COMMENTARY

INSIDE REPORT

Challenge to DA could break ground

District Attorney Hillar Moore III said he plans to fight a motion challenging his decision to transfer a juvenile defendant to adult court — an issue that might make its way to the U.S. Supreme Court.

The case involves Tyler Coleman, the 16-year-old boy accused of shooting and, officials say, paralyzing Metro Councilman Chandler Loupe's son.

Moore, like all Louisiana district attorneys, has been largely unchallenged when he has decided to move any 14-, 15- or 16-year-old charged with a serious violent crime to adult court, with no need for a hearing on the issue first.

NAOMI MARTIN

Moore said that while many defense attorneys fight transfers on the grounds of insanity or incompetence, Coleman's attorney, Bruce Craft, is claiming his client has a right, under Louisiana's Children's Code, to a hearing on the transfer. The hearing would, in essence, shift authority over the decision from the district attorney to the Juvenile Court judge.

Moore said his office will file a motion with the 1st Circuit Court of Appeal contesting Juvenile Court Judge Pam Johnson's Feb. 17 decision granting Coleman a transfer hearing. The final ruling will determine whether Coleman, who is charged with attempted first-degree murder and three counts of armed robbery, will face a maximum five years in Juvenile Detention Center or 99 years in an adult prison.

Hillar Moore III argues that all juveniles charged with attempted murder or armed robbery in Louisiana can automatically be tried as adults at the district attorney's discretion.

Craft, the defense attorney, said the Children's Code specifies certain factors to be considered in a transfer hearing, such as the defendant's ability to be rehabilitated by the juvenile justice system as well as the defendant's criminal, educational, mental, social and medical history.

Moore said his office already takes those issues into account when deciding whether to charge a juvenile in adult court. He said each case presents a tough decision on whether the public is best protected with the offender facing juvenile or adult consequences. The decision is reached, he said, after examining the juvenile's individual background, the seriousness of the crime, how it was committed, the victim's input and the strength of the case.

"It's difficult on us when you look at a kid who's 15, maybe 4 foot 11, maybe 120 pounds and you're charging him with 100 years in prison," Moore said.

He argues that all juveniles charged with attempted murder or armed robbery in Louisiana can automatically be tried as adults at the district attorney's discretion.

But other experts say the issue is not so clear cut. When the defendant is older than 14 but charged with a lesser crime than aggravated rape or murder, the defendant falls into a gray area, said Dana Kaplan, executive director of the Louisiana Juvenile Justice Project.

Judge Johnson said in an interview that while certain defendants — mainly those accused of violent crimes less serious than rape and murder — are guaranteed the right to a transfer hearing, the defense attorney must request one before adult charges are filed, a step that is not usually taken.

The case may soon end up before the state Supreme Court because whichever side loses in the 1st Circuit will probably appeal the ruling. If the case makes it to the state or U.S. Supreme Court and the defense wins, the ruling could have ramifications for juvenile defendants statewide and possibly beyond.

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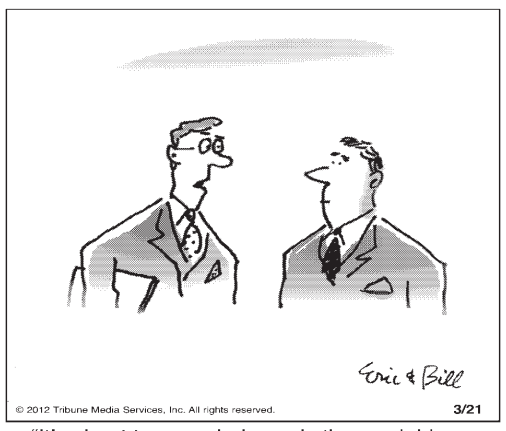
BOTTOM LINERS



"It's about teamwork. I supply the weak ideas, you provide the mediocre execution."

An inconceivable scenario

WASHINGTON — Next week, Supreme Court justices will begin deciding whether President Obama's health-care reforms live or die. But if you think that's ambitious, consider what the modest jurists were debating on Monday: what Americans are allowed to do AFTER they die.

Specifically, the question before the court was this: whether a dead man can conceive children.

This odd point of law came before the court after a woman, Karen Capato, gave birth to twins 18 months after her husband died of cancer. She had used sperm he deposited when he was still alive, and she was seeking his Social Security survivor benefits for the kids.

The Constitution is silent on the question of posthumous conception, in large part because people back then did not sire children after death. In addition, the relevant Social Security law, written in 1939, does not get into questions of whether a surviving "child" includes one fertilized in vitro. In other words, the justices pretty much had to wing it.

The transcript of Monday morning's oral argument before the High Court included, in alphabetical order, the words "illegitimate," "insemination," "marital," "offspring," "reproduced," "reproduction," "reproductive," "sperm," "unmarried," "wedlock," "wife" and "wives." And that's not even getting into Justice Sonia Sotomayor's description of "biological input" into the procreative process.

Clearly, the justices were on another of their field trips from their judicial chambers to Americans' bedchambers.

DANA MILBANK

"Let's assume Ms. Capato remarried but used her deceased husband's sperm to birth two children, ... " Sotomayor posited. "Would they qualify for survivor benefits even though she is now remarried?"

"What happens if the decedent is the mother?" Sotomayor also wanted to know. "Does marriage matter only if it's the father?"

The justice was not done forming new conception concepts. "What if you are a sperm donor? Does any offspring that sperm donor have qualify?"

"What if," Chief Justice John Roberts posed, "the Capato twins were conceived four years after the death in this case? Would your argument be the same?"

And Justice Ruth Bader Ginsburg asked whether people in 1939 would have "understood that the marriage ends when a parent dies."

The lawyers dutifully chased each scenario. "Today there are many cases in which biological parentage is not determinative of legal parentage," argued administration lawyer Eric Miller, defending the Social Security's decision not to pay benefits.

The argument was at once picayune (not many babies are conceived with a dead parent's seed) and profound (the justices have to resolve the definition of what a child is), and the case raised questions of federal versus state powers.

But mostly the case shows the struggle of an 18th-century legal system to keep up with 21st-century technology. As Justice Samuel Alito noted, "they never had any inkling about the situation that has arisen in this case" when members of Congress wrote the law.

The phenomenon is happening more often, and with more consequence — notably in the area of abortion, where legal standards have been outstripped by technologies such as the morning-after pill and the ability to make younger fetuses viable.

On the matter of posthumous conception, at least, justices on both right and left seemed disinclined to guess about what long-dead lawmakers would have thought about not-yet-invented technologies.

Charles Rothfeld, arguing for Capato, said lawmakers drafting Social Security in the 1930s only meant to include children of married parents in their definition of child, because that was "the paradigm of a child at that time."

Justice Antonin Scalia wasn't buying that. "When Congress says child, child means child, and the mere fact that Congress wrote that at an age when most children were indeed children of married people doesn't change the word child," he argued.

Justice Stephen Breyer raised a more practical objection. "There are already children who are eating up all of the money" in the survivor-benefit program, he said. "And then some new person shows up and you have to take the money away from the other children in order to give it to this new child. And all the time, you don't know if that's what the parent who was dead really wanted."

Ultimately, Roberts said, the child-bearing widow loses the case if the law in question is ambiguous. "Is there any reason we shouldn't conclude based on the last hour that it's at least ambiguous?"

"It's a mess!" answered Justice Elena Kagan.

"I think the problem is that we're dealing with new technologies that Congress ... wasn't anticipating at the time," Rothfeld allowed. "Congress would not have specifically had in mind, contemplated, the question of posthumous conception."

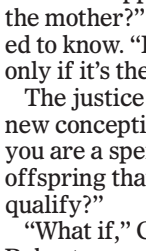
Dana Milbank's column is distributed by the Washington Post Writers Group.

Ruling to decide future of health-care law

Next week, the U.S. Supreme Court will hear three days of oral arguments in the health-care lawsuit challenging the constitutionality of the Patient Protection and Affordable Health Care Act, otherwise known as "Obamacare."

We now know the law was based on phony predictions about its cost. After promising the price would be under $940 billion over 10 years, the nonpartisan Congressional Budget Office has issued a correction of its initial estimate, which appears to have been based on sleight of hand accounting tactics by congressional Democrats and the White House. CBO now projects the measure will cost taxpayers at least $1.76 trillion over a decade.

Randy E. Barnett, the Carmack Waterhouse professor of legal theory at the Georgetown University Law Center, is troubled by the administration's shifting rationale in its defense of the health-care law: "First they told us this was an easy 'Commerce Clause' case. Then they (said) it was an exercise of the Tax Power. Now it is the Necessary and Proper Clause. If the mandate was so obviously constitutional, the government would not be shifting its position 10 days before oral argument."



CAL THOMAS

Ilya Somin, an associate professor at George Mason University School of Law, adds, "Despite this seeming shift, the federal government's brief almost completely fails to consider the question of whether the mandate is 'proper,' as well as 'necessary.' The Supreme Court has made clear that these are two separate requirements, both of which have to be met. And a law that can only be defended by a rationale that gives Congress a blank check to enact virtually any other mandate clearly is not 'proper.'"

Many wonder what will happen to needed reforms in health care should the individual mandate — the heart of Obamacare — be struck down. That question is answered in a timely new book published by the Pioneer Institute, a Boston-based public policy research organization, titled "The Great Experiment: The States, the Feds and Your Healthcare." In a series of essays compiled by Joshua Archambault, director of Health Care Policy at the Pioneer Institute, and with a forward by Jeffrey S. Flier, M.D., the dean of Harvard Medical School, experts propose the states take the lead in reforming health care, as Massachusetts did, rather than dictate a one-size-fits-all system from dysfunctional Washington.

The authors propose what they call "Competitive Federalism" that would allow for a federal partnership, but permit states to fashion their own approach to health care based on their individual circumstances.

Refundable tax credits, high-risk pools and Medicaid reform are among the specific recommendations for maintaining the high quality of health care America now enjoys while providing coverage and reducing costs for people whose access to care is now limited and for those now paying the bills.

Along with the bipartisan Medicare reform plan developed last year by Rep. Ron Wyden, D-Ore., and Paul Ryan, R-Wis, which was dismissed by supporters of the status quo who prefer the issue to a solution, these are serious and doable proposals that deserve congressional consideration.

As Pioneer Institute Executive Director Jim Stergios writes, "Despite years of effort and mountains of regulations, the federal government has proven incapable of screening for quality (health care), and acting on that information. It is time for states and the federal government to hit the reset button."

The Supreme Court might give them that opportunity. We should know by June how the likely slim majority will rule. Much of our future depends on the court's decision because it goes to the heart of what the government can be allowed to impose on a free people.

If the high court doesn't invalidate the individual mandate, there will be no stopping government from threatening our most valuable possession: liberty.

Cal Thomas' column is distributed by Tribune Media Services.

Campaign makes candidates look irrelevant

WASHINGTON — Thus far, the 2012 presidential campaign has been unfocused, dispiriting and largely irrelevant. By the time Election Day comes, a weary nation will be at the point of pulling the covers over its head and screaming, "Somebody, please, make it stop."

What's that? You say we're there already?

"Both sides are to blame" is usually a cop-out, but in this case it's true. President Barack Obama has conducted a more reality-based campaign than the Republicans vying to run against him in the fall, but that's not saying much. Arguably, it's not saying anything at all, since the GOP primaries seem to be taking place in some parallel universe.

It's not as if there aren't real issues to deal with. The recession is over and the economy is recovering. But even if we manage to dodge all the potential bullets that could cause another slump — a Middle East war that sends oil prices to the stratosphere, a Greek default that causes another financial crisis — the nation will still face years of painfully high unemployment.

Real estate, the source of most Americans' wealth, is showing some flickerings of life in parts of the country. But home values will not fully stabilize and begin a sustainable rise until the enormous backlog of foreclosures is cleared and the excess inventory built during the housing bubble is absorbed. In other words, the engine that powered our last big growth spurt is in no condition to power the next one.

EUGENE ROBINSON

Huge structural problems are looming. The shift to a post-industrial economy will require massive new investment in infrastructure and education. But servicing the gigantic national debt and ensuring the health and well-being of a growing population of senior citizens will devour resources that we ought to spend investing in the nation's future. Meanwhile, inequality has grown to the point where the basic promise of the American system — that with talent and determination, anyone can succeed — is in doubt.

With all this at stake, what are our presidential candidates talking about? Um, contraception.

That's not quite fair. It's not that the candidates totally ignore the big issues; it's that no one is offering proposals that are comprehensive, honest and rational.

Mitt Romney presents himself fundamentally as a technocratic handyman who needs only one tool to fix the economy — his free-market socket wrench. How does he see America's place in a world whose economic center of gravity is shifting toward Asia? What, if anything, does he propose to do about the widening gap between rich and poor? Where will growth come from?

Just hand me that wrench, kid.

Rick Santorum campaigns as more of a moralist whose concern is the salvation of America's soul. His economic policies sound like a return to George W. Bush's "compassionate conservatism" — which, if you recall, involved big tax cuts and big spending increases, resulting in our present predicament.

Newt Gingrich, to his credit, does offer a sweeping, optimistic vision of America's future. But he's looking through his patented Mad Scientist lens: permanent colonies on the moon, "energy independence" that would practically require an oil derrick in every backyard.

And Ron Paul sees the Big Picture, too, but his solution to everything that ails us — shut down the government and return to our villages and farms — doesn't strike most Americans as realistic.

With so little inspiration coming from the Republican side, the field is open for Obama to raise our hopes and fire our dreams. So far, he has declined the opportunity.

As a matter of politics, why should the president do anything but stand by and watch as the GOP makes a spectacle of itself? The primaries have given the Obama campaign a tutorial in how to attack Romney, the likely nominee. And the Republican Party has spun itself so far to the right that Obama can easily make a centrist appeal to the independent voters who will decide the election.

But that doesn't get Obama off the hook. True, he has been telling Americans what problems we face and what measures we can take to meet those challenges. What he hasn't done is give us a sense of purpose.

We need more than actuarial calculations about how many more years we have until Social Security benefits need to be adjusted. We need a goal — something more practical than a moon base. We need a mission. We need a reason to get out of bed on Election Day.

Eugene Robinson's column is distributed by the Washington Post Writers Group.