforced."

"Our nation's commitment to equal protection of the law will have little meaning if we deny such pro-



Health and Human Services Secretary Margaret Heckler



Health and Human Services Civil Rights Director Betty Lou Dotson



Assistant Attorney General William Bradford Reynolds

tection to those who have not been blessed with the same physical or mental gifts we too often take for granted," the president said in the order. "I support federal laws prohibiting discrimination against the handicapped and remain determined that such laws be vigorously enforced."

The same presidential order was dispatched to Justice Department civil rights chief William Bradford Reynolds, who was given the additional task of drafting a report to the White House suggesting further "constitutional and statutory remedies" which the government might use to force hospitals to comply with federal regulations.

White House officials say Mr. Reynolds has yet to prepare that report. In two years he has authorized only one investigation into a "Baby Doe" complaint and has never prosecuted a hospital or a doctor for violating federal laws.

Mr. Reynolds, through a Justice Department spokesman, declined repeated requests for interviews. HHS officials, including Secretary Heckler, her chief of staff George Siguler and civil rights director Betty Lou Dotson, also turned down several Washington Times requests for interviews.

Many past and even some current administration officials attribute the lack of enforcement to internal philosophical differences

among key HHS and Justice Department officials.

"First, I don't think the people involved at HHS and Justice are particularly competent to deal in this area," says Martin Gerry, the Nixon administration's HHS civil rights chief. "And, I don't think, quite honestly, that they agree with the president's policy. The president has some people working for

"She's not doing the job . . . never has," Mr. D'Agastino said. "The complaints come into her office, and that's where they stay. Let's not kid ourselves. HHS is run by and for the medical establishment. And if there's one thing the doctors in this country don't want, it's any law enforcement agency checking up on their work. I can assure you that the Justice Department is ready to

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— Former HHS civil rights chief Martin Gerry.

him who are basically in disagreement and who have done a variety of things to attempt to erode the policy."

Robert D'Agastino, a former Reagan administration Justice Department attorney who handled that agency's lone "Baby Doe" investigation, agrees. But he puts the blame on HHS officials — particularly Civil Rights Director Dotson, a career government employee and until 1981 an Equal Opportunity lawyer for the Department of Agriculture.

move on every case, but first we need the cooperation of HHS. I'm telling you we never got any cooperation."

But another critic, a White House official who asked to remain anonymous, points an accusing finger at Justice Department civil rights chief Reynolds.

"Brad is a good conservative but perhaps the worst person to deal with this issue," the administration official said. "Simply put, he has never met a civil rights law he liked."