

P U B L I C    H E A R I N G

before

COMMISSION TO STUDY THE NEW JERSEY STATUTES  
RELATING TO ABORTION, CREATED UNDER ACR 24 [1968]

Held:  
November 26, 1968  
City Hall  
Camden, New Jersey

Members of Commission present:

Assemblyman William M. Crane [Chairman]

Rev. Thomas F. Dentici

Rev. Alexander Shaw

Rabbi Barry Dov Schwartz

Oscar W. Rittenhouse, Esq.

Also:

Samuel A. Alito [Secretary]

Robert M. Poley, Esq. [Counsel]

Assemblyman Walter E. Pedersen

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ASSEMBLYMAN WILLIAM M. CRANE [Chairman]: This is a legislative hearing before the Commission created under Assembly Concurrent Resolution No. 24 to study the statutes relating to abortion. The members of the Commission present tonight are Oscar W. Rittenhouse, Rev. Alexander Shaw, Rabbi Barry Dov Schwartz, Rev. Thomas F. Dentici, and I am Assemblyman William M. Crane, sponsor of the resolution and Chairman of the Commission. Also with us are Robert M. Poley, Counsel to the Commission, and Samuel A. Alito, Secretary.

We hope the other members of the Commission will be appearing shortly.

The time limit, which will be strictly enforced, will be five minutes. If your statement runs over five minutes and it is a written statement, don't worry about it. It will certainly get into the record even though it is testimony that you don't give verbally. If it is written and presented to us, it will be made a part of the record.

Is Alvin E. Granite here, Prosecutor of Gloucester County?

Mr. Granite, will you please take the chair. The timer is set for five minutes. When the five minutes are up, I will ask you to conclude within a few seconds, and if any members of the Commission have any questions of the witness they will ask them. We do have a great number of witnesses and we want to try to move on as quickly as possible. Mr. Granite.

A L V I N E. G R A N I T E: Gentlemen, when I decided to accept your invitation, I did it because of the fact that in past instances before other legislative committee hearings, I have been an advocate for an entire revamping of

the Criminal Code of New Jersey.

I have been a prosecutor now for almost nine years. I have seen our Criminal Code in action, and I have seen those parts that are enforceable, I have seen those parts that are more or less ludicrous, and those which by their very nature are completely unenforceable.

The subject of abortion is one, of course, that is not only controversial, but in my opinion completely up in the air in the State of New Jersey at this time as a result of a Supreme Court decision in a civil action of about a year ago. In that decision by way of dictum, the Supreme Court of New Jersey seemed to indicate that the proposal of the American Law Institute was in fact the law in the State of New Jersey. The statute really is rather vague, as you know, and it is my hope and assumption that the Legislature will take upon itself to not only make some definitions in this field, but in other fields, especially in the sex violation field.

I personally through my own feeling - and, of course, I cannot hide that in a discussion such as this - I feel that the proposals of the American Law Institute should be adopted by our Legislature. It is apparent that there is a movement in the country as a whole to this end, that we are beginning to realize that it is impossible to police the hundreds of thousands of unlawful abortions which occur in the United States each year.

We know that there are two types of unlawful abortions which occur today and they are the quack abortions where someone is very easily liable to die as a result of septic conditions



and those who are fortunate enough to have so-called D and C's in all of the lovely hospitals in the country. To think otherwise - to think that these so-called D and C's are anything other than abortions in many instances, would be, I think, rather naive. It is the old story of those who have some money being able to do what they want and I think it is about time that we took a realistic view and just as prohibition was annihilated, I think that our archaic attitudes toward this subject should be also.

I realize that there are many people who have personal, moral attitudes contrary to this position and there are those who have religious scruples against this position, but I think that is up to them. I think if their religious feelings or personal feelings are such that they are against abortion, then if their 15- or 16- or 17-year old daughter becomes pregnant, they can, along with the child, take those consequences.

I would go one step further than the American Law Institute has gone. By the way, I think I am correct in stating that they state that where the woman's life is in danger, where her health - and this includes psychological as well as physical health - is in danger, the so-called Thalidomide and German measles cases, and the forcible rape -- and I would include under forcible rape non-forcible rape where the girl is under the age of 16. Now if we are by legislation going to say that a girl under the age of 16 cannot consent to sexual intercourse and, therefore, any voluntary sexual intercourse with her constitutes rape, then would it not necessarily follow if she can't consent, would it not also be forcible for our

purposes here?

I know that there are many prosecutors who are of the same opinion that I am. There are some who are completely against the opinion that I present to you. I am not here on behalf of any association; I am here on behalf of myself. There are those who would go all the way and say that it is entirely a matter of choice. I think that you will find that states such as Colorado which have basically adopted the American Law Institute law have not become abortion mills. They have on the contrary set up stringent regulations in regard to the actual tenants of the law.

I have made my position clear. I feel this way, that the moral issue, the religious issue and the legal issue, especially in so far as criminal law is concerned are two entirely different things. We know from criminal law that a child to be a child must be born alive and, therefore, I think it is about time that we took a realistic view on it and this is my position in my capacity as a law enforcement officer.

ASSEMBLYMAN CRANE: Thank you, Mr. Granite.

Are there any questions of Prosecutor Granite?

Mr. Granite, you made a very strong recommendation for the A.L.I. recommendations to be adopted. In addition you said that we should do something in the sex violation field and you also talked about the impossibility of policing the number of illegal abortions in the State.

MR. GRANITE: I didn't say in the State; I said generally.

ASSEMBLYMAN CRANE: Well, we have to consent there are some in the State. There are no good figures available, of

course, since a satisfied customer does not complain.

MR. GRANITE: Right.

ASSEMBLYMAN CRANE: Would you have any idea of what the number of illegal abortions in the State might be?

MR. GRANITE: I have no idea.

ASSEMBLYMAN CRANE: Have you heard the guess that 30,000 might be a somewhat accurate figure?

MR. GRANITE: I wouldn't know; I really wouldn't know.

ASSEMBLYMAN CRANE: I see. Is there anything you can suggest to us that might be helpful to this Commission in enforcing the law, even if we should revise the law, against illegal abortions?

MR. GRANITE: Well, I can only answer that in a general way. Give law enforcement more money and more personnel and we can enforce all of the law. This is the hue and cry of all law enforcement - plus public support.

ASSEMBLYMAN CRANE: Any further questions? [No response.] Thank you, Mr. Granite.

MR. GRANITE: Thank you.

ASSEMBLYMAN CRANE: Dr. Bernard Pisani, please.  
[No response.] Dr. Karl Klinges, please. [No response.]  
Dr. Velimir Szesko. [No response.] Dr. Jerome Dolan. [No response.] Sister Anne McCarthy.

S I S T E R     A N N E     M c C A R T H Y: I am really not sure whether I should read what I have or comment on what the last speaker said, but perhaps I will read what I have prepared.

Will the proposed changes in the abortion law serve the common good? Since abortion affects the interests of so many, the parents, the fetus, the State and the common good, there are important moral, legal, medical aspects of the problem. To what problem are the proposed changes in the law actually addressed?

Abortion is part of a larger social system that involves the sexual relations of men and women, marriage, the family, creation and rearing of children, the alternate method for dealing with interruptions practiced in the normal flow of these relationships, contraception, adoption and divorce. Underlying these reasons is the basic one of whether the fetus can be considered a human being. Medical evidence is as yet unclear about the actual time in developing when the fetus may be considered human. However, if we cannot prove that it is not human, fetus has the right to live within the womb as well as outside the womb.

Respect for human life has always formed the basis for the social worker's profession. Every man possesses the right of life from God, not from man or society. The human person is believed to have indestructible value regardless of his mental or physical condition or his circumstances. Social work refuses to attach a condition to this valuation. As the War on Poverty clearly showed, social work wants to secure as far as possible the optimum opportunity for full human life for all people. To do so has never meant wilful termination of any human life. This position takes a fuller view of a

mother's well-being than the mother in profound emotional stress is capable of taking, be it mother or child. If social workers supported the permissibility of abortion to save the mother's reputation, her health, her marriage, her pocket-book, even her life, we would not be taking into full account the position, rights and responsibility of the mother. In admitting a principle allowing the elimination of a child, we would be endorsing a principle that would allow the elimination of the mother should someone judge the need had arisen.

The best way to assert and protect the dignity and well-being of the mother is to assert the dignity and inviolability of all human life.

In daily practice social workers treat the unresolved conflicts caused by pregnancy termination, just as they treat threatened or actual psychological problems triggered by pregnancy itself. In the first instance, we meet the challenge by application of social work principles. In the second instance, we should do the same in the highest traditions of our profession. Problems connected with pregnancy call for treatment, but confronting of such problems head on during pregnancy and not termination of a human life is the treatment of choice of our profession where no price tag is every attached to a human being.

To help people grow to maturity has always been a goal of social work. One mark of maturity is responsibility for one's actions. Abortion removes the responsibility for the natural consequence of sexual intercourse and therefore reduces the person and their actions to a sub-human level.

In response to the last speaker concerning rape and the consequences of the unmarried becoming pregnant, I think in our society there are very few indications of actual rape and I cannot see your reasoning for abortion being allowed to the person who comes to us saying that she has been raped because it is very difficult to prove that a girl or a young woman or a married woman has actually been raped and statistically there are very few figures that could back this up.

Another instance is in regard to the married person, that she becoming pregnant is faced with perhaps the decision for an abortion, but is this actually handling the problem that she, herself, is involved in? Would it be not better to work around what is causing the conflict in her life and to help her resolve the problem rather than to merely kill or remove the problem when it is only the symptom that you are removing and you haven't gotten to the core?

ASSEMBLYMAN CRANE: Thank you, Sister. One question - we have on our list here some initials after your name which the Rabbi has asked me what they mean - M.S.B.T. What does that mean?

SISTER ANNE MCCARTHY: That is the community I belong to - the Missionary Service of the Blessed Trinity. I am a social worker by profession.

ASSEMBLYMAN CRANE: Any questions of this witness?  
[No response.] Thank you, Sister, for coming to talk to us tonight.

Is Dr. Christopher Tietze here, please?

Would you identify yourself, please. Will every witness please identify themselves. We are using a tape recorder to record the proceedings here and in order to identify which witness says what, we do need your name, title and so forth.

D R. C H R I S T O P H E R T I E T Z E: My name is Christopher Tietze. I am a physician by background, having graduated from the School of Medicine of the University of Vienna in 1932. My area of professional specialization is medical statistics, the use of statistics to solve medical problems. Over the years my interest in these matters has grown far beyond the confines of medicine and I now consider myself primarily a demographer, an expert on population. My present position is that of Associate Director of the Bio-Medical Division of the Population Council.

I have been interested in abortion from a scientific point of view for at least 20 years and have published a number of papers relating to this subject. I have taken the liberty of bringing with me reprints of some of these papers and I shall be glad to leave these reprints with you to become a part of the record. I have attended several national and international conferences on abortion, most recently the International Conference which took place in Hot Springs, Virginia, early last week.

My role here is probably somewhat different from that assumed by most other persons who have testified or will testify either for or against liberalization of the abortion laws in the State of New Jersey. Like most other adults, I hold very definite views on the subject of abortion, but I do not

represent any civic or religions group and my views are strictly those of an individual. Therefore, I do not believe that it would be appropriate to proclaim these views in order to give moral support to some of you or to convert others. My own views are no secret, however; I shall be glad to reveal them in response to questions. I would prefer, however, to do so after, rather than before, my other testimony.

As I see my function before this Commission, it is that of a "resource person." I have come here to make my knowledge available to you, to answer your questions on a wide range of subjects relating to the statistics of abortion such as the following:

1. Experience with abortion laws in the United States, Great Britain, the Scandinavian countries, Eastern Europe and Japan.

2. Statistics on abortions in these countries. This part of my testimony will, of necessity, be centered on abortions performed in hospitals since reliable information on illegal or criminal abortions is quite inadequate for all countries.

3. Statistics on mortality, especially that associated with abortion performed under medical auspices.

This list should give you an idea of the kind of information I am ready, willing, and able to provide. If your concern ranges beyond the subjects I have suggested, you should feel free to ask whatever questions appear important to you. I shall try to answer all of them to the best of my ability as a scientist,



without regard to my personal bias which is well known to me, and if I do not know the answer, I shall tell you so.

[Dr. Tietze leaves some exhibits with the Commission.]

ASSEMBLYMAN CRANE: Thank you, Doctor. Any questions of this witness?

REV. DENTICI: Doctor, in this field of statistics, we have often heard, and Mr. Crane asked a previous witness a few witnesses ago, the number of illegal abortions; do we have any way of knowing definite figures?

DR. TIETZE: No, we have no way of knowing a very reliable figure. Some years ago I was Chairman of the committee charged with making an estimate and we came up that a true figure in the United States could be anywhere between 200,000 and 1,200,000, but we did not feel that we could assign any particular figure in this range to be the most likely one. That was ten years ago and I have not seen any more recent evidence that would permit us to make a better estimate for the United States. There is no doubt, however, that the number is very large, doubtless in the hundreds of thousands.

REV. DENTICI: I know there is a question about the statistics here. Do we have any figures, for example, relative to the states that have liberalized abortion as to the decrease of the illegal abortions?

DR. TIETZE: Not yet. New laws have been in force only a very short time and we barely have data on the number of legal abortions in these states. To determine any trend is much too early. Incidentally, the changes that have been made

in several states, such as Colorado and California and others have been so small that I would not expect them to have a major impact on the number of illegal abortions.

RABBI SCHWARTZ: Is there an impending danger in the rise of population today as we have been reading and, if so, would abortion alleviate some of these dangerous conditions?

DR. TIETZE: Sir, are you referring to the United States or the world as a whole?

RABBI SCHWARTZ: Well, let's talk specifically about the United States.

DR. TIETZE: Well, I do believe that the increase of population in the United States is still a very rapid one and that it would be better from many points of view, economic and social, if we had a lower birth rate for a protracted period. At the present time we are still increasing at a rate of approximately 50 per cent per generation and that is a lot of increase. If the several states were to adopt abortion laws or were to repeal their abortion laws, this might have some impact on the number of births. I do not believe that the kind of legislation that has been based on the American Law Institute model will have a great demographic impact.

MR. RITTENHOUSE: Doctor, what percentage of the number of abortions that are performed, would you say, would be covered by this type of permissive abortion?

DR. TIETZE: Well, most people have estimated that it might be somewhere in the vicinity of 5 per cent.

MR. RITTENHOUSE: Five per cent. And where are the majority of abortions - what area are they performed?

DR. TIETZE: Geographically?

MR. RITTENHOUSE: No. I mean in what areas. Are we talking about the married woman who does not desire the child for reasons other than ---

DR. TIETZE: Yes. I believe that the curve of abortions has two peaks, one peak among the very young and unmarried who are under strong social pressures not to have pre-marital pregnancies, and on the other hand among married women who have the number of children they want. It is my impression - and I cannot prove it - that abortion is not used very much in the United States for child spacing, but mainly to avoid pre-marital pregnancy or out-of-marriage pregnancy and to limit the ultimate size of the family. I wouldn't know which of the two peaks is the larger one. I would guess that it is the one involving married women who have completed their families.

MR. RITTENHOUSE: When you say, very young girls or unmarried women, are you referring to age or simply unmarried girls?

DR. TIETZE: Mainly unmarried. Actually the older unmarried girl who is pregnant has a better chance of getting an abortion, an illegal abortion anyway. I mean, she knows her way around better than a teen-ager.

ASSEMBLYMAN CRANE: Doctor, in the states that have legalized abortion there was considerable concern at the time the legislation was being passed that those states would become abortion meccas for the country. Would you say that this has happened?

DR. TIETZE: This has not happened because even in those

states where the law has been liberalized and where there has been no legal limitation as, for instance, in South Carolina, there has been a tendency on the part of hospitals to reject out-of-state applicants.

ASSEMBLYMAN CRANE: Did I understand you to say that South Carolina has no legal limitation on abortion?

DR. TIETZE: No, that is the only one that has written it into the law.

ASSEMBLYMAN CRANE: In other words, it is a matter between doctor and patient there and the law is not involved?

DR. TIETZE: No, they require a four-months resident limit before it can be legally performed. They have written the exclusion of out-of-state people into the law, but other states have not. In all the states, even those doctors who are generally sympathetic to the law have been quite reluctant to accept out-of-state people.

REV. DENTICI: Doctor, since you suggested that the Model Penal Code would not take care of the major portion of cases and that abortion can be dangerous, would it be better for us to perhaps suggest better family planning than abortion?

DR. TIETZE: Well, I certainly believe that family planning, that is, contraception, is a better means of preventing not only unwanted births, but also unwanted pregnancies. I am in some disagreement with you, sir, as to the dangers to life and health of abortions performed in hospitals under proper auspices. The risk is not very high - on the order of, oh, rather less than 3 per 100,000 abortions - that is, the risk to life, which compares with a risk of about 20 per 100,000

pregnancies from other risks of pregnancy, exclusive of illegal abortions.

REV. DENTICI: Doctor, I didn't get clearly the figure you said in the states that have legalized abortions - what percentage of the supposed abortions are they taking care of, realizing we are dealing with somewhat inaccurate figures here?

DR. TIETZE: Oh, of course. Let's take California. The estimate was that before the new law, California had about 600 legal - that means in hospital - abortions, 600. Actual reports are now available for the first six months of the new law and during that time somewhat more than 2,000 legal abortions were reported. So the estimate is that when a full year will be available, the figure will be somewhere between four and five thousand legal abortions. There are roughly 350,000 births in California or one-tenth of the total number of births in the country. So let us assume that all the states would adopt a law similar to that of the new California abortion law and let us further assume that the application of this law would be on the same scale as it is in California during the first year of its use. We would expect to have ten times this number or forty to fifty thousand legal, in-hospital abortions in the country as a whole, which compares with, say, a one million total, so that is about 5 per cent.

ASSEMBLYMAN CRANE: Doctor, would you say that New Jersey could eliminate its abortion problem if it were to take the abortion laws off the books?

DR. TIETZE: I think New Jersey would have very few illegal abortions left.

ASSEMBLYMAN CRANE: Would it then be as economically feasible for a person, for example, of limited means to avail themselves of abortion through scientific, medical circles rather than to go to the back-alley abortionist who might be cheaper?

DR. TIETZE: I think the prices of illegal abortion, at least of medically good illegal abortion, will go down. You will still have a special problem with the indigent who generally do not pay for other medical services either. But I would say it would go a long way to remove the ill effects of induced abortion in the State.

ASSEMBLYMAN CRANE: Any further questions? [No response.] Thank you, Doctor. Thank you very much for coming to see us.

DR. TIETZE: Thank you for calling me so quickly.

ASSEMBLYMAN CRANE: I would like to announce the arrival of Assemblyman Walter Pendersen from Gloucester-Salem Counties who has come to join us this evening.

I would like to say that anyone who wishes to testify whose name does not appear on the list, will please see Mr. Sam Alito who is standing right over here. He will circulate through the audience and take your names so we may have your name to call on you.

I understand Dr. Velimir Szesko is here now. Doctor, would you come forward, please.

Would you identify yourself, please.

D R.     V E L I M I R     S Z E S K O:     My name is Dr. Velimir Szesko. I am Director of the Department of Obstetrics and Gynecology at St. Vincent's Hospital, Staten Island, New York, and I am Attending Physician at St. Vincent's Hospital in Manhattan.

I might further identify myself by saying I was born in Youngstown, Ohio, and at the age of ten was brought back by my mother to Southeast Europe, to Yugoslavia, where I was brought up. I was there quite a while and graduated from the Medical School of the University of Zvornik, Yugoslavia, and after the war I spent about seven years at the Department of Gynecology and Obstetrics of the Medical School of the University of Zvornik until 1954 when I returned to the United States. Over there, I was even author of a paper on Artificial Abortion in which I stated at the time that the indications became very, very loose, that we didn't get much out of these so-called indications. Tuberculosis and heart disease were some of the indications which were used most, but they were all more or less a cover for what I would call semi-legal abortions. In other words, there was a very strong social component to these medical indications at that particular time.

Later on, when I left, of course, as you probably know from Dr. Tietze's remarks, the social component became

a social indication in Eastern Europe in countries such as Yugoslavia, Czechoslovakia, Roumania, to the extent that the number of abortions has increased tremendously. The medical indications as such were completely set aside and there was a tremendous influx, a flood, if you wish, of so-called social indications. So now-a-days, for instance, as far as Yugoslavia is concerned, anybody can go into any municipal place in Zvornik or Belgrade, Yugoslavia - the same goes for Czechoslovakia - and procure an abortion for reasons of what she might call, not mental illness, but discomfort or she doesn't feel too well - she thinks that she won't be able to bring up her children or she is out of wedlock and so on. The numbers as such, of course, are fantastic, even according to Dr. Tietze's notes. You will find out, for instance, in Czechoslovakia and Yugoslavia, the number of so-called legal abortions has risen in ten years almost more than ten times. The point here is not only that the number of legal abortions has risen up so high, but that the so-called illegal abortions have risen just as much or even more than that. So much so that there is practically no problem in Yugoslavia or any other country in Eastern Europe to get an abortion at any place, even on a private basis, though there is no more private medicine, as you know, in countries like Yugoslavia, Roumania, Czechoslovakia, Poland, etc.

You are very much acquainted with the fact that the situation became so dangerous in Roumania that there was not any more population explosion; on the contrary there was a definite decrease in natality, so much so that Roumania has more or less had to revise their abortion laws. For the first time



in ten years finally the maternity wards became crowded to the extent that they didn't even have maternity beds enough. Well, this is all a well-known fact. I don't want to go further into it.

In other words, what I am driving at, gentlemen, is the fact that abortion in these countries was not a necessity there, but it became some sort of a social escape whereby anybody can get an abortion and the result was moral degradation as well.

It is interesting enough too that the methods of contraception in Eastern Europe - and you might know that the interrupted coitus is one of the most popular ones - have not been replaced by the pill. So people still think abortion is better than a pill.

If we should try to get a liberalized abortion law here in this country or in this state, if you wish, I think it will follow this same pattern in the long run. And this is why I feel that any liberalization of abortion laws will be dangerous.

ASSEMBLYMAN CRANE: Thank you, Doctor.  
Any questions of the witness?

REV. DENTICI: Doctor, you said that in Yugoslavia, the laws relative to abortion were very loose?

DR. SZESKO: Yes.

REV. DENTICI: Well, what would you account for the reason that the illegal abortions also are on the increase?

DR. SZESKO: The reason for that is that, let's say, between 1946 and 1950, the people who did most of the abortions

- and this is a very well-known fact - the gynecologists and obstetricians who had nothing else to do or had very low income would go around and perform abortions in private apartments and kitchens, and so on. So after social medicine was instituted, of course, the income of these doctors has become very, very low, and this was one source of good income for these people. So in addition to so-called legal abortions, this is one of the reasons, of course, why the number of abortions has remained high.

REV. DENTICI: But, Doctor, if a woman can go to a hospital in Yugoslavia as you indicate and get an abortion on demand under socialized medicine and perhaps pay a very low fee or none at all, why should she then go to a practitioner, practicing on the side, so to speak, and pay him a fee?

DR. SZESKO: Well, the fee is not so high right now and, number one, she might know this doctor. She might have two or three abortions in a year. And as far as I know, I don't think she can get three abortions in one year in Yugoslavia.

REV. DENTICI: There is a restriction then.

DR. SZESKO: Yes, sir.

REV. DENTICI: A very loose one, but there is some restriction.

DR. SZESKO: There is some restriction.

REV. DENTICI: Is there a social stigma attached to the fact that she would have an abortion in Yugoslavia?

DR. SZESKO: There is to a certain degree, yes, sir.

REV. DENTICI: Would it be known by the general populous?

Is there a list available for public inspection or something?

DR. SZESKO: I would think so.

ASSEMBLYMAN CRANE: Did you have a question, Prosecutor?

MR. RITTENHOUSE: Yes. I was wondering under this socialized medicine scheme you are discussing, the person who comes in and requests an abortion - of whom does she make the request?

DR. SZESKO: There are different requirements, of course. I am not familiar with all of them. But she would go into a hospital or as far as I know to any social department, for instance, the social service in the City of Zvornik, and she could obtain - you might call it a ticket, if you wish - and then go to the nearest hospital for abortion.

MR. RITTENHOUSE: Is that from what we would term a social worker or from a person with a medical background?

DR. SZESKO: From a social worker. It used to be from a person with a medical background before.

MR. RITTENHOUSE: Now with this so-called stamp of approval from the social worker, she displays that at the hospital and receives the abortion free of charge from qualified medical personnel. Is that correct?

DR. SZESKO: That's correct. As a matter of fact, there is even a competition in Yugoslavia between certain hospitals because they have to support themselves in the way of a so-called -- I don't know how to explain this -- but a self-supporting economic law. So one hospital who just can't get enough financial means usually competes with another hospital to get more abortions.

MR. RITTENHOUSE: Well, is there a reimbursement from

the state to a hospital that performs the abortion?

DR. SZESKO: Yes, sir.

MR. RITTENHOUSE: So that in a sense there is an incentive to perform an abortion.

DR. SZESKO: There certainly is.

MR. RITTENHOUSE: Is that one of the reasons for the high number of abortions in Yugoslavia, this sort of a back-handed scheme of making money?

DR. SZESKO: There is no problem of getting an abortion so people just have them.

MR. RITTENHOUSE: Would you say that the medical practitioners encourage abortion because the hospital makes money and is successful financially because of that?

DR. SZESKO: I wouldn't be able to make a statement like that.

MR. RITTENHOUSE: Well, in your opinion, not actually, but it might happen.

DR. SZESKO: Yes, it might happen.

ASSEMBLYMAN CRANE: Any further questions?

RABBI SCHWARTZ: You used the term "moral depravation." In what way has Yugoslavia recently undergone moral depravation?

DR. SZESKO: I think this is a long story. I might go back to 1945 when the Communists took over Yugoslavia. At that time their main target was the intellectuals. They crushed them by all possible means. So as a result in five or six years they really became completely demoralized. In addition to that, of course, all that was left was to entertain among themselves and so on, and I don't like to cite examples, but I know from my

own experience there were never so many divorces, for instance, in my home town of Zvornik, as there have been for the last ten or fifteen years. This is what I call moral depravation. People don't care about their families. They know if they have one or two children - that's fine and enough, if they have them. They know it is very, very easy to get an abortion at any time at any place. So this is one of the reasons, Rabbi, why there is a moral depravation. The family life is not so well knit as in this country and I can make this a definite statement.

RABBI SCHWARTZ: You think one of these reasons is the free methods by which they can obtain abortions?

DR. SZESKO: Certainly, yes. It is certainly a good contributory reason.

RABBI SCHWARTZ: What year did abortions become socialized?

DR. SZESKO: In approximately - don't quote me - but after I left. It was between 1955 and 1960.

RABBI SCHWARTZ: And before that, were there less abortions before that?

DR. SZESKO: Before that, there were just medical indications for abortion with a strong social component.

RABBI SCHWARTZ: How did this affect the divorce rate?

DR. SZESKO: In a very simple way because the people just become more and more loose as far as their morality is concerned.

RABBI SCHWARTZ: So would you conclude then, Doctor, that abortion on demand in Yugoslavia has been bad for the morals of the country, if I can just try to put your statement

in focus here --

DR. SZESKO: Definitely so.

RABBI SCHWARTZ: — and has not resulted in the betterment of the populous in general?

DR. SZESKO: Definitely so, yes.

RABBI SCHWARTZ: That would be your conclusion.

DR. SZESKO: Correct.

RABBI SCHWARTZ: Would it be possible to say there would be other doctors who would think the opposite, that perhaps the ability to obtain socialized abortions on demand has assisted Yugoslavia in its development?

DR. SZESKO: "Assisted in its development" is a very, very broad statement, Rabbi.

RABBI SCHWARTZ: In other words, there must be some people who think that it is doing Yugoslavia some benefit.

DR. SZESKO: Oh, I would think so.

RABBI SCHWARTZ: In other words, is there a conflict in Yugoslavia of ideas on this particular matter?

DR. SZESKO: I am really not competent to say so at this point, but this has been my impression.

RABBI SCHWARTZ: That there are two, not just one viewpoint?

DR. SZESKO: Correct.

COMMITTEE MEMBER: Doctor, do you feel if this question were left to competent, qualified medical personnel, under standards that have been set forth in the American Law Institute Code, that this same result would follow? In other words, if our law in New Jersey, if not liberalized, at least ---

DR. SZESKO: I don't think that would happen in the very beginning, but in the long run, it might.

COMMITTEE MEMBER: Are you opposed to any change in the existing legislation in the State of New Jersey?

DR. SZESKO: Yes, I am.

COMMITTEE MEMBER: Are you opposed to defining the reason for abortion under the New Jersey statute? As you may know, the Jersey statute says that abortion may not be performed except for justifiable reasons, but it does not define justifiable reasons. Would you say those reasons should be defined?

DR. SZESKO: Before we start talking about it, they should be defined.

COMMITTEE MEMBER: What would you deem justifiable reasons, in your opinion, sir?

DR. SZESKO: I would say rape, for instance.

COMMITTEE MEMBER: To save the life of the mother for medical indications in addition?

DR. SZESKO: Not necessarily.

COMMITTEE MEMBER: But in rape or incest, you would say those would be justifiable reasons. Would you have any other reasons or would that be the extent of it?

DR. SZESKO: That would be the extent of it.

ASSEMBLYMAN CRANE: Thank you, Doctor. Any other questions of this witness?

COMMITTEE MEMBER: How about the instance, Doctor, where there is a good likelihood that the child would be born in a deformed state; would that be an instance which you would

recommend?

DR. SZESKO: As you all know, this has been a very controversial question for the past ten years. We had the Thalidomide problem, but we got over it. We have our problems with RH incompatibility and so on. However, I just wonder how many of these fetuses would be aborted in order to save this one pregnancy or just get rid of one deformed child. That has never been established so far.

COMMITTEE MEMBER: We had testimony from a Dr. Cooper from NYU, who is the head of the section in NYU that is studying the effects of Rubella. His testimony, I believe, was to the effect that if the Rubella virus has pierced the placenta, there is a 90 per cent chance of serious deformations and then he went on to describe the deformations, which are well known to you, of course. Would you have any experience in that field?

DR. SZESKO: I certainly do respect Dr. Cooper's statement because he has done such a lot of work on Rubella. However, there have been so many, it is my personal experience, where the women have been infected by Rubella and yet the child was not born malformed.

COMMITTEE MEMBER: But you didn't know whether the virus had pierced the placenta or not?

DR. SZESKO: No.

COMMITTEE MEMBER: Is it likely that the virus will pierce the placenta in a Rubella case?

DR. SZESKO: I would think there would be isolated instances, yes.

COMMITTEE MEMBER: But the diagnostic problem would be



knowing whether it pierces the placenta or not.

DR. SZESKO: I think it is in a very investigative stage and we don't have any definite conclusions about it.

ASSEMBLYMAN CRANE: Any further questions? [No response.]  
Thank you, Doctor.

Dr. Glenn P. Lambert, please. Would you identify yourself, please, Doctor, so we will have it on the record.

D R. G L E N N P. L A M B E R T: My name is Glen P. Lambert, M.D. I am a Fellow in the American Academy of Pediatrics and here representing the New Jersey Chapter of the American Academy of Pediatrics, specifically the Committee on the Fetus and New-Born, of which I am the Chairman. I did my training at Seton Hall, now the New Jersey College of Medicine; my post-graduate training at Baltimore City Hospital, affiliated with Johns Hopkins; served in the Air Force; and am now an Assistant Director of Pediatrics at the Hunterdon Medical Center.

The role of the pediatrician in this question, I think is a little clouded, but yet I think we have a definite answer to give to you that we see as what is the end product of human conception.

The pediatrician has changed his role a good bit. He seems to be spreading out in his spectrum. His interest now has spread into studying the fetus because it affects the new-born when he finally gets his hands on it. He has spread out even further into the later adolescent years because nobody else has picked up the ball and run with it. We will concentrate on the fetus right now.

We know as pediatricians that we are handed babies that

have been affected severely by the Rubella virus and other babies where it is evident that some viral infection took place and yet, unlike the baby with the Rubella syndrome where there are severe central nervous system injuries, cataracts, heart defects, genital urinary defects, and other anomalies - that the history that is given often by the mother, given to us by the obstetrician, of a definite Rubella infection by clinical means without necessary serological means, leaves us in a quandry as to, was there actually a Rubella infection here? And I think much needs to be done yet about this.

I think before we can ever find that out, we are going to have the Rubella vaccine. God help us if we don't have it before 1970 because we are going to be deluged with another huge quantity of children. The recent numbers that I have available from the last epidemic of 1964-65 was 300,000 in the United States alone. We are anticipating the next epidemic in 1970 and if this means another 22 per cent of the infants delivered of mothers with Rubella are going to have similar problems, this State as well as all other states are going to have a big problem.

It is estimated that in New Jersey alone, there are 600 children totally deaf because of the last epidemic from Rubella. These children are now approaching school age. In fact, this very next September, they will be entering school. There will probably in most likelihood be no provisions for them to have the adequate education they need.

I would say here, the American Academy of Pediatrics has taken no official stand. They are meeting currently on this.

There is, according to the most recent communication I had with them, a controversial concern over the entire matter of abortion.

As a pediatrician, abortion definitely affects children from the standpoint that it primarily affects the mother who is pregnant. It removes, if there is an abortion, a potential child from the family circle. Therefore, it affects the family as a pediatrician handles it and for many practical purposes a pediatrician is a family doctor because we can't deal with a child without fitting him into the total picture of the family. The well-being of the other children living and already in the circle has to be considered in whatever law you decide upon and the over-all health of the potential child to be born.

The indications, as a physician, that I would say would be those of life saving for the mother; secondly, the medical well-being of the mother in terms of her psychiatric well-being as well as pure health; the indication of eugenics, which is a struggling field, by no means the question of deterrent to genesis from Thalidomide and other drugs as they affect the fetus. We don't know anywhere near as much as we should. It is at the embryonic stages itself. We do know the business about the Rubella and perhaps a couple of other viruses, but they are few viruses in number. And I would hope that with the introduction of better technological methods, we will find this out and it won't be so much a question of producing therapeutic abortions in these women.

ASSEMBLYMAN CRANE: Doctor, could you conclude your

remarks, please.

DR. LAMBERT: Then I would agree with the humanitarian reasons, rape and incest, and I would disagree with those on a social-economic basis.

ASSEMBLYMAN CRANE: Thank you, Doctor. Questions?

REV. DENTICI: Doctor, in your own background in looking at this, have you found at times that psychiatric reasons have gotten greatly mixed up with social-economic reasons?

DR. LAMBERT: Very definitely. I think the psychiatric end of this thing is very greatly overplayed and over-emphasized. I read recently a comment by a very good expert on this field who stated that the incidence of actual suicide in these women who supposedly threaten suicide during pregnancy because of pregnancy is actually one-sixth of the number of suicides that would ordinarily occur in women of pregnancy risk, in other words, women in the susceptible pregnancy-age group. So I think it is highly overplayed and not really a very important part of determining what is the medical or psychiatric reason for therapeutic abortion.

REV. DENTICI: What could you suggest to us, the Commission, because in some of the places where they have liberalized the abortion laws, as it turned out many of the people sought and got abortions on psychiatric grounds which were not truly psychiatric? What would you suggest we write into the law?

DR. LAMBERT: I think you would have to have a physician be the primary contact in the setting up, if there is going to be a therapeutic abortion take place. He has to work with a

psychiatrist, and I think it ought to be whether there are psychiatric reasons or not, because there is such a terrific impact on the woman herself, the family as a unit and society in general.

When we talk of abortion, we are really talking about something that is not really beneficial to society. It has not been proven to be in the Eastern European socialistic countries. It certainly has not benefitted the Swedes. Their criminal abortion rate has gone up just as it has in the Eastern socialistic countries and it has thrown open a great number of women to pregnancy risk sooner because they are, of course, susceptible of becoming pregnant after their abortion. I think it has changed the structure of human life in this area definitely.

REV. DENTICI: Thank you, Doctor.

ASSEMBLYMAN CRANE: You would then recommend, if I understand you correctly, some sort of a combination of a psychiatric and a medical indication, perhaps weighted in some degree?

DR. LAMBERT: Yes. I think each hospital ought to have its own board --

ASSEMBLYMAN CRANE: -- or committee of some sort?

DR. LAMBERT: [Continuing] -- to answer this question on proper petition without delay because delay is very important. It is impossible medically to perform an abortion - I am sure an obstetrician could give you more details on that than I can - after a certain time.

The other stand I think that the Academy of Pediatrics might

take on this would be that the very important part of this whole question is not just the writing of a law that will permit medical therapeutic abortion on good grounds, not necessarily on sociological grounds, but to include this as the first step in the total picture of what one is going to do about this whole population question, the total world population question. We are going to drown in people eventually if we don't find a suitable means for family planning. I don't think it has been found yet personally. I would hope that it will come. I hope it will be acceptable to the majority of the people in the world and I think the majority of the people, at least in the polls I have seen for this country, indicate that they wish that there were such an effective family planning, whether it be contraceptives or whatever measure is necessary.

COMMITTEE MEMBER: When you say, "whatever measure is necessary," you don't include abortion?

DR. LAMBERT: No, I don't think this is an effective means for family planning.

REV. DENTICI: You don't believe abortion should be a method of birth control?

DR. LAMBERT: No.

ASSEMBLYMAN CRANE: Any further questions?

COMMITTEE MEMBER: Doctor, within the hospital area, you are indicating that therapeutic abortions for the reasons you have outlined should only be performed after approval by some hospital board, made up of ~~personnel~~ established in each separate hospital. Do you feel that the Legislature should define that method? What is your feeling with respect to the present

statute and how is it affecting you as a pediatrician or doctors you have known that have been faced with this problem?

DR. LAMBERT: I think that it is worded so loosely now that the physician confronted with a petition to request a therapeutic abortion where there is I think a medical justification for this, that most physicians after going to colleagues, including psychiatric colleagues, and due process of petition, presenting the whys and wherefores, what is to be done, getting consent from the husband, of course, the pregnant woman, and in the case of the adolescent, the parents, that all parties concerned in this are quite aware of the consequences of what is to be done -- and not necessarily a majority, but probably almost a 100 per cent approval from the board. I think you have to be careful how you set it up for a negative vote or an abstaining vote, a conscientious objecting vote, in any committee that you possibly would set up. I think a committee is not necessarily to solve the obstetrician and GYN man's conscience on this. I think he wants to be constantly sure that he is doing the right thing medically rather than necessarily getting caught up in his own moral and ethical consideration.

COMMITTEE MEMBER: Are you suggesting, Doctor, that the statute could set forth guidelines within which this committee would operate?

DR. LAMBERT: I am torn between this. I think it would be good, yes. I think it would keep the situation of competition of one institution over another from getting out of hand. For instance, say patients would find it ten times easier to obtain a therapeutic abortion in Perth Amboy versus one in

Trenton. They would flock to Perth Amboy because they would fulfil the State's requirements for residency and they would flock to a place like that. I think it has to be uniform. I don't think you can make it too free-wheeling. I would say that it is up to the discretion of the institution, the hospital, itself, as to who gets one and who doesn't.

COMMITTEE MEMBER: Are you suggesting then that the law could be so written to medically define who could and who could not be granted an abortion?

DR. LAMBERT: No, because we are going to change the picture. The situation on heart disease has changed terrifically, so that what was 20 or 30 years ago an indication for therapeutic abortion for a woman with severe rheumatic heart disease is no longer existent. There are better drugs and methods of therapy. The same is true of tuberculosis. I think the indications change and you have to look ahead with foresight as to what the future may hold, yet without writing a completely liberal law. Physicians, I think, through the years have shown good judgment for the most part. You are going to run into bad physicians just as you run into bad carpenters or bad anything. But I should hope with clear judgment and clear decisions, a system could be pretty well set up authorizing the physicians as the decision makers over who and who shouldn't obtain therapeutic abortions.

ASSEMBLYMAN CRANE: Any further questions? [No response.]  
Thank you, Doctor.

Dr. Bernard Pisani, please. Would you identify yourself so we will have your name on the record.



D R.        B E R N A R D        J.        P I S A N I:        Mr. Chairman and members of the panel, I am Dr. Bernard J. Pisani, a resident of New Jersey in the County of Bergen. I am a practicing obstetrician and gynecologist and Director of the Department of Obstetrics at St. Vincent's Hospital in New York City. I am a member of the faculty of the New Jersey College of Medicine and Dentistry in their clinical Department of Obstetrics and also of New York's University Department of Obstetrics.

I am here this evening through your courtesy to respond relative to the thoughts of this Commission in regard to the problem of abortion and its current status.

I am also a Vice President of the American College of Obstetrics and Gynecology and in this capacity I am speaking as an individual and as a part of that College of which there are 10,000 members.

I would like to address myself, if I might, to the clinical aspects of the problem of abortion. I feel that in so far as our statements, for example, go, there are strong minorities as well as a majority report. Being asked to serve upon a committee of ten of the ad hoc committee to study this problem and study it only, not to urge liberalization, but to study the abortion law, I can report that four of the ten did not concur in the total report of this particular committee. It is reported that 85 per cent of the people who responded voting upon the poll - and I hate to mention polls at this time of the year - did concur in this particular report. I would like to say that this 85 per cent represents 56 per cent

of the total membership; in other words, there were 10,000 members and approximately 4,000 elected not to return their vote. I just point this out because being a teacher and all of us being interested in figures know the many multiple problems.

I would like to state, if I might, that abortion as an operation is not as simple - not the cup of tea or coffee that is sometimes presented. It is an invasion of a cavity that is completely sterile and clear as far as infection goes and the interruption of an abortion in a person who is healthy and normal is quite different from completing a spontaneous abortion that occurs in one of every ten patients that we obstetricians see spontaneously. I think that the chance of infection and the other portions of the physiological problems that occur should not go neglected or unnoted.

I feel quite strongly that removed totally from any clerical, moral or other side, as I am certain your Commission has heard, that the genetic package within that uterine capsule, with its R and A and its C and A and our modern advances of science and biology is a packet that will be destined to be only one total entity and that will be not anything sub-human but a human. I point this out because I am not involved in the question of when do we first hear the fetal heart which we actually know is now in ten weeks that it can be picked up or when can the product of that gestation survive by itself.

I think that these are very important things to recall and remember when we get into the position of legislating in relation to life and death. I also feel that the advances of

medicine in which we are all a part and about which we just heard something in our last three speeches must be taken into consideration most strongly.

Today in certain centers of our country, they are operating upon this intrauterine patient, sometimes in the 26th week and sometimes in the 27th week. In another decade or two this may well change the picture.

The advances that we have made in medicine due to the women who have the fortitude to battle through with pregnancy and gestation, I think are reflected in the vaccines, by the greater and deeper knowledge we have on placental transfer and the like.

It is also to be remembered that in cases of Rubella, when the placenta has been very rigidly and deeply assaulted by a strong virus, it will spontaneously abort.

ASSEMBLYMAN CRANE: Would you conclude your remarks, please, Doctor.

DR. PISANI: I simply would like to conclude my remarks, sir, by highlighting the fact that because of the great number of problems in abortion and deliberations of many states in this country, I would like to see our particular state make a cautious, thorough and complete study and learn by the mistakes of others in this country. We are not an Eastern European or Asian country, we are the United States of America. Thank you.

ASSEMBLYMAN CRANE: Thank you, Doctor. Any questions?

COMMITTEE MEMBER: Doctor, what would your recommendation be to this panel? How should we change the New Jersey abortion law in your opinion as a resident of New Jersey?

DR. PISANI: As a resident of New Jersey, I would very strongly like to see support for the matters that are not medical. I really believe that the care, the social and hospital care, of people who are having children is the most important thing that I as a doctor can contribute, and I think all of us should contribute to this. I don't think that changing the law is going to make the doctor, per se, a better doctor. I think it may keep him from thinking he is God at times in one fashion or another, but I think that our total support of our people is important. We find that where we are not permitted to do abortions, for example, in a Catholic hospital, we work with our pathologists, with our endocrinologists, with our medical men, hand in glove, and we sweat and work. Everyone else does too. But we have no alternative and we have, I am certain, figures and statistics that are equally as good as those of other hospitals, although my background was not in a Catholic hospital - it was in Bellevue and Lying-In at Boston.

COMMITTEE MEMBER: Well, Doctor, don't you think the law should be defined? As you are probably aware, the law now does not define justifiable reasons. It mentions justifiable reasons, but does not define them.

DR. PISANI: Yes, this is a very difficult thing. I think that polarization is beginning to occur, either the total liberalization or does our demand today in good medicine and practice from the medical standpoint warrant doing away with another "when do you play Herod on one side and just play the Lord on the other side?"

ASSEMBLYMAN CRANE: How would you define a justifiable reason for abortion, Doctor? Could you do that for us?

DR. PISANI: I think when the life of the mother is directly involved - for example, I know that we have certainly completed abortions in carcinoma of the uterus where in two or three months - that mother has no unjust aggressor - that baby that has been laid there through the perfect will of two people now is in an area where out it goes. This is abortion and we do it in order to save the life of that mother. I think that there are very many hard cases that could be made, sir. They could be made on rape; they could be made on incest. But I don't think that they should demand to make it lawful, sir.

MR. RITTENHOUSE: Now under the present statute, would you, Doctor, have any hesitancy in performing an abortion where the life of the mother was at stake?

DR. PISANI: Under the present statute and from a physician's viewpoint, I would not, sir. I think that with the protection that has been given the medical profession -- When I say "protection," I mean the support that has been given to us has been realistic as it has been in many states.

MR. RITTENHOUSE: Under the present law in New Jersey?

DR. PISANI: This is my feeling.

MR. RITTENHOUSE: You are indicating that the argument that can be made in the case of rape or incest is not sufficiently great to justify changing that law. Is that your opinion?

DR. PISANI: I would say that is correct, yes, sir. If the person reports the rape immediately or because of fear maybe a day later, consideration could be given that case.

MR. RITTENHOUSE: From your comments, I judge that your direct answer to the Chairman's question is that you do not favor an amendment to the present law.

DR. PISANI: I do not at this time, sir.

COMMITTEE MEMBER: In other words, Doctor, the only reason that you would at this moment recommend to this Commission as justifiable reason for abortion would be to save the life of the mother?

DR. PISANI: Correct.

ASSEMBLYMAN CRANE: Any further questions? [No response.]  
Thank you, Doctor.

Is Dr. Wood here, please? Will you identify yourself, please, Doctor.

D R. P E R C Y H. W O O D, J R.: I am Dr. Percy Wood. I am a psychiatrist in Princeton, New Jersey, certified by the American Board of Psychiatry and Neurology and Fellow of the American Psychiatric Association.

I don't have a prepared speech. I would like to say I believe the law should be amended considerably. In my experience, it should be amended to include legal therapeutic abortions in cases of rape and incest - I would say in children below the age of 18 who are not married - and I believe that actually the consciences of the people involved, even if they are married, should probably be taken into consideration more deeply than they have been in the past.

I think that to bring a human being into this world is sometimes something that is desired and sometimes something that is undesired and in my experience as a psychiatrist,

unwanted children are not the recipients of great joy or great help in this world.

So I believe that there should be considerable moderation in the law as it stands now.

I am open for questions. I don't have a speech. These are just my general thoughts.

ASSEMBLYMAN CRANE: Thank you, Doctor. Any questions?

Doctor, you said you believe the law should be amended considerably. Can we get a little more specific on how you think the law should be amended? You mentioned cases of rape, incest, children under 18 who are single. Would you say there should be prescribed procedures that would be followed by a hospital board or should the law just say that it should be done and the physicians would then go and do the abortion for these valid reasons?

DR. WOOD: I would say if the law were amended, I believe that very quickly the hospitals would fall into line. In other words, I believe it should be done in hospitals with established abortion boards as it is right now, where good medicine would be practiced. But at the same time, the history of medicine has been that when you create an agency for which there is a great human need, people flock to it. The amount of abortion that goes on now-a-days, which is criminal abortion, is tremendous. In my experience, therapeutic abortions have caused very tiny damage, psychiatrically, that is, to the person's emotional stability compared to the damage that has been done by unwanted pregnancies.

I think that we will reach a time - I don't know how

soon - where it will be one of our civil rights for each mother to decide whether she is going to have the child that she is impregnated with or not. I am not sure we are at that time now. I am not sure we really have that much wisdom yet. But I think that this is probably the direction we are going to go in.

ASSEMBLYMAN CRANE: Doctor, you are a psychiatrist and you, as I understand your testimony, have not said anything about abortion for psychiatric indications. Would you favor abortion for certain psychiatric indications?

DR. WOOD: Yes, I certainly would. I say if there is serious danger to the mother's emotional health, I would recommend it. I don't believe that just the threat of suicide -- I certainly think that is a serious enough reason for abortion, for legal, therapeutic abortion. But if a person is emotionally unstable and they are not able to raise the children they already have and there is a tremendous burden put upon that mother's or family's life, I think that that pregnancy should be terminated if both people consent and I think that the mother's position should carry a lot more weight than the father's.

MR. RITTENHOUSE: Who should make that decision, sir?

DR. WOOD: Well, I would say, it is still an abortion law and the physician should make the decision, but I am recommending a more permissive and an amelioration of the law as it stands now.

MR. RITTENHOUSE: I would like you to be a little more specific. Should the Legislature say that an abortion should



be permitted in any case where rape or incest are a factor?

DR. WOOD: I would absolutely recommend that.

MR. RITTENHOUSE: And in any case in which the health of the child is endangered, the unborn child?

DR. WOOD: I would say in any case where the health of the family is endangered.

MR. RITTENHOUSE: Supposing a father comes to you and says, "I do not want this child," if the mother is indifferent, what would be your reaction to that?

DR. WOOD: I believe the mother should have the greatest vote by far.

MR. RITTENHOUSE: In other words, the mother has the power to ---

DR. WOOD: I would say the mother I would think should be allowed the greatest vote. If she were psychotic and if she had seen a psychiatrist who felt that this woman was completely unstable, a psychotic, and her wishes in this direct issue were not realistic, then I think in that case the husband's vote should be the more powerful one. But if the mother is stable at that time, not psychotic, but a sensitive person who is having a terrible time in raising the family she has at that time, then her vote should be the most powerful one.

MR. RITTENHOUSE: But if you had a mother whose two psychiatrists said in their opinion she was psychotic and the father said, "I don't want that child to be born," do you believe an abortion should be performed?

DR. WOOD: I think that all the circumstances would have to be considered.

MR. RITTENHOUSE: But there are circumstances where you would advocate that despite the wishes of the mother?

DR. WOOD: Yes. If the mother is psychotic and the father recommended that the abortion take place and it could be documented that this mother was a completely unfit mother, that she was not taking care of the children she already had, that their mental and emotional health was jeopardized, the ones they already had produced, that the father's say should be taken. I would strongly recommend that.

MR. RITTENHOUSE: One final question, Doctor: You used the plural word "we" are at a point where we may have to come to this point of social health and psychiatric health being a general factor and almost the wish of the mother controlling. What do you advocate personally? What is your position - not where we are as the public?

DR. WOOD: Well, I would advocate that the mother have the biggest say unless she is psychotic, as I say. For example, if we create a situation where the mother, say, has had several children and is a good mother -- She had a psychotic episode, and while she was psychotic, she was pregnant. At that time she wished the pregnancy to be interrupted, but this was a transient psychotic whim. Certainly we should not terminate her pregnancy.

MR. RITTENHOUSE: That is capable of psychiatric definition?

DR. WOOD: Yes, I think so. But if on the other hand you have a situation where the mother was unstable all along and had several psychotic episodes, was incapable of raising her

children properly, I think in that case the father should be given a larger vote than the mother. I think this would have to be decided by, I would think, at least two psychiatrists who knew the family situation quite well.

RABBI SCHWARTZ: Doctor, how serious are the feelings of guilt in an aborted mother?

DR. WOOD: It is interesting. I have run across them very rarely in my practice. I would say with those who have had criminal abortions that I know of, there has been considerable guilt, but I think that this guilt comes from culture. The guilt that I have seen where there has been a legal therapeutic abortion has been almost nil. There has been a great deal of gratitude and general happiness largely in the family because they have been spared an additional burden which might have jeopardized the educations of the other children or the stability of the other children in the family. There are an awful lot of good mothers who can handle two children, but can't handle three, and there are some who can handle one and can't handle two, and some that can handle five, but can't handle six.

COMMITTEE MEMBER: Doctor, do you practice in New Jersey?

DR. WOOD: Yes, I do.

COMMITTEE MEMBER: You have mentioned these cases where there have been legal therapeutic abortions performed. Have they been performed New Jersey?

DR. WOOD: Yes.

COMMITTEE MEMBER: -- under what you consider to be the terms of the statute as it now exists?

DR. WOOD: I believe so.

COMMITTEE MEMBER: Now, what then is the problem with the statute as it now exists?

DR. WOOD: Well, as I understand it - have you got the statute? Would you just give it to me in brief again?

COMMITTEE MEMBER: The statute reads that any person who maliciously or without lawful justification with intent to cause or procure a miscarriage of a pregnant women, administered or prescribed -- then it goes on to say any manner in which they can perform what we call an abortion, is illegal and a high misdemeanor.

DR. WOOD: There is nothing in the statute --

COMMITTEE MEMBER: It says a person is guilty of a high misdemeanor if he performs these acts maliciously or without lawful justification.

DR. WOOD: But, I mean, aren't the lawful justifications included in there?

COMMITTEE MEMBER: No, it's not defined, Doctor.

DR. WOOD: It is not defined.

COMMITTEE MEMBER: That's the real problem, it's not defined.

DR. WOOD: This shows the state of affairs. Well, I think they should be defined. I think that the law should certainly be defined because I think there are an awful lot of physicians in New Jersey who think they are operating within the law and they probably aren't.

COMMITTEE MEMBER: Would that define your definition of lawful justification, as a physician?

DR. WOOD: Would what?

COMMITTEE MEMBER: Whether or not they're acting within the law?

DR. WOOD: I'm not a lawyer, so you'll have to --

COMMITTEE MEMBER: No, but you're a doctor, a psychiatrist as a matter of fact.

DR. WOOD: Would you repeat your question?

COMMITTEE MEMBER: Well you just indicated that a great many doctors are apparently acting without the law in that you feel therapeutic abortions are being performed and I ask you whether you feel they're acting without the law is -- I then say, is it a question of whether or not they are acting without lawful justification.

DR. WOOD: Well, if there is no justification under the law --

COMMITTEE MEMBER: I didn't say - the law doesn't say there is no justification.

DR. WOOD: Well a definition of it.

COMMITTEE MEMBER: But it says that a person may not perform an abortion without lawful justification. If they have lawful justification then they're acting within the law.

DR. WOOD: Then would you give me the lawful justification?

COMMITTEE MEMBER: I would like to know, Doctor, whether --

DR. WOOD: How can a doctor accept the law, except in theory, if it isn't on the record?

COMMITTEE MEMBER: You're saying a psychiatrist needs the law set.

DR. WOOD: I would certainly hope so.

COMMITTEE MEMBER: All right. Now, would it be set by the Legislature by defining those areas in which you could then perform an abortion?

DR. WOOD: I would recommend it.

COMMITTEE MEMBER: And you feel they can be listed, one, two, three? How many reasons should there be?

DR. WOOD: Well, I would recommend then certainly in cases of rape and incest and I mentioned the case of the mother who is psychotic or unstable who has obviously not been able to raise the children she already has and does not wish, obviously, to --

COMMITTEE MEMBER: But you say "obviously," now this is on determination by whom?

DR. WOOD: Well, I just said a while ago I think by a psychiatrist who knows the family well, who has studied it, who has had the mother as a patient. That would be the most logical one.

COMMITTEE MEMBER: Well, in the event there is not a psychiatrist that knows the family well - for example, not every family in New Jersey has a psychiatrist as a practitioner.

DR. WOOD: Well someone who has examined the patient, the mother, and has had several interviews with her.

COMMITTEE MEMBER: Would you say there would be time for a psychiatrist -- from the time of implantation would there be time for a psychiatrist to determine that this mother was not able to bring up her family well before the so-called quickening of the fetus, three months, or so, the first trimester?

DR. WOOD: I would say that there is room for error in all human examinations of anything. I believe that we would be on the side of mercy and help. We would make less errors with a psychiatrist seeing a person several times and coming to a decision as to whether he would recommend this, recommend a legal abortion.

ASSEMBLYMAN CRANE: Any further questions? Rev. Shaw.

REV. SHAW: Doctor, are you saying that doctors that agree to have a lawful abortion are actually taking their stand in accordance with the things that you have just said ought to be considerations for a lawful abortion?

DR. WOOD: Well, I believe so. I believe so. I believe that there are a considerable number of physicians who feel the way I do.

ASSEMBLYMAN CRANE: Thank you, Doctor.

DR. WOOD: Thank you.

ASSEMBLYMAN CRANE: Mr. Leonard Carlin, please?

Would you identify yourself, please, Mr. Carlin?

L E O N A R D C A R L I N: My name is Leonard Carlin. I'm an Attorney from Denver Colorado.

Mr. Chairman, by way of background, I might indicate that I have had the opportunity to speak before both the House of Representatives and the Senate in Colorado at the time of their proposed legislation, and then, at the request of Mr. Shriver, I went back and spoke to the International Conference sponsored by the Kennedy Foundation on abortion. I have acted on behalf of our Association with the advisor on criminal law to the Senate, State of Colorado, for a number of years,

although I do not presently serve on that Committee.

I thought it might be of some interest to this Committee to hear the actual facts and statistics that have resulted from the adoption of the abortion bill in Colorado. I note with some interest the prelude to the appointment of this Committee that the primary concern was the number of criminal abortions.

I think those of us that have been involved in this area for some years are well aware of the fact that there are not accurate statistics as to the number of criminal abortions. The number of criminal abortions in Colorado has not been reduced since the enactment of the bill. The largest abortion ring ever discovered in the State was detected approximately six months ago in a community just outside of Denver.

We have no reason to believe - and having served as a Prosecutor for a number of years myself - that the adoption of the liberalized abortion statute has had any effect in reducing substantially, or at all, that condition. We also noticed that the Senate Committee in the State of California indicated, as previously stated, that probably the more liberal abortion bills will effect about 5 percent of the illegal abortions, meaning that 95 percent of the criminal abortions will continue. So there seems little reason to say that the enactment of that legislation has any effect on that problem.

We know from the Swedish study and the Scandinavian study that criminal abortions are up after even more liberal



bills than we have here.

I think of particular interest to this Committee would be the facts and statistics of what has been done in Colorado.

Now these cover the period through June, 1968, and the initial bill, as you know, was signed by the Governor on April 27, 1967.

The primary reasons advocated and expostulated to the Colorado Legislature were because of incest, rape, the health of the mother, and the problem of deformed children. This has turned out to be the least reason for the performing of abortions in Colorado.

Approximately 70 to 75 percent of all abortions that are performed in Colorado are for psychiatric reasons, many of which we feel do not fall within the requirements of the statute.

I have brought with me, if you care to see them, the public health report on every abortion that has been done in Colorado since the enactment of the law. They show 58 percent for specific psychiatric reasons, 17 percent for therapeutic reasons, giving no measure of disability.

The reasons given, gentlemen, include depressed, acute depressed, serious depression, depression, tendency toward depression. All of these, and they are repeated hundreds of times, are contrary to the law in Colorado which provides that an abortion may be performed only when there is a serious permanent likelihood of impairment to the mother's health from a mental health standpoint.

So I think the psychiatric abortion in Colorado has become the primary reason. It's been made a farce - we're aware of this fact - because the rules required by the statute are not being adhered to. Very few, less than five percent of the diagnoses indicate any serious permanent psychiatric problem and simply depression is generally given as the reason.

It would appear then, in Colorado, that the reasons which were given for the enactment of the statute in fact do not exist.

Fifteen percent of the abortions were performed for medical reasons which included 6 percent for possible Rubella exposures. The remaining ten percent were for rape.

In Colorado, as you know, we have a law very similar to what you have here, statutory rape, but by definition in the abortion statute it would be any person who has intercourse under the age of 16 who is not married and becomes pregnant it's automatically rape and is entitled to an abortion as a matter of law in Colorado without certification by the hospital board. Certification by the District Attorney in the district where it happened is required.

So I would indicate to you that in Colorado, prior to the adoption of this statute, we already had a law which permitted abortions by definition. In other words, an abortion was permitted in Colorado on the grounds that the life of the mother was seriously endangered.

Prior to the enactment of this bill, 9 abortions were performed in that year. In other words, less than one a month.

Subsequent to the enactment of the abortion law - and I take issue with those who say it doesn't produce an abortion mecca - the first year they rose to 17 a month. The second calendar year, which is not yet complete, but taking the first 9 months, they are doing 42 a month. We we will do approximately over 500 in Colorado. We will raise by several thousand percent the number done.

I think it's particularly important in analyzing the statistics to realize that in Colorado it was permissible to have an abortion where the health of the mother was seriously involved and there was no restriction to whether it be physical or mental, the statute simply recited the health of the mother.

So we must speak then about a 2,000 percent increase, the vast majority of which are now related to psychiatric grounds which are not defined or allowed by the statute.

It would appear to us that what is taking place is that the medical indications for abortion have proven to be quite small. The alleged psychiatric areas have resulted in those people who perhaps believe in a more permissive abortion law than Colorado has, because by using the public health records almost 95 percent of those grounds listed are not grounds that are recognized by the statute. There has been no prosecution for any of these abortions, there has been no indication of what will take place.

So, in conclusion, I would like to thank you for the opportunity I have had to speak to you this evening. I have the statistics from Colorado on each individual abortion in each category by age and cause if you gentlemen would be interested in them.

ASSEMBLYMAN CRANE: Thank you, Mr. Carlin. You're an expert legislative witness. You've had some experience, I can see.

Mr. Carlin, in your testimony you stated that there were no accurate statistics relative to illegal abortions throughout the country. I believe you also included Colorado in that. Then in the next sentence you said that there has been no significant reduction of criminal abortion in Colorado. How would you square those two statements?

MR. CARLIN: On the number of prosecutions. I think we know from the number of prosecutions and that's the most accurate indication of how many criminal abortions actually take place.

ASSEMBLYMAN CRANE: You have to multiply year by year, or what?

MR. CARLIN: Well, no. We look in the background and we see what the average number of criminal prosecutions for abortions have been for Colorado. They have not been substantial. The largest number of persons involved has happened since the enactment, as far as an individual case is concerned. In talking with the district attorneys around the State, realizing Colorado is not very large, populationwise, the vast majority of prosecutions would take place in the Denver metropolitan area. Our reports there indicate no decline. So I am basing my statistics on the actual prosecutions that have taken place since and before, and I draw from that conclusions. If the numbers of prosecutions have not decreased, we can indicate that as far as the district attorney

is able to determine there have been no reductions in abortions. As to the exact number, I don't think anybody can give you that statistic.

ASSEMBLYMAN CRANE: This is a number we haven't been able to get from anyone, unfortunately.

You say that there are many abortions being performed in hospitals now under pseudo legal conditions which are patently illegal. Why hasn't the State prosecuted these flagrantly illegal abortions.

MR. CARLIN: I don't know. That's a good question. I think a lot of us are concerned about that. For example, here is Colorado through June, the hospitals that I've dealt with, - it starts, psychiatric grounds, rape, rape, psychiatric reasons, termination of pregnancy, rape, emotional disturbance, psychiatric cause, psychiatric reasons, psychiatric reasons, emotional inability, psychiatric grounds, depression, depression, acute depression, etc. Now these are the grounds that the hospitals reported, under the statute, to the Public Health Department. On the other hand, the statute requires that there be a determination that there be a serious and permanent impairment to the mother's health.

Now all we can say from these grounds is - and some of them have listed much more detailed grounds - that these grounds do not fall within the purview of the statute. Now perhaps if we investigated each individual case, we'd find some that did and some that wouldn't, - I'm sure that we would. But based on the material that we presently have, if we have to make an opinion from that, we have to say that the information

that the doctor is listing is not the information required by the statute to provide the grounds. Perhaps it's a reporting fault, I don't know, I don't think so, but it may be true in some areas. I'm simply saying that based on the information that we have from the physicians who have actually performed the abortions, the grounds they list are not the grounds authorized by the statute.

ASSEMBLYMAN CRANE: Is there some sort of a form that the physician or the hospital files with the Department of Health?

MR. CARLIN: Yes. There is a requirement that every pregnancy that's terminated, regardless of the reason, be reported giving a reason. Now the reasons have been the ones that I have listed.

ASSEMBLYMAN CRANE: I see. In other words, you've gone through these forms and listed the reasons and sort of copied the significant data.

MR. CARLIN: I've taken the actual reasons given in each case that was reported to the Public Health Department. Initially we had a problem with doctors and hospitals not reporting at all.

ASSEMBLYMAN CRANE: Well this seems to me a very slim indication or medical reason for abortion. Has anyone edited these reasons or is this the total statement that was put in, where it says "reason" on the form, or whatever it says?

MR. CARLIN: That's in toto. In other words, this is the actual statement taken off the public health record.

ASSEMBLYMAN CRANE: Mr. Prosecutor?

MR. RITTENHOUSE: Mr. Carlin, I commend you on the thoroughness of your presentation and your awareness of the problem that you know is acute. I take you back to the days when you were a prosecutor, when you were dealing with the statute in Colorado, was that prior to the enactment of the statute?

MR. CARLIN: Yes, sir.

MR. RITTENHOUSE: It was. Now, at that time were you ever directly involved in the prosecution of any cases that involved abortion under the then Colorado law?

MR. CARLIN: Yes. We had a procedure in the District Attorney's office in Denver that every abortion reported by a hospital had to be investigated by a deputy district attorney or the district attorney. As a practical matter, of course, it's usually the deputy. So I've had occasion to investigate them from the time they were reported, to assist in the preparation of some abortion prosecutions, and, as you know, they were not substantial although there were some while I was there and there were some convictions while I was there. So --

MR. RITTENHOUSE: Excuse me, I don't like to interrupt but was there ever a conviction of an abortion performed in a hospital where it had been recommended by a doctor?

MR. CARLIN: Not to my knowledge.

MR. RITTENHOUSE: All right. Would there, in your opinion as a former district attorney, ever be an instance in which a case that is reported by the hospital and recommended

by the doctor, performed in a hospital under standards set forth in the Colorado statute, - can you imagine an indictment being returned in the State of Colorado by a grand jury under any of these cases if they were presented to a grand jury?

MR. CARLIN : You mean, if the statute were followed?

MR. RITTENHOUSE: If you as district attorney go in and read the statute to the members of the grand jury, the doctor comes in, - of course he's the defendant so he doesn't testify, but you present the case, the doctor's recommendations, in your opinion do you feel that an indictment would be returned under our system, under your system in Colorado?

MR. CARLIN: No, if the doctor testified that he had followed the statute - of course, in Colorado you have to go through the hospital board so it's a little difficult to answer. He has to make a recommendation to the hospital board, so if the abortion had been done in a hospital, as you indicated, it would have been approved prior to that time by the hospital board. Under those circumstances I would say that no prosecution would result.

MR. RITTENHOUSE: So the prosecutions which resulted in any kind of an indictment over the convictions that you're talking about were all prosecutions for abortions performed outside of the hospital probably in extra medical fashion. Is that correct?

MR. CARLIN: To my knowledge, that's correct.

MR. RITTENHOUSE: And that would probably continue to be the case in the terms of law enforcement, regardless of what is done with the New Jersey statute. Isn't that a fair



statement?

MR. CARLIN: Well, except I think that you have the problem that we have in Colorado now of determining whether or not the statute is being followed, and I think that there could certainly be some prosecution based upon abortions that are being performed in Colorado hospitals now if the information furnished as to the reason why they're being done is not that indicated by the statute. I think that that certainly could happen. I think perhaps it should. I can't tell you because of what they state here but the grounds given here are not the grounds allowed by the statute and, if these grounds are correct then I would say certainly that there may be prosecutions in Colorado. Whether there will be or not, I have no idea, but they're may, on the basis of abortions performed in a hospital. If the statute were followed to the letter, then I am sure that there would be no criminal prosecutions against doctors who perform them pursuant to the statute. At least, that's my opinion.

ASSEMBLYMAN CRANE: Anyone else have questions?

COMMITTEE MEMBER: You're familiar with the terminology of the New Jersey statute?

MR. CARLIN: Yes.

COMMITTEE MEMBER: In your opinion, is it more or less permissive than the statute which existed in Colorado before its amendment?

MR. CARLIN: Well, of course, you have the problem of defining what constitutes a justifiable ground. And I suppose if you --

COMMITTEE MEMBER: To a district attorney and a prosecutor that's a very real problem.

MR. CARLIN: It would be much more difficult than the Colorado statute.

COMMITTEE MEMBER: Now if this was amended - say the New Jersey statute were amended to conform to the Colorado statute, which generally follows the ALI recommendations and so on - is that correct?

MR. CARLIN: That's correct.

COMMITTEE MEMBER: Would it, in your opinion, be more or less restrictive with respect to allowing the doctors or the hospitals to perform abortions?

MR. CARLIN: That's an extremely difficult question to answer because with the Colorado law you have specifics. I suppose you could say, from a purely legal standpoint, that that justifiable portion could include more than the grounds presently listed in Colorado, if they are in fact de juris justifiable, and I think this is a criminal court decision touch. So you could postulate that the present New Jersey statute is more liberal than the Colorado statute because of that reason. On the other hand, you can postulate the other way around. I'm not familiar with but the single famous New Jersey decision as to what confines in this area. So I say, to say justifiable might mean that you have a more liberal one than Colorado has right now.

COMMITTEE MEMBER: Well, are you here - I realize that you are here to present statistical data and your wealth of background but are you here with a recommendation

with respect to the New Jersey statute?

MR. CARLIN: Well, I have my own personal feeling and I'm not hesitant to express it. I feel this way, that our experience in Colorado indicates that the American Law Institute recommendations, as a practical matter, don't work out. And I think we have to go back into the whole background, and I think you have to make it a moral decision, you have to make a legal decision, you have to make a social decision, as to whether or not you want it. I am opposed to abortion. I don't think that the Colorado bill has worked. I think it has been misused. I think that theoretically it sounds good to a lot of sincere, intelligent persons as a solution to the problem. I don't happen to agree with them but I think they approached it from that standpoint. I think it takes an awful lot of study. I think the study that we know of from Colorado, which has had the most experience, indicates that the grounds that we argued about the most - and I am sure the Legislature mulled over at great length - didn't turn out to be the grounds upon which the abortions are performed.

With due respect to the psychiatrist who testified, this is an area which I think has been abused, misused and cajoled into, in some cases, certainly not in all, a total permissive abortion situation.

From a purely legal standpoint, I don't think that this bill has, in practice, turned out to be what its advocates thought it would be in theory.

COMMITTEE MEMBER: Do you feel that the Legislature is capable of defining those categories in which abortion

legally could be permitted?

MR. CARLIN: I think this - I am opposed to that legal document that says that we withdraw from the field because I think the attorney or the Legislature can resolve problems, social with moral implications as well. That may be a problem. The solution may be for some, do not allow any abortions; for some, to more specifically define. This is a decision which I think, in a pluralistic society, the Legislature has to make. I feel that the best thing for the community is not to allow liberalized abortions but I don't say the Legislature can't discuss the problem, consider it and come up with a solution, whichever it may be. Certainly I don't think that we should take the position to wipe all abortion laws off the book and leave it to just determination helter-skelter. I think it better, difficult as it may be, that the legislature wrestle with the problem.

COMMITTEE MEMBER: But do you feel that the New Jersey statute in its present form should or should not be amended?

MR. CARLIN: I don't like the word "justifiable." Frankly, I don't think this means a great deal of anything. By being amended, I don't mean I think it should become more liberal. I think taking the term "justifiable" is not the best legal approach to the problem, frankly, because it's so hard to define.

COMMITTEE MEMBER: Then you are in favor of amendment to get further definition.

MR. CARLIN: I would be in favor of an amendment with limitations. In other words, I would be in favor of an

amendment that doesn't allow abortions because I'm opposed to it. I think, from a purely legal standpoint, we ought to talk about their choice of words. It's not a good one.

COMMITTEE MEMBER: You're saying that they should eliminate abortions under any circumstance.

MR. CARLIN: That's my personal opinion. I don't think the word "justifiable" is a good word to try to solve the problem. I don't think it tells anybody anything.

COMMITTEE MEMBER: Is that your opinion, Mr. Carlin, as a person or as an attorney with your experience in the field of abortion?

MR. CARLIN: My personal opinion is that I am opposed to abortion. My legal opinion is, from a purely legal standpoint, what has been postulated and adopted in Colorado certainly hasn't worked out. For those people who felt abortion was proper, and I respect their opinions to take that position, I think they felt that legally this bill would be almost a Utopian solution to the problem. Some of them feel, for example, that this bill is too conservative and they want to liberalize it. I think that from a purely legal standpoint the guidelines that were adopted here turned out to be not meaningful particularly in the psychiatric area; that the areas they were trying to solve where the most concentration and the biggest appeal to the Legislature was the medical and the forceful rape, statutory rape and incest, turned out to be an area in which there had been very few abortions. The area in which the mass of abortions arose - I feel, legislatively, they dealt very poorly with.

And I think many people who advocated the program would indicate that this is an area in which they have had problems that they did not expect to have.

COMMITTEE MEMBER: Is there any move in the Colorado Legislature to amend this statute further?

MR. CARLIN: Yes. I think there will be movement on both sides of the fence.

COMMITTEE MEMBER: Is there any one that has a particular likelihood of succeeding?

MR. CARLIN: I'll say this. The Legislature as constituted when the bill was passed has not changed. The Governor who was in at that time is presently still the Governor and my personal opinion is that there will be little liberalization or little change either way because there is little or no change in the setup of the Legislature. Interestingly enough, the proponents and opponents are all back again. I don't feel there will be any substantial change although I am sure there will be some movements for that.

COMMITTEE MEMBER: Speaking legally, doesn't your personal opinion -- would that not infringe upon one's constitutional right of privacy.

MR. CARLIN: No. I think the legal concept and one which I think New Jersey and Colorado both have adopted, recognizing that life exists from the time of conception -- this is, as you know, an anathema in the legal profession. We have recognized the right of the fetus in tort cases, in criminal cases, the right of support, and so forth. So,

legally, I say that we recognize that that's a human being with human rights at the time of conception. It has done no wrong so legally it can't be deprived of rights. We often have to balance legal rights. You're talking about the invasion of the privacy of the right of the mother. To me, the legal right to live is far superior to that right of the mother. I think the legal right has been recognized by the courts and by the legislatures. This is one reason why this is a very difficult problem. On one hand the courts and the legislatures have recognized that life exists from the time of conception; it can be taken legally only when there's been a wrong. On the other hand there are proponents who say that the rights of the mother are superior. And attempts legally to balance these two, obviously, is where the problem arises.

ASSEMBLYMAN CRANE: Any further questions?

COMMITTEE MEMBER: Mr. Carlin, in the proposals for the change in Colorado, was the subject of the aid to the poor and the minority group brought up, that this law would help the poor and those in the minority group?

MR. CARLIN: To some extent. There was discussion before the House that one of the reasons for abortion should be those families who had several children and didn't want more and for social-economic reasons they should be able to limit from this standpoint. Some argument was made that this was a form of birth control for minority groups and those who were impoverished. These were recommendations and suggestions that were made.

COMMITTEE MEMBER: Well, do you know if, since the law

has been passed, a climate has been created in which the poor and minority group can be helped to obtain abortions, to afford abortions?

MR. CARLIN: Well, as far as I know, the Denver General Hospital, which does the most, charges a fee of less than \$250 to perform the abortion. And from there on the fees go up and some of them are somewhat near astronomical. So there is still a charge, so far as I know, being made to everyone who makes application for it. I don't know of any particular effort in this area that's been extended to the poverty groups.

ASSEMBLYMAN CRANE: Any further questions?

Thank you, Mr. Carlin, for coming so far to see us. We appreciate it.

Mrs. Evelyn Smith, please.

Would you identify yourself, please, Mrs. Smith, and tell where you are from?

M R S. E V E L Y N S M I T H: Yes. I'm Mrs. Evelyn Smith. I'm a resident of the State of New Jersey. I am very impressed with the caliber of people you have speaking here today and I want you to know that I am only a housewife and a mother but I wanted you to know my feelings on this.

About ten years ago my husband and I felt that we had all the children that we could take care of and that we wanted. Then I became pregnant for another time. My husband and I were upset about this, not only for ourselves but for our children. We talked this over with our doctor and he said that having an abortion in the United States often has unhappy



consequences because, of course, it was illegal and the people that took care of you sometimes passed judgment on whether you were right or wrong and he suggested that I go to Cuba to have an abortion, which I did, in a perfectly fine hospital with good medical procedure. I've had no problems since then and I think our children are adequate testimony to the rightness of our decision, my husband's and mine, for this kind of procedure. I'm saying, only for my husband and myself, we have never regretted this.

ASSEMBLYMAN CRANE: Thank you, Mrs. Smith. Questions?

COMMITTEE MEMBER: Mrs. Smith, being a resident of New Jersey and probably knowing certainly through your experience what the law is in New Jersey at the moment, how would you recommend that the New Jersey law be changed?

MRS. SMITH: Well, of course, I think it should come out of the criminal code, and I think it should be something that is very much up to a husband and wife to decide. It seemed to John and myself that when we were talking about this, the fact that we had denied having children by practicing contraception was not much different than denying children by having an abortion.

COMMITTEE MEMBER: You would then recommend that the abortion statute be taken out of the criminal code and that it be made a part of the medical practice act and that - this is what would have to be done, as I understand the legislation - it would then be a matter between doctor and patient and there would not be any criminal sanctions.

MRS. SMITH: Yes.

COMMITTEE MEMBER: However, anyone not a licensed medical practitioner who would perform an abortion would, of course, be subject to prosecution on violation of the medical practices act.

MRS. SMITH: That would be appropriate, I think.

ASSEMBLYMAN CRANE: Any further questions? Rabbi?

RABBI SCHWARTZ: Do you think abortion is preferable to other methods of birth control?

MRS. SMITH: No. I think abortion is a very drastic measure and if we had much better contraception and patients who were more motivated to use it, as apparently I was not at that time, I think we would have a much better chance of not having so many abortions.

ASSEMBLYMAN CRANE: Any further questions?

Thank you, Mrs. Smith, for coming to see us.

Dr. William J. Otis. Will you identify yourself, please?

D R. W I L L I A M J. O T I S: Yes. I am Dr. William Otis, a Psychiatrist practicing in Belle Mead, New Jersey. I am certified by the American Board of Neurology and Psychiatry.

I favor repeal of the present law and would like to just state briefly why.

It has been known for hundreds of years that women can become very depressed or even psychotic after the birth of a child, so we might certainly expect that a prematurely terminated pregnancy could lead to a similar condition.

A study was done in Sweden on 479 women who had been

granted a permit for a legal abortion on psychiatric grounds. Evaluation after the post partum period showed that 75 percent were content with this manner of having handled the pregnancy; 14 percent were mildly self-reproachful; 11 percent were bothered with serious self reproach and 1 percent were sufficiently incapacitated with feelings of guilt and depression to necessitate their stopping work.

As to the actual incidence of mental illness, it has been given as 1.92 percent after legal abortion as contrasted to .63 percent after normal full term pregnancy.

It must be remembered, however, that in all the above statistics which are from Sweden, the samples are heavily weighted because the legal abortions were granted for psychiatric reasons and, therefore, the people obtaining licenses for the abortions were presumably people who had more emotional illness than would be expected in a sample of the population at large.

Now, I feel the chief criteria for the granting of an abortion should be the spontaneous statement of the mother that she does not want to have a child. This would assume our responsibility to protect humans from being delivered a helpless creature to the care of a mother who cannot possibly fulfill their needs for healthy survival.

I saw recently, in consultation, a couple who have a six months old baby. The wife did not wish to be pregnant and claims she went through with it only at her husband's insistence. Since the child was born she defiantly states she has never tended to anything but the barest necessities, that is, she constantly hates the child, has even hit the

child on occasion and has never shown any positive emotion of warmth. She says she will feed it three times a day, change it as infrequently as possible and not in any way have any further connection with the baby. I actually had to listen to this said in a way in which I knew she meant every word of it.

I think it can be categorically said that a child cannot possibly survive an early exposure to such emotional deprivation without being severely crippled in all aspects of the development no matter how favorable a later environment may be. And it must be remembered that even in much less extreme cases when there is some degree of conscious acceptance of the child, if there is strong underlying resentment and guilt, the effect on the child can be disastrous.

I guess we are saying that a woman should definitely listen to that voice inside her when it says she does not at this time want to be a mother.

One question of interest is why women have submitted so meekly and compliantly over hundreds of years to accepting unwanted pregnancies. In other instances they are often stronger and able to act in a decisive and independent manner. For example, in cases of a long-standing, unhappy, destructive marriage I have found it is more often the woman who finally takes the initiative toward a break in the relationship even though she has more to lose and it creates a more difficult way of life for her to face than for the husband. But when the question of an abortion comes up the woman finds herself in a real bind. If she follows what may be her deep-felt wishes and terminates the pregnancy, she can only do so by

rejecting a basic part of her femininity, for certainly having children is one of the mainstays of seeking her identity. Even in the more expansive modern world it is crucially important for most women that they accept to some degree this feminine identity and so an abortion causes conflict in the deepest layer of the psyche and particularly in a woman who already has a dubious view of her ability to be feminine.

It must be remembered that to be truly feminine is a very demanding thing, for it entails a giving situation, being warm and soft, and there is nothing more terrifying to a person than to face in themselves that they really cannot feel warmth or love toward another person. Indeed, this has precipitated many psychotic reactions.

Now since we are implying that the prohibitions against abortion are irrational and hence should be changed, let us examine some of the origins of these irrationalities. One of the foremost issues raised on all sides is "the sanctity of life," but since there is no clear scientific ruling on a definition of human life, it is clearly arbitrary to have rigid ideas about the sanctity of life.

Every fertile young couple who refrains from having sexual intercourse regularly during the fertile period of the wife are wilfully preventing a human being from coming into the world. Even if they miss a little pleasure in the process I cannot see that this can logically make amends for the fact that they are tampering with the possibility of a human life.

ASSEMBLYMAN CRANE: Could you conclude your remarks, Doctor? We have a tight schedule here.

DR. OTIS: Yes, I will do that.

It should be noted that we are conspicuously less concerned about the sanctity of life when it comes to the slaughter on our highways, the war in Vietnam, pollution in the air, etc., but a special urgency appears when the question of abortion comes up. Could this be traceable to our puritan heritage and the firmly entrenched idea that sexual pleasures and abandon should be punished.

In other words, if the woman had a moment of sexual ecstasy, make her pay a lifetime for it.

Now as one final look at reasons for opposing abortion, let us consider a widely stated fear. If we have easy safe abortions, there will be a degeneration of our moral life and young people will engage in sexual relationships casually and without due thought to responsibilities. I think a parallel might be drawn here with the present use of LSD. This is a fine drug which, used in a sensible way, can give a mature person an opportunity to take a telescopic view of himself. It is not a drug to stimulate euphoria, escape, sexual libido or any kind of wild orgies. Now the last thing an insecure teenager needs is a really good look at himself. So many youngsters are getting something they have not bargained for when they do go on an LSD trip, namely, depression, anxiety and plenty of self doubt.

The latter phenomena will be regulating factors, putting the brake on the wild use of LSD much more efficiently than

police raids, threats, etc. A sexual relationship between young immature people is not an easy matter and hence there is already a regulating mechanism built into the situation. The most constructive approach here is to encourage people to only engage in some activity or relationship if they are going to feel better after having done so.

In conclusion, it can be seen that there are many conflicting and contradictory sides to this question. Yet, I believe the most pressing and basic issue is the woman who at this moment stands with an unwanted pregnancy and is denied the right to decide her own fate. I think when the day arrives that she is allowed to exercise this responsibility, it will indicate that we, as a society, have arrived at a higher level of psychological health, having moved away from irrational fears and toward a more constructive way of life.

I'm sorry I was so longwinded.

ASSEMBLYMAN CRANE: Would you leave your statement with us, please, so that we can make it part of the record.

DR. OTIS: Yes.

ASSEMBLYMAN CRANE: Any questions of the Doctor?

COMMITTEE MEMBER: I would just like to ask, do you subscribe to the views of Dr. Wood, a fellow Psychiatrist, who indicates that perhaps the wife's wishes alone should not be determinative, and the fact that she is psychotic the recommendations of the psychiatrist and the husband might overrule her wishes and permit an abortion?

DR. OTIS: If the woman is psychotic, yes, I do.

COMMITTEE MEMBER: With respect to the woman's wishes, you feel that her wishes should be evaluated by a psychiatrist before the abortion should be permitted or do you feel the mere fact that she wants the abortion is cause enough?

DR. OTIS: I feel the decision should be made between she and her physician and I do not feel that that would have to be a psychiatrist.

COMMITTEE MEMBER: It could be a family physician?

DR. OTIS: It could be the family doctor, yes.

COMMITTEE MEMBER: As long as the abortion is performed then by a licensed physician within the State and the wife or mother-to-be consented to it, that would be sufficient.

DR. OTIS: Yes, the paramount wish would be the woman who did not want to have the pregnancy completed.

COMMITTEE MEMBER: So you're talking again about removing this from the criminal code and simply placing it under the Medical Practices Act.

DR. OTIS: Exactly.

COMMITTEE MEMBER: Thank you, Doctor.

ASSEMBLYMAN CRANE: Thank you, Doctor.

Is former Assemblyman Francis Werner here, please?

Would you identify yourself, please, Mr. Werner.

F R A N C I S     W E R N E R: My name is Francis Werner. I am a former Assemblyman, having served from 1953 to 1965 in the New Jersey Legislature.

Chairman Crane and Assemblyman Pedersen, members of the Clergy and Counsel. I only have a few words to say and I think I can draw from 12 years of experience.



I would like to say our lives are shaped by law. At the instant we are born the doctor drops silver nitrate into our eyes to prevent infection. As tiny children we are vaccinated against small pox. Both by law. We must attend school for a certain number of years. If we want to marry, we must be of a certain age to meet medical and legal requirements.

The law dictates when we may vote, drive a car, hold a job. The food we eat and the medicine we take are regulated by federal statutes. So is our take-home pay.

At the moment we die, the doctor must sign a certificate stipulating the cause of our death. In short, our entire life is controlled by a staggering complex network of laws. Their purpose? To protect each one of us and society at large.

The present abortion controversy goes into the heart and the meaning of the law because it deals with our most basic human rights, life itself.

On November 25th when the Legislative Study Committee on Abortion comes into Camden for a public hearing, it will take the first step toward a decision. Can civil law make it legal to deny life to the unborn child if the mother has certain reasons for wishing it? This is a core question. Who, incidentally, can decide who shall be born?

Gentlemen, I've heard testimony here, and having served as Chairman of many committees up there, I know how laws emanate by people coming to you and suggesting that this or that should be changed and they give you very good reasons for it. But I'm wondering who should play God.

Should it be the clergy? Should it be the medical profession? or should it be the Legislature?

I'm thinking seriously, back in 1958 and '59 when I was a Legislator and Chairman of a committee - I'm sure none of the physicians here, and we may have thousands of them in the State of New Jersey but 123 doctors took the liberty to petition the New Jersey Legislature to pass a law legalizing euthanasia. In other words, they wanted somebody to play God only they would like the Legislature to enact it so that someone could play god.

Is it going from one extreme, from unborn children to people who are old and decrepit?

I think, Gentlemen, you should leave the law as it is. Legislators before you enacted the law under perhaps study commissions such as yours, they probably had public hearings such as yours, and I don't think that we're advancing and advancing so we can take one more place where we play God. And you Legislators, like myself, will be out of there in the future but the laws will be on the books and you'll have to live with the laws. I think you should leave the law just as it is. I don't think you should change it at all.

That's all I have to say.

ASSEMBLYMAN CRANE: Thank you, Mr. Werner. Rabbi?

RABBI SCHWARTZ: Mr. Werner, in your opinion as a Legislator, what is --

MR. WERNER: Former Legislator.

RABBI SCHWARTZ: What is your definition of the

current law in which it says "lawful justification?"

How is that to be defined?

MR. WERNER: That can be defined by those who are trying to justify it. In other words, leave it as it is. The doctors are going to justify it in their way, the religious will justify it in their way, and you Legislators will try to justify it in your way.

RABBI SCHWARTZ: In other words, leave it as it is because no one else protests.

MR. WERNER: That's right.

ASSEMBLYMAN CRANE: Any further questions?

Thank you, Mr. Werner, for coming to see us tonight.

Is Dr. Klinger here, please?

D R. K A R L K L I N G E R: I am Dr. Karl Klinger. I am a resident of Englewood, New Jersey, an Assistant Professor of Obstetrics and Gynecology of the New Jersey College of Medicine and Dentistry, and am an Assistant attending at St. Vincent's Hospital, New York.

I would first like to let the Committee know that I had a great deal of trepidation when I entered this evening. The guard downstairs looked at me and said, "Abortions are in 319."

ASSEMBLYMAN CRANE: How did you make out? (Laughter)

DR. KLINGER: Thank you for the opportunity to present my views here this evening. This Commission has been charged with the responsible task of reviewing the problems concerning abortion in this State. I would simply like to ask what motivates those who favor liberalization of our laws. The present legislation covers the patient whose physical health is endangered by pregnancy. Few quarrel with this indication, but at the present time there are indeed few medical conditions that make pregnancy a life threat.

Are they concerned about the young girl whose pregnancy results from rape or incest? While these truly are grave situations, albeit rare, they can be handled in a licit manner if dealt with promptly.

Are they hoping to eliminate the illegal abortion with all its inherent dangers? Surely history has shown this not to be the case. The abortion is still tried in Scandinavia and in States with liberal laws.

Are they concerned with the prevention of abnormal offspring when a mother is exposed to German measles early in pregnancy? Certainly certain well-meaning advocates are, but must we destroy seven or eight unaffected babies to prevent congenital abnormality in two or three children, some of whose defects may be corrected by surgery or other means? Even now this problem faces solution with the recent development of Rubella vaccine.

Are they concerned about population control? Some supporters surely feel that abortion has its place in this regard, but most authorities agree that education and contraceptive advice best can resolve this problem.

Why then all this concern about liberalization of existing abortion laws? In my judgment and my sincere concern, the real drive by the proponents of revising the law is in the inclusion of the term "mental health"; that is, abortion to be permitted if the physical or mental health of the mother is endangered by the pregnancy. The World Health Organization defines mental health as a state of complete physical, mental and social well-being. Therefore, under this guise of a medical or psychiatric indication, the proponents, I feel, are in reality endorsing a social indication; namely, abortion on demand.

To quote Ian Donald, a well-known gynecologist in England, the bulk of the abortion problem is not a tragic case of rape of the young child or the possibility of a deformed child, but the problem of an unwanted baby because it is likely to be an embarrassment socially, domestically,

or financially. To support this thesis, the woman's mental health was used as an indication for legal abortion in 72 per cent of the cases in Colorado with their recent revised laws, and in 83 per cent of the cases in California. As a doctor of medicine, as an obstetrician and gynecologist, and foremost as a parent, I cannot support any revision of this law that will allow parenthood to become less responsible or that renders life of any less value.

Thank you.

ASSEMBLYMAN CRANE: Thank you, Doctor. You say you could not support any change in the law that would make life less valuable. What change in the law would you support? You are, of course, a New Jersey physician and familiar with the law as it stands on the books today, and familiar with the fact that it was written in 1949.

DR. KLINGER: I would specify that abortion could be performed in any condition that endangers the life of the mother.

ASSEMBLYMAN CRANE: Solely for that reason?

DR. KLINGER: Yes.

ASSEMBLYMAN CRANE: What conditions would you say they would be?

DR. KLINGER: Well, I think they are extremely rare, but patients who present congestive heart failure or recurrent congestive heart failure and some situations where there are severe renal problems, or hypertension cardio-vascular problems with renal complications. I might add that I think, although this is a valid indication, we have never at our institution

had to do this. At the Margaret Hague Hospital in Jersey City over a 20-year period, no therapeutic abortions were performed for valid medical indications, and their maternal mortality stacks up with any institution in the world.

ASSEMBLYMAN CRANE: Doctor, this Commission is also charged with trying to do something about the alleged high rate of illegal abortions. Is there anything you can suggest to this Commission as to what action we can take to effect this charge that is in the resolution?

DR. KLINGER: I wish I could, sir.

ASSEMBLYMAN CRANE: So do I, Doctor.

MR. RITTENHOUSE: In line with that, Doctor, as a practising obstetrician - You do practice?

DR. KLINGER: Yes, sir.

MR. RITTENHOUSE: Would you have any trouble with the law in its present form if the life of the mother was threatened?

DR. KLINGER: I don't really think so, sir.

MR. RITTENHOUSE: Have there been instances in which you felt an abortion should be performed for the benefit of the mother or child but would not perform it because of a statute which is on the books?

DR. KLINGER: That situation has not arisen, sir.

MR. RITTENHOUSE: Never has arisen?

DR. KLINGER: For me, no.

MR. RITTENHOUSE: Because of your personal feeling with respect to the sanctity of life and the responsibility of the parent?

DR. KLINGER: Right, and that condition has never

been presented to me that we couldn't cope with without resort to abortion.

MR. RITTENHOUSE: In your opinion, is the statute that is presently on the books a deterrent within the medical profession, particularly to the obstetrician when it comes to performing an abortion?

DR. KLINGER: I don't think it is a deterrent but I do think it would be helpful to specify clearly from a legal point of view. To clearly state it would eliminate a lot of the foggiess that is apparent with respect to the law at the present time.

MR. RITTENHOUSE: Clearly stated, you would say that it would indicate only when the life of the mother was in jeopardy?

DR. KLINGER: Yes.

MR. RITTENHOUSE: That is your personal opinion.

DR. KLINGER: Yes, that is my personal opinion.

MR. RITTENHOUSE: However, do you know other obstetricians who might have a broader view?

DR. KLINGER: I certainly do, sir.

MR. RITTENHOUSE: And for the benefit of those obstetricians, do you feel the law should be broadened so as to give them some latitude?

DR. KLINGER: As long as it includes the physical well-being of the mother.

MR. RITTENHOUSE: Now with respect to the performing of abortions, therapeutic or otherwise, is the deterrent strongest with respect to the existence of the statute



to the obstetrician who has a broader view than you have, or is the question of civil liability a serious deterrent?

DR. KLINGER: I don't know how I can answer that question. In my circle of professional people, this has never come up where a civil deterrent has been present. In other words, when a situation demanding, as far as these other obstetricians feel, that therapeutic abortion is necessary to save the life of the mother, to my knowledge no civil deterrent did come up.

MR. RITTENHOUSE: But you know obstetricians who might perform an abortion if the child was affected by Rubella or there was likelihood of that and the mother wished it, do you not?

DR. KLINGER: I know of these obstetricians but I never discussed it with them.

MR. RITTENHOUSE: Your view is that even though they may hold that view, that should not be permissive then?

DR. KLINGER: I do not feel that that should be a permissive form. I feel that we are making great strides and we can now detect by antibody studies whether or not a woman has ever had Rubella, and I hope that in the near future we will be able to give Rubella vaccine to those women at the time of marriage if Rubella has not been present, and again I feel, even with the situation with respect to Rubella, that I hold the sanctity of human life to be such that we cannot sacrifice - the statistic was 22 per cent tonight - that means there would be 78 per cent of normal unaffected babies when, with surgery and other rehab

measures, we can rehabilitate many of these infants that do have some sort of defect.

MR. RITTENHOUSE: One final question, Doctor. Of course, I recognize your interest in coming here, and I appreciate that. As a practicing obstetrician, I assume that you familiarized yourself with the law in doing so. In your profession would you say that the members of your profession are generally aware of the law in its present form?

DR. KLINGER: I don't think so, sir.

MR. RITTENHOUSE: And would you say your profession is generally aware of the attitude which the prosecuting attorney in your particular county takes with respect to enforcing the law?

DR. KLINGER: I don't think so, sir.

MR. RITTENHOUSE: Do you feel that some form of communication along those lines would be helpful?

DR. KLINGER: I do think so, yes, sir.

MR. RITTENHOUSE: Thank you.

ASSEMBLYMAN CRANE: Are there any questions?

REV. DENTICI: Doctor, you teach as well as practice?

DR. KLINGER: Yes, sir.

REV. DENTICI: In your teaching and from your experience in your practice, would you say, when we speak about an abortion, that this is as light an operation as a tonsilectomy, that even given the best circumstances in the hospital it is ordinarily always a safe operation?

DR. KLINGER: I don't think a tonsilectomy is either, Father. I think that every surgical procedure has its inherent risk? Tonsilectomy has a real risk of hemorrhage; abortion under good hospital environment certainly has an inherent risk. It certainly is not an innocuous procedure.

REV. DENTICI: Would you equate the two operations, or is that difficult to do?

DR. KLINGER: It's very difficult to do.

REV. DENTICI: Each one has its own problems as a surgical procedure.

DR. KLINGER: That's right, sir.

REV. DENTICI: Doctor, have you had women approach you as a professional practitioner and ask you to perform an abortion?

DR. KLINGER: Yes.

REV. DENTICI: What has been your advice to these women?

DR. KLINGER: My advice - and I might add there that every patient who has approached me and asked for an abortion has been concerned as to their mental well-being, that another pregnancy would make them unstable, that they just couldn't stand another pregnancy; they couldn't stand another child in the house. The situation, the very real situation where some of these horrible situations do arise, has not confronted me personally in my practice. Every patient approaching me for an abortion has been a college girl pregnant, a secretary pregnant, a mother with three children who doesn't want the fourth, or this type of situation.

REV. DENTICI: And your advice to them has been, "Don't have the abortion; let's try to get some counseling or something." Is that what your advice is?

DR. KLINGER: Yes.

REV. DENTICI: Continue the pregnancy.

DR. KLINGER: Yes, and continue the counselling.

I feel that it's very important at this point to discuss the situation with the husband, clergy, or whatever the case may be. I do feel that it is important that you have a follow-up on these individuals. I see many of these women bring their "unwanted children" back to my office two, three or four years later and show me this "unwanted child." It has not been my experience that the woman who has had some anxiety with pregnancy is the same as having an unwanted child that is going to be neglected. I might add that my good wife had anxiety with each one of her pregnancies and possibly at the time, the news that we were going to have an addition did cause a great deal of upheaval and perhaps she was unstable for a day or two. But the family has turned out reasonably well and there are no neglected children in my family. That situation is not uncommon.

REV. DENTICI: Do you give the same advice to an unwed mother?

DR. KLINGER: I advise an unwed mother that this is a difficult situation. I advise them that in my practice I see many, many women who are desirous of having a child, and I refer them to social agencies so that she could be cared for,

counselled, as well as receiving care for the mental condition due to pregnancy, leading to adoption of the child.

REV. DENTICI: Have you had victims of rape or incest, Doctor, approach you for an abortion?

DR. KLINGER: I have not, sir.

REV. DENTICI: So you are not experienced with regard to that?

DR. KLINGER: No, sir.

ASSEMBLYMAN CRANE: Thank you, Doctor.

ASSEMBLYMAN CRANE: Mrs. Dvo Marganeal, please.

[Not present.]

Dr. Dryden Morse, please.

D R.     D R Y D E N     M O R S E:     I am Dr. Dryden Morse from Moorestown, Burlington County, New Jersey. I practice at Deborah Hospital and do heart surgery and therefore am involved in decisions of life and death in another part of the body and have been concerned with the recent changes in the legal definition of death going on in the country and perhaps in New Jersey.

The question in heart transplants is whether you should deny to the recipient, the potential recipient, who is dying of heart disease a heart transplant. That's the real question, not whether you should do a heart transplant. Similarly in an abortion, the question in my mind is whether you should deny the mother and society the benefits that an abortion will bring and not whether it should be done. I am in the minority perhaps this evening here, but I feel that I represent a majority of women. So far you have had relatively few women testifying and I think really it is a problem of women. Instead of calling this an abortion law, I think it should be called a women's civil rights act, as somebody just said, or a women's personal rights act or something of that order. I also think the term abortion in the United States has a bad, dirty connotation because, as has been pointed out, 95 per cent of them are illegal and done under mutilating circumstances. Perhaps we should use

"pregnancy termination" in the law. We have a model cities law and not a slum clearance law. We should have an euphemism for this law too.

I think that the alternatives to a modern law are the various forms of marital strife, unwanted children, divorce, child abandonment, impoverishment of children, child battery, delinquency and crime. Child battery has been brought up a good deal in medical magazines; it hasn't been brought up here tonight. We see them coming in the hospital with broken arms, broken legs, and so forth. And why? Apparently child abuse. Dr. Hardin has stated, "Non-abortion causes great mischief that may extend for an entire lifetime." As one of the psychiatrists brought out, a child who is maltreated in the first two or three years may easily turn out to be a permanent psychopathic personality.

A woman, I believe, should have a legal right to control her own reproductive life. A doctor should have a legal right to practice medicine according to the highest principles of his profession. Neither should have these rights infringed by the archaic law now in force in New Jersey or the limited type of legislation which has been passed in Colorado. A law on the product of rape, incest and deformed children, although necessary, is almost inconsequential in view of the magnitude of the problem.

We have been through a million illegal abortions in the United States and maybe 30,000 in New Jersey. No one is asking for a law to force someone to have a pregnancy terminated.

All that is required is permissive legislation. No one need act against his or her principles.

We have had Catholic doctors testify here and I want you to note mainly the obstetricians who are testifying are Catholic. You know on a Catholic hospital staff, such as St. Vincent's, you practically have to go down the line and say you will never perform an abortion and they interview you, the administrators do, to see what your stand is on this subject and Catholic doctors, I think, have an underlying prejudice in a certain direction because of their religious concepts, which I don't quarrel with, but I think they should not come here and you should not accept their testimony on that basis alone. I think they will give medical reasons for their testimony and have underlying moral reasons which they are not ventilating. I think, it is in other words a questionable thing.

In Roman Catholic France, the annual number of abortions equals the annual number of live births. In Roman Catholic Chile, 27 per cent of the women reported they had induced abortions. In America, roughly one in five of the women in the Kinsey Study who were ever married reported induced abortions. This is in America. Over 60 per cent of the Catholic women in our own country use the birth control pill and the Catholic bishops recently favor leaving this matter to the conscience of the women. I think one factor in their decision was the desire to preserve and strengthen the marriage for obvious reasons.

It is not a question of contraception versus abortion.



We should have both. For instance, this building is probably of cement structure to prevent fire, but if that failed, then we have fire extinguishers. Particularly with the poor people, as was pointed out, there is a certain amount of failure of education on birth control and they come to the point where they have pregnancies and their technique of avoiding unwanted pregnancy is abortion.

New Jersey should not become an abortion mill. I think the residence requirement will take care of that. I think you should not use the words "abortion on demand," which again is a term which is one with a poor connotation and possibly "unwanted child prevention" would be a better way of putting that.

[A written statement submitted by Dr. Morse  
can be found on page 211 of this transcript.]

ASSEMBLYMAN CRANE: Thank you, Doctor. Any questions?

RABBI SCHWARTZ: I just wanted to point out that I think that it is true that we all have our own biases and that Catholic doctors can find medical justification for their bias. I think that this is just as justifiable as the opposite viewpoint and must be respected as good medicine.

DR. MORSE: They have a special motivation to come and testify which the ordinary doctors - and the Catholic doctors are in the minority - don't have so there will be more of them testifying. I know there are so far more men testifying.

RABBI SCHWARTZ: Yes, but I think we have heard testimony of female doctors, specifically in Newark. The reason why more aren't called here is because more haven't come. We call those who have come. The fact that a doctor happens

to be a Catholic does not color the picture, I believe, if it can be backed up with medical justification, as I have no reason to assume it isn't, just as yours is backed up by medical testimony.

DR. MORSE: The point I am trying to make and maybe poorly is that New Jersey being predominantly non-Catholic - there are more non-Catholics than Catholics I would think - there is no reason why the Catholics who feel very strongly on this issue should keep a law which is what they want. I would say, let the Catholics continue not to have abortions - that's O.K. - but let the other people have what they want. I am for freedom in America and personal rights of women. I think it is permissive. I am not going to interfere with any Catholic or tell him what to do, but he shouldn't tell me.

ASSEMBLYMAN PEDERSEN: Well, Doctor, there is just one remark I would like to make. I don't assume you are a theologian. I figured you were testifying as a medical doctor. I think it would be more proper if your remarks were kept in the medical field.

DR. MORSE: I am testifying personally.

ASSEMBLYMAN CRANE: Anything further? [No response.]  
Thank you, Doctor.

Is Dr. Robert Cosgrove here, please. [Not present.]  
Dr. Burch. Will you identify yourself, please.

D R. R E Y N O L D B U R C H: My name is Reynold Burch. I am Chairman of the Maternal Welfare Committee of the Essex County Medical Society. I am a practicing obstetrician

and gynecologist in Newark, New Jersey. I am a staff member of the attending staff of Martland Medical Center, the Presbyterian Hospital in Newark, the Claremont Memorial Hospital in Belleville, the Orange Memorial Hospital in Orange, New Jersey. I represent the Essex County Medical Society as the delegated representative to attend this conference. Unfortunately we were not aware of the conference's existence in Newark and so we came here this evening.

We want to thank you so very much for providing us with the opportunity of testifying for the Medical Society and my statement is short.

After very considered study of various abortion laws throughout the United States and the various proposals that have been made throughout the various states of the United States, the recommendation made by the American Medical Association endorsing therapeutic abortion for those women who are victims of incest, victims of rape, women whose lives are threatened as a result of pregnancy, and the other four that have been documented here and have been proposed - and I will hand you a prepared list -- the Medical Society after very careful deliberation of this feels that it must endorse the proposed revision for abortion in the State of New Jersey and that the Legislature is to be commended for conducting hearings which elicit every phase of thinking in relation to this very complex problem.

Last year after the endorsement of the American Medical Association of these various factors for which therapeutic abortion was proposed, the Medical Society of the State of New Jersey

endorsed these proposals and made it an official matter of record that these proposals be endorsed by the Medical Society after polling the membership of the Medical Society itself, that is, the State Medical Society.

I understand that in Trenton, Dr. John Preece, as the representative of the New Jersey State Medical Society, endorsed this thinking too.

There is one thing we are concerned about, however, and that is not only should there be a reformation in the abortion law of the State, but there should be an opportunity for those individuals who disagree on a professional basis, on an ethical basis, on a philosophical basis, or on a religious basis, to have protection. We have already had one law suit that has been brought before one of the courts of the State with respect to a case where the indications which we have suggested were present and because of convictions of one kind or another they did not perform the abortion. They were brought before a court of law by virtue of the fact that they had refused to do this because it was against their conscience.

We of the Medical Society feel that these individuals should be protected and we have brought for your appraisal a statement from the Medical and Chirurgical Society of the State of Maryland which has enacted an abortion law with some safeguards and protections for hospitals and for physicians who on a medical basis, an ideological basis or what not, would not perform abortions. We feel that this is also necessary and I have brought here the interpretations of legal and ethical

requirements for hospitals staffs which I would like to leave with you, if you don't mind.

ASSEMBLYMAN CRANE: We would appreciate it very much.

DR. BURCH: And my colleague, Dr. Allan Crunden, will present the legal statements which were written into the statute of the State of Maryland and we feel in the Medical Society - and this is an endorsement of the Council - we feel that this should be also considered when the abortion law is written in the State of New Jersey. Thank you, gentlemen.

ASSEMBLYMAN CRANE: Thank you, Doctor. There may be questions, Doctor. Any questions?

COMMITTEE MEMBER: Doctor, I would like to ask, in your experience in a highly urbanized portion of the State in your vicinity, do you know of instances in which fellow obstetricians who have performed abortions within hospitals in your area with which you have been affiliated have ever been indicted for violation of the statute as it presently exists here in the State of New Jersey?

DR. BURCH: Not within my knowledge within those hospitals in which I practiced. I am speaking of another instance when I mentioned that one, but I am not aware of any within my hospital.

COMMITTEE MEMBER: Well, is it your opinion, Doctor, that the present statute is a deterrent to physicians in the performing of abortions in those institutions?

DR. BURCH: Yes, very definitely so.

COMMITTEE MEMBER: Because of fear of prosecution?

DR. BURCH: Because of fear of prosecution depending upon the interpretation of the law.

COMMITTEE MEMBER: And yet there has never been any such prosecution to your knowledge in any of your institutions or among your cohorts in this field?

DR. BURCH: Not that I am aware of.

COMMITTEE MEMBER: When you say you would like to have this liberalized, you say the New Jersey Medical Society endorses this proposal. First, the New Jersey Medical Society is a group of doctors in the state?

DR. BURCH: Seven thousand doctors in the State of New Jersey.

COMMITTEE MEMBER: And when you say they were polled - how were they polled, Doctor?

DR. BURCH: They were polled by mail. Last year when this controversy was presented to the Medical Society for a decision the Medical Society decided to be democratic about it and not take an attitude until it had polled the membership. It sent out letters with ballots to every one of the physicians who were members of the New Jersey State Medical Society and the questionnaire accompanied the letter and I think there were four or five points within the questionnaire and of the number that was sent out, over two-thirds were returned and the overwhelming decision on the part of those physicians who returned their ballots was that there should be a very definite change in the abortion laws of the State of New Jersey. Now I am not actually aware of the statistics. I cannot quote you definite statistics and I would be in error if I attempted to. These can easily

be obtained from the Secretary of the Medical Society and I think it might be a wise thing if you were provided with this information. I think it is rather valuable information.

It was on the basis of a democratic poll that the Society arrived at its decision. And last year at the meeting in Atlantic City, the Medical Society of New Jersey voted upon this resolution and it can be obtained in the Journal of the New Jersey State Medical Society, July, 1968, on page 302.

COMMITTEE MEMBER: That particular resolution, Doctor, involved a revision or a proposed revision of the law in line with the AMA provision and also, I understand, in line with the proposals that we heard of the Law Institute which were discussed here this evening?

DR. BURCH: And also the American College of Obstetricians and Gynecologists.

COMMITTEE MEMBER: I see. Now it has been testified here that that might encompass as few as five per cent of the total number of actual abortions performed - the areas covered by that particular revision. What do you think of the other 95 per cent, if that is an accurate figure?

DR. BURCH: I don't really understand your question.

COMMITTEE MEMBER: It has been testified to here that the areas which would be legitimized by the passage of the amendment that you are proposing would then legalize approximately five per cent of the abortions that are performed in the State of New Jersey. What would you suggest with respect to the other 95 per cent?

DR. BURCH: The other 95 per cent of potential abortions?

COMMITTEE MEMBER: Well, we don't know, Doctor, how many abortions are illegally performed, but it has been suggested by persons who have testified here that only 5 per cent of the abortions now performed nationwide would be covered by the areas which would be legitimized by the statute that you are suggesting. Now I ask you, what would you do about the other 95 per cent?

DR. BURCH: I think this has to reside in the conscience of the individuals and also the decision of the physicians who attend those patients.

COMMITTEE MEMBER: Now when you say that it resides in the conscience, you mean whether or not they should engage in illegal activity?

DR. BURCH: We don't feel that any illegal activity should be indulged in by the medical profession in relationship to abortion. So, therefore, we have endorsed these particular tenets that have been suggested.

COMMITTEE MEMBER: Yes, sir, I understand that. But what I am getting at is you still have a substantial number of the population who apparently - I am talking now about the young girl who is an unwed mother or the woman who feels that her family is sufficiently large and she cannot care for additional children ---

DR. BURCH: For socio-economic reasons.

COMMITTEE MEMBER: -- for socio-economic reasons. Now that has been said to comprise perhaps as many as 95 per cent



of the abortions now performed. You can't say, leave that up to the individual, because then you leave it up to them as to whether or not they violate the law. Is that correct?

DR. BURCH: This becomes an individual decision on the part of the female. But as far as the medical profession is concerned, the medical profession should not endorse this at this particular time. At this particular time this is not a matter of moment, sir. We have felt that we weren't going to enter into any kind of discussion with relationship to illegal abortion and we are really recommending that abortions be performed in these instances which we have outlined.

The 95 per cent that you have mentioned would naturally be of socio-economic reasons or other reasons. But nevertheless, this doesn't come under the ken of this particular law and we are not making this recommendation. Our recommendation, I think, is rather clear and I understand what you are saying.

COMMITTEE MEMBER: I am not trying to push you, Doctor, but I am concerned about an area that I think concerns everyone in the State and I think you are in a very good position, representing the group that you do, to speak as to their position on this. Are you of the opinion, for instance, that by adopting this particular legislation that you are suggesting that you will then limit the liability of the doctors under the law and make you less inclined to be criminally prosecuted?

DR. BURCH: No, we are thinking in terms of those individuals who happen to have religious beliefs against this. We are thinking of those individuals who might probably have some

indication against the performing of certain abortions. There is room for a difference of opinion of professional people. And if a physician decides that he couldn't in good conscience, either for professional reasons, scientific reasons or for ethical reasons, be what they may, we don't feel that this physician should be prosecuted. The patient should be able to go to another physician who will give her the consideration she wishes. I would much prefer that Dr. Crunden pursue this particular aspect in that this was in a sense his area to discuss and I think if he reads the laws to you that we have proposed in the statement, it might possibly clarify some of this.

ASSEMBLYMAN CRANE: Doctor, is there anything you could suggest to us that this Commission could look to toward solving the problem of illegal abortions in the State of New Jersey besides liberalizing the law?

DR. BURCH: I don't think liberalizing the law is going to contribute too much toward stopping illegal abortions actually. We have heard so many statistics regarding the increase in illegal abortions even in states where therapeutic abortion has been legalized. These are based to a great extent upon the prevalence of spurious pregnancies of one kind or another, pregnancies because of socio-economic reasons, pregnancies among teen-agers, pregnancies among unmarried women, and there are many reasons for women pursuing abortion as a means of ridding themselves of an unwanted pregnancy, regardless of the reason.

I don't think that this is going to reduce this, but I

most certainly think it is going to address itself to a very much needed aspect of our living and this gives the woman who has been violated, who has threat to her life, threat to the child's integrity, threat to her mentally, most certainly an opportunity to permit herself the civil liberty of ridding her body of something which is a violation of her justifiable rights. It most certainly would place this woman in a position whereby she would be in better mental health and most certainly in many instances in better physical health, and from a genetic point of view, it might rid our population of some aberrations which would have come about as a result of incest and which would be genealogical abnormalities taking place.

From a scientific point of view, it has a great deal of validity and from a humane point of view and from a civil rights point of view, it most certainly has validity and this is the reason the Essex County Medical Society has taken the attitude that it has. It hasn't been done lightly; it has been done with a great deal of consideration. And it hasn't been done on the basis of prejudice; it has been done on the basis of some rather profound consideration regarding this particular, let's say, serious subject which is being presented to the people of the State of New Jersey.

ASSEMBLYMAN CRANE: Any further questions? [No response.]  
Thank you, Doctor, for coming to testify.

Dr. Allan Crunden, please.

D R.     A L L A N     B.     C R U N D E N,     J R.:     My name is Dr. Crunden. I practice in New Jersey in Montclair, Essex County. I had hoped to attend the meeting in Newark, but I never heard about it until after it had been already announced and held so I am sorry that we had to clutter up the meeting here by coming down and extending the remarks here.

First, my credentials: I am an Attending Obstetrician at Mountainside Hospital, the principal hospital in Montclair. I am an Attending Obstetrician-Gynecologist at St. Vincent's Hospital in Montclair. I am on the courtesy staff of various hospitals in and around Montclair. I am a Diplomate of the American Board of Obstetrics and Gynecology, American College of Obstetrics and Gynecology, American College of Surgeons, and various other professional groups, including the American Public Health Association. I have always had a preoccupation with problems of maternal welfare and this is one that I feel we should give our best heart to and in deference to Dr. Dryden Morse who has testified before me, may I reassure him that we have an Episcopalian here, if that makes any difference, and I practice in a Catholic hospital.

Now what are some of the opinions I would like to get over tonight?

Number one, our previous witness has indicated that we have pursued the laws of certain other states in an endeavor to find out those things that might be constructively copied or, at least, paraphrased in adopting the law here in our own State of New Jersey.

There were two points that worried me considerably when I reviewed the happy rapport that we all share with our Catholic physicians and those practicing in a Catholic hospital with a very high level of Christian ethics as displayed in the hospital and yet we all have our own personal opinions. It has worried me considerably that in such a case as was cited earlier by the other physician here from Essex County we could bring a very reputable obstetrician and his colleague, his partner, into court and make him very uncomfortable and have all the attendant unpleasant publicity which was attendant on that case and which was reported nationwide associated with a very fine obstetrical name that I hold in great esteem, having been trained over at Margaret Hague Maternity Hospital.

These suggested points that I think should be made a matter of any revision of the law would be in protection of the Catholic physician who in his own conscience feels that he does not want to touch a particular case which seemingly has other points which would make another physician possibly want to terminate the pregnancy. I think he should be protected in law and it be stated as such, that he will not be brought into a court of law. Moreover, I think a hospital that by its own by-laws fixes it so that it will not tolerate the performance of therapeutic abortions in its hospital - I think that hospital should be protected in law.

In reviewing the various statutes that have been provided in six states and the District of Columbia regarding this particular sticky problem, we find that the State of Maryland has done this admirably and in the leaflet that Dr. Burch

I think has passed along - and I have another copy if anybody else on the panel would like to see it -- This was picked up at a legal institute and I think it is well worth giving some serious thought to by the members of the Study Commission here.

Let me just read it. First of all, "No person shall be required to perform or participate in medical procedures which result in the termination of pregnancy; and the refusal of any person to perform or participate in these medical procedures shall not be a basis for civil liability to any person nor a basis for any disciplinary or any other recriminatory action against him." This I think is stated admirably and it would not make any physician who in his own good conscience feels that this is not for him liable to be prosecuted by a couple who later feel that with the birth of an abnormal baby which may or may not have been anticipated, which may or may not have been the result of something that they knew about ahead of time -- Certainly there can be no recourse in the law as a liability case.

Then the other relates to the hospital administrator, the director of the hospital and the governing board or the trustees of the hospital, that have in their by-laws certain restrictions relating to such procedure and this would be stated something to this effect: "No hospital, hospital director or governing board shall be required to permit the termination of human pregnancies within its institution and the refusal to permit such procedures shall not be grounds for civil liability to any person nor a basis for any disciplinary or other recriminatory

action against it by the state or any person."

I feel this might well go a long way in furthering the thought that we don't try to have a religious group dictate the law of the State and I believe that many of our physicians feel a little badly about this. They feel that they are being dictated to. I didn't say this, but let's say that some of my colleagues say it, and that makes me feel a little easier in stating it.

Certainly hospitals may feel that if we have a somewhat more explicit permissive law that they may well get into trouble, into sticky, unpleasant legal actions where their legal attorney has to get involved to protect that hospital from certain unpleasantnesses associated with this permissive law.

Again may I reiterate the fact that the American Medical Association spent considerable time, effort and study on this particular problem. This was a very difficult one, to give a positive opinion and have it stick with the full force of the American Medical Association's many hundreds of thousands of members behind it.

Now obviously this isn't the basis of a report from all the physicians that are members of the American Medical Association. This would be impossible to attain. Certainly you as lawyers are well aware it is awfully sticky to try to get 100 per cent return on any questionnaire. But the great bulk would seem to justify the action of the Board of Trustees in affirming the suggestions of the Law Institute which you

all well know - I don't have to repeat them here tonight - which would permit where a hospital board, an appropriate supervisory, consultative group in a hospital, feels in their own good conscience that they have ample medical or other surgical opinion which would require the termination of this pregnancy, in that instance a doctor could be permitted to perform it, if in his own conscience he felt he wanted to perform it and if the rules of that hospital permitted the performance of it.

ASSEMBLYMAN CRANE: Excuse me, Doctor. Could you conclude; we are running out of time.

DR. CRUNDEN: Yes.

Do you do therapeutic abortions? I do few and far between. This is a subject of great unpleasantness as far as I am concerned. I want no part of it. However, I feel very uncomfortable at the thought of being, shall we say, quotation marks, "at the mercy" of the county prosecutor.

We had a recent case, if I can give you a very quick summary of a rape case that occurred in New York that was referred to me by a clergyman. It was a relative of his. This was a case that had been momentarily turned down by the Mount Sinai Hospital and the prosecutor's office had expressed lack of interest in doing something about it and the physician had sort of thrown up his hands, but he had the paper work to prove that he had seen the patient within an hour after a rape by a member of another race in a girl's apartment with an icepick as the weapon to persuade her to have relations and there was a little Mongoloid two-year old in the house and that



was all that was in the house. It was in a rough section of New York. She was later seen by a member of the Detective Bureau and it is a matter of record on the police blotter.

Now what did I do in this instance? You might be interested. How did you do this - at least get permission or quasi-permission in the State of New Jersey? I am a member of the Therapeutic Abortion and Sterilization Board at Mountainside Hospital. Obviously I couldn't vote. But I presented it as it was with no additional factors other than the basic facts with supporting evidence and police blotter information. The physicians concerned to a man felt that this thing should be done. There was no question about the facts in the case. They had a reputable physician attesting to the fact that there was sperm in the vagina within an hour after. The husband was working at school. There was no question about her being pregnant.

Well, anyway, the Board did feel that if I could get some sort of protection for the hospital, they would certainly concur in the performance of the procedure even on a patient from a neighboring state. I called up the County Prosecutor's office and talked to the First Assistant Prosecutor and explained my dilemma and he said, "Doctor, you know the correspondence from this office on the subject?" I said, "Yes, I have read every word of it and I am very grateful for some of the latitude you have granted the hospital and its personnel in the past." He said, "Well, let's put it this way, that you have physicians who are on your board who feel that this should be done for one reason or another."

The girl had threatened to commit suicide. I won't tell you the race, but this was something that was highly repugnant to her. She said she would jump off the Brooklyn Bridge, but she was not going to carry this baby, and that was that, and I really believed her. Now I don't have the force of a psychiatrist behind me, but there were two psychiatrists who passed on this particular bit of evidence. And they felt the thing should be done. I said, "Well, cheer up, I may or may not have to do this, but what would you say?" He said, "Doctor, I am not going to bring you into court. Let's put it that way. You fulfil your own conscience on the thing. Your colleagues concur with you." That was the last of the conversation. I said, "Thank you very much. That makes me feel a lot better even though it gives me no permission to do anything and I understand this."

So I went back to my telephone and I called up Dr. Birk, the physician in New York, and I said, "Alex, this is the position. I can get permission of a type to do this in the State of New Jersey. What's the matter with you?" So he said, "I am going right back to Mount Sinai and tell them what you did. I'll do the same thing. I'll call the Prosecutor's office." This was done that night at Mount Sinai Hospital.

That's the end of my story. But you don't like the hot breath of the Prosecutor on your neck.

The question has been asked time and again by the member on the end here with regard to - "Does this inhibit the doctor in the performance of his duty, shall we say, to his patient?" I would say it definitely is a deterrent. Let' say,

it is a deterrent to Allan Crunden. It is a very great deterrent. I don't like breaking a law. I get very unhappy about this. I feel that we should have the thing explicit in law and then I can carry on my medical work and feel a little bit more that the State is behind me and not working against me. And, believe me, some of these are really heart-rending cases. When you have a girl with malignant hypertension, way up in the 200 over 120, which is really a brittle case, you have kidneys that are not working and you have her six weeks pregnant, you are going to think twice and you don't want the County Prosecutor breathing down your neck. I mean, this is a real hazard to your thinking. You are thinking under very unhappy conditions. You can present this to your medical colleagues and they can agree with you, but you are still unhappy. You wish he would say that for the protection of the life of the mother, go ahead and do it, providing your colleagues agree with you.

ASSEMBLYMAN CRANE: Thank you, Doctor.

DR. CRUNDEN: I could pursue this, but I think time is running out and I know there are lots of other speakers.

MR. RITTENHOUSE: I don't want to prolong this, but I think we want to clarify this. You say, Doctor, in your opinion if it involved the protection of the life of the mother, you are worried under the present law.

DR. CRUNDEN: It talks about negative things. It talks about willfully doing something wrong. Now I would like to know, when is it right and when is it wrong? I mean, I am not a master-mind.

MR. RITTENHOUSE: But you are a doctor and you want this particular decision taken out of your ken as a doctor.

DR. CRUNDEN: I would like it out of my way, yes.

MR. RITTENHOUSE: You would like to have the Legislature decide it for you.

DR. CRUNDEN: I would love to have that done. We haven't talked too much about the force of public opinion from some of our people testifying. They have testified from personal experience. But I think we really should consider that we have the great bulk of opinion of a learned body, the American Medical Association. They have seen fit to bring this up at the Medical Society of New Jersey and they concurred in it. Certainly there is great unanimity of opinion on our own county level. All I can say is that I am very happy that we have this proposal. I think - God speed to any sort of a proposal that will spell this out a little bit, however much they spell it out, but again with safeguards such as we have suggested to protect the hospital and to protect the Catholic doctor or other person who may not feel he wants to do it for reasons of his own. They may be medical reasons and not religious reasons. Maybe he disagrees for reasons of his own. But he should be protected. He shouldn't be subject to law.

MR. RITTENHOUSE: Doctor, I will only comment that I am a Prosecutor and in that role, I have been faced with exactly what you requested. I trust you and your colleagues have reflected on this. But it may well be that the very things that you request may put you in a touchier situation than you

are in right now.

DR. CRUNDEN: But I felt if I called him up and I was completely frank with him, at least my conscience would feel better.

MR. RITTENHOUSE: I understand that, Doctor.

DR. CRUNDEN: I don't like to argue. I hate therapeutic abortions.

MR. RITTENHOUSE: You are suggesting in terms of specifying by legislation - specifying not only for you, but specifying for the Prosecutor also?

DR. CRUNDE: Yes. As far as the other 95 per cent, this is something else again. This is negligible. I mean, all we can do is worry about our patients under our scrutiny today, 1968. We can't worry about the great bulk of criminal abortions going around the country and around our State. I think it would be great if we could get rid of them, but you have a tough job, a real rotten job, to write legislation for that and we have gotten a couple of convictions by appearing in court for rape, which made me very happy. I didn't mind giving up the time. This was good time given up.

ASSEMBLYMAN CRANE: Any further questions? [No response.] Thank you, Doctor.

DR. CRUNDEN: May I just pass on to the Secretary the law in Maryland and the Law Institute recommendations with a comment.

ASSEMBLYMAN CRANE: Thank you. There will be a five-minute recess at this point.

(Recess.)

(After recess)

ASSEMBLYMAN CRANE: Dr. Gottlieb, please.

D R. M O R R I S G O T T L I E B: Gentlemen, I am Dr. Morris Gottlieb of Shore Memorial Hospital. I am a Diplomate of the American Board of Obstetrics and Gynecology, a member of the American College of Surgeons, as well as a member of the College of Obstetrics and Gynecology; Past President of the New Jersey Obstetrical and Gynecological Society and I am a member of the Philadelphia Obstetrics Society.

I don't want to waste a lot of time here. If you are familiar with the statement of the American College of Obstetrics and Gynecology, I will not go into that.

ASSEMBLYMAN CRANE: We are familiar with it.

DR. GOTTLIEB: I won't go through the introduction and I won't go through the statement, if you're familiar with both. I just would like to go on record to say that I am completely in accord with the introduction statement and completely in accord with the statement of the American College of Obstetrics and Gynecology.

And that's all I have to say, unless you have some questions.

ASSEMBLYMAN CRANE: Thank you, Doctor. Any questions of Dr. Gottlieb?

Thank you for coming to see us, Doctor. We appreciate it very much.

ASSEMBLYMAN CRANE: Is Dr. Christopher Reilly here, please?

D R. C H R I S T O P H E R T. R E I L L Y: I am Christopher T. Reilly and it is a privilege to represent the Christian Medical Society and to testify before this Commission.

I am also President-Elect of the New Jersey Obstetrical and Gynecological Society and Clinical Assistant Professor at the New Jersey College of Medicine.

The Christian Medical Society is an international organization with about 3,500 members who are either physicians or dentists. The majority of Protestant medical missionaries belong to this organization. It is non-denominational and conservative, recognizing the authority of the Bible in matters of ethics and morals as well as in matters of Christian faith.

The Board of Trustees of the Christian Medical Society, recognizing its responsibility in speaking on matters of medical ethics and morals, summoned twenty-five evangelical scholars to participate in a Protestant Symposium on The Control of Human Reproduction which was held in August this year at Portsmouth, New Hampshire. Participants, which included physicians, theologians, lawyers and sociologists were selected from various major Protestant denominations, the only prerequisite being the recognition of the Bible as the ultimate authority in these matters. In the past, Protestant statements were frequently denominational or based either on situation ethics or took an existential approach. Roman Catholics were not included because the authoritative conservative opinion of the Catholic

church had already been publicized. The consensus of the participants was published and entitled "A Protestant Affirmation On the Control Of Human Reproduction." The complete text has been submitted in writing to this Legislative Committee. This Affirmation has not yet been submitted to the members of the Christian Medical Society for their opinion but I would suspect it would be heartily endorsed by over 90 percent of them.

Now in the time left to me I would like to read some pertinent excerpts from this Affirmation.

For some questions the Scriptures provide specific answers as concerning the sacredness of marriage and the wrongness of sexual intercourse outside that relationship. In other situations the Bible speaks primarily through principles such as the sacredness and value of human life, the need to act in love for God and man. Where specific counsel is lacking, Christians acting under the authority of Scripture may differ from each other in the conclusions they reach because different weight may be given to different principles.

Is induced abortion permissible and if so, under what conditions? If it is permissible in some instances does this mean that the act of intervention is sinful? Can abortion then be justified by the principle of tragic moral choice in which one evil is chosen to avoid a greater evil? Whether or not the performance of an induced abortion is sinful we are not agreed, but about the necessity and permissibility for it under certain circumstances we are in accord.

We live in a world pervaded by evil. Human relationships



become distorted: unwanted children are born into the world; genetic defects are not uncommon and harmful social conditions abound. Therefore, it is the duty of Christians to be compassionate to individuals and to seek responsibly to mitigate the effects of evil when possible, in accordance with biblical principles.

The human fetus is not merely a mass of cells or an organic growth. At the most, it is an actual human life or at the least, a potential and developing human life. For this reason the physician with a regard for the value and sacredness of human life will exercise great caution in prescribing an abortion.

The Christian physician will advise induced abortion only to safeguard greater values sanctioned by Scripture. These values may be individual, familial, or societal.

The fallenness of human nature requires the guidance of laws and regulations prescribed for the benefit of society and administered in recognition of the ultimate authority of God who is the supreme law giver. Harmful pressures easily result from the codification of law in a way that is either too authoritarian or too permissive. The Christian maintains that in avoiding legalism on the one hand and license on the other, the prescriptions of the legal code should not be permitted to usurp the authority of the Christian conscience as informed by Scripture.

The sanctity of life must be considered when the question of abortion is raised. Regardless of what stage of

gestation - including birth - at which one considers the developing embryo or fetus to be equivalent to an adult human, the potential of the developing intrauterine life cannot be denied. There could, however, be compelling reasons why abortion must be considered under certain circumstances. Each case should be considered individually, taking into account the various factors involved and using Christian principles of ethics. Suitable cases for abortion would fall within the scope of the recommendation of the American College of Obstetricians and Gynecologists. However, we believe that isolated sociological pressures that justify abortion rarely occur. We do not construe the A.C.O.G. Statement as an endorsement of abortion on demand or for convenience only.

I don't need to read the Statement.

We would recommend that changes in the State laws on therapeutic abortion that will permit honesty in the application of established criteria and the principles supported in this statement should be encouraged. Provisions should be included to protect the physician from legal action or medical liability should he refuse to perform the operation because he finds a particular abortion to be against his moral standard.

ASSEMBLYMAN CRANE: Thank you, Doctor.

Any questions of Dr. Reilly?

COMMITTEE MEMBER: I would just like to ask the Doctor what he thinks about the statute as it is presently written.

DR. REILLY: Well, the only question I have concerning the Statute is the one that is very frequently raised - are

we violating the law in any given abortion which we are performing? I think it is very broad and it needs to be interpreted.

COMMITTEE MEMBER: Well, in terms of interpretation, again you would have the Legislature define specifically those instances in which abortions would be permitted?

DR. REILLY: Yes, because the way you have it now this would vary with individual moral standards and it could result in people doing something to themselves which would not be good for their emotional health.

COMMITTEE MEMBER: Should the moral standards which you refer to which should not vary be established by the Legislature and set down in statutory form?

DR. REILLY: I don't think you can legislate morality but we should try to legislate in a way that we protect the public.

COMMITTEE MEMBER: But I would like you to be specific, Doctor. Are you asking that the Legislature specify those cases where abortion is with justifiable cause, lawful justification?

DR. REILLY: Yes. I think the recommendations of the American College are broad enough, yet specific enough to cover most situations.

COMMITTEE MEMBER: Well when you say "to cover most situations." you disagree with the testimony that we've had that it would only cover perhaps five percent of the abortions now being performed?

DR. REILLY: If you're talking about this 95 percent

illegal abortions -

COMMITTEE MEMBER: Illegal in the sense that they wouldn't be covered by the American Law Institute recommendations, yes.

DR. REILLY: Well I would question whether they would or would not because I think many of these would. You're talking about the single girl. When you have a problem such as the single girl, from a medical standpoint you're interested in two people, you're interested in the mother and you're interested in the intrauterine pregnancy. And it may very well be, after proper medical evaluation that it would be better for that individual to carry the pregnancy to term for her emotional well-being; on the other hand, it might be better for her emotional well-being not to carry the pregnancy to term. When you think in terms of the fetus, you have to think in terms of the need for babies. What is the adoption market? What's it going to go into? What did the pregnancy result from? Is it a racial thing? Is it an inter-family pregnancy?

COMMITTEE MEMBER: Now these sociological factors would be encompassed in the psychiatric or mental health aspect of the recommendations.

DR. REILLY: Yes, and I would disagree with the man from Colorado stating that these psychiatric reasons were against the law because with the simple statement that he had, "emotional instability," you have no concept of what the medical opinion was on that individual case, so that many of them may have been gone into very thoroughly, a medical

decision and then to a hospital board.

COMMITTEE MEMBER: Thank you.

ASSEMBLYMAN CRANE: Any further questions?

Thank you, Doctor.

Martin F. McKernan, please.

Will you identify yourself, please, Mr. McKernan?

M A R T I N     F.     M c K E R N A N: Gentlemen, my name is Martin F. McKernan. I'm a practicing Attorney for 31 years in the City of Camden, a member of the American Bar Association, New Jersey State Bar Association, Camden County Bar Association, American Judicature Society, and I have been interested in the subject of abortion ever since I read the recommendations of the American Law Institute and I have done considerable reading on it.

I would say that the ultimate benefit which should be sought by any government is the common good. This must be the goal especially when the State is a Republic or a Democracy because in such state the people are the sovereign.

It was for the common good that the American Colonies felt obliged to declare themselves independent of Great Britain because "all men are created equal and are endowed with certain inalienable rights, including the right to life, liberty, and the pursuit of happiness."

It was for the common good that the Constitution of the United States was ordained and established, since its Preamble reveals the Constitution's reasons for being, among others, the

establishment of justice, the promotion of the general welfare, and the securing of Liberty's blessings to ourselves and our posterity.

Now it appears that instead of securing Liberty's blessings to our posterity, we are asked to embark on a course designed to legally destroy a great number of our posterity and deny them the primary right to life before they see the light of day.

Unless this Republic is ready to deny that all men are created equal, - and note that the founding fathers did not say "born equal" they said, "created equal," - unless it is ready to deny that all men are endowed with an equal right to life, then any law which sanctions the destruction of an innocent man ought not to be enacted. If we believe that such a law should be enacted, then I say we should not give hypocritical lip service to our Declaration of Independence and our Constitution with its Preamble, but we should discard those documents with their outworn notions and relegate them to the scrap heap of interesting, but useless, historical curiosities. And the presently proposed liberalization of the criminal law dealing with abortion brings us to this crossroad. It makes necessary the choice to change or not to change our long held legal philosophy concerning man's basic rights, because the proposed enactment is a startling departure from our concepts of both substantive and procedural law.

When our founding fathers used the word "man," they referred to the entire human race and to every human being. They did not intend to exclude women and children. They did

not mean only healthy men or sane men, or brilliant men or strong men. They used the word in its generic sense to embrace all of mankind and all human beings.

And the law of New Jersey recognizes that an unborn child, from the very moment of conception, and at all stages of its gestative life is a legally existing entity. This was recognized in three leading New Jersey cases which I am sure this Committee is familiar with - *Smith v. Brennan*, decided in 1960; *Raleigh-Fitkin Hospital v. Anderson*, decided in 1964; and *Gleitman V. Cosgrove*, decided in 1967.

*Smith v. Brennan* allowed a child after birth to recover damages for injuries it received before it was born. *Raleigh Hospital v. Anderson* required a mother, against her religious scruples, to have a blood transfusion to save the life of her unborn child. *Gleitman v. Cosgrove* denied recovery by parents against the obstetrician because their child was born with defects and the doctor had not advised them to procure an abortion.

Our criminal law regards an unborn child as a separate entity. Our law of property and decedent's estates considers an unborn child in being for purposes beneficial to his interest. Our Workmen's Compensation law allows a posthumous child to recover as a dependent of his deceased father, on the ground that he is both a "child in esse" at the time of his father's death, and when born, a "posthumous child." Hence the law recognizes the property rights of every unborn child no matter what the state of gestation, and will appoint a guardian ad litem if necessary to protect those rights.

With the proposed modification of the abortion law, what kind of legal anomaly will we have which stands firm for an unborn child's property rights but denies his absolute right to live and enjoy them?

ASSEMBLYMAN CRANE: Excuse me, could you conclude your remarks, please?

MR. McKERNAN: Yes. Gentlemen, I have a pamphlet which I will leave with you, but I think that the opinions which I have cited in here reflect the trend of current judicial thought, which is to expand the rights of unborn children rather than to circumscribe them. And I think that the importance of those three cases are not particularly the matters which they decided or the facts in the civil rights which they decided in them. I think that the most important thing about those cases is that they reveal the philosophy of highly-trained, carefully disciplined, and extremely expert legal minds, regarding the unborn child, its status as a human being, and its legal rights, including its right to keep the life which nature gave it.

I would only like to add that if legislation were passed which mandated the destruction of every fetus in the categories defined by the American Law Institute proposal, such legislation would be denounced, if you mandated it. However, you are asked to pass permissive legislation which puts the fate of this child in the hands of others whose reasons for destroying it may be purely subjective, so you will have this anomaly, you will say to the unborn child, or the law will say, the state does not compel your destruction



but it will permit others to destroy you if they do not want you to be born. And I say that one type of legislation would be as vicious as the other.

I have heard the civil rights of the doctors protected or protested, a protest of their civil rights; I've heard the civil rights of the mother spoken for tonight; the civil rights of the doctors again; and the psychiatrist would have us put the fate of this child in the hands of a woman who admittedly is not in good mental health when she's going to make the decision to get rid of the child.

I don't think that we should turn the question of life and death of a part of our population, gentlemen, over to the psychiatrist or the doctors. And I think that this is the heart of the matter, that we have to either depart from the law as we have understood it ever since the founding of this country or let us say, well, everybody is not equal. This child is a human being. We have to admit that. The courts, the legal philosophers, the medical men say he is a human being. Let us say he does not have a right which is equal to others but when we do this we are going to endanger the life of every one of us; we're going to endanger the lives of other classes of people, the hopelessly insane, the burdensome age and incurably ill. And my opinion is that the abortion law should be changed to define that the one ground which justifies the taking of the life of the fetus is the imminent danger to the life of the mother. All of these other indications need to be handled, the poor child who is the victim of rape, the mother whose family is too large

but not by aborting a life. I think there is more social legislation necessary to take care of these situations but I don't think there is going to be progress of any kind and any gain when the opening gambit is let us destroy the unborn. That's not progress, that's an easy out and a return to barbarism.

ASSEMBLYMAN CRANE: Thank you, Mr. McKernan for your testimony.

I wasn't sure, from your statement whether you are under the opinion that this Commission is considering a particular revision of the law. The Resolution which set up this Commission states that the Commission shall recommend any legislation it may care to to the Legislature. We have currently no proposals that the Commission, at this moment, has proposed. The only proposals that we have are what have come in, more or less over the bar, to us, yours as well as others.

MR. MCKERNAN: I understand that. It was my understanding, Mr. Chairman, that the general trend, though, is for - the push, generally, is for the adoption of the American Law Institute's model code, model code for the revision of criminal laws, dealing with abortion.

ASSEMBLYMAN CRANE: I can say for myself, and I believe for most of the members of the Commission, that there have been no minds made up as of this point as to what's going to be done. We want to hear all facets and that is why we are having our, about, 20th hour of testimony and we are very grateful to you for coming.

MR. McKERNAN: Thank you gentlemen for inviting me.

COMMITTEE MEMBER: Mr. McKernan, your assertion that the fetus is an actual human being and not merely a potential human being, do you consider that to be a legal fact, a medical fact, or a personal opinion?

MR. McKERNAN: No, it's not a personal opinion because I am not an embryologist or a gynecologist or a doctor. I base that opinion on my reading of the - that is the opinion of the Supreme Court.

COMMITTEE MEMBER: We have heard testimony that the embryo is alive but not a human being. We have heard such testimony here by competent doctors.

MR. McKERNAN: The Gleitman Case covers those two facets. The Gleitman Case and the first case I cited, which is the Smith v. Brennan, - they recognize that from the very moment of conception this is a separate entity - the Brennan case; the Gleitman v. Cosgrove case goes farther and defines it as a human being, a human life, and they say that the parent's right not to be inconvenienced economically or emotionally cannot rise higher than the right of the child to complete its gestation and be born because of the preciousness of that very life. And they reiterate the statement from the Declaration of Independence that the right to life in our society is inalienable. That was the basis of the Gleitman decision by the majority. Now I am aware that there are minority opinions.

COMMITTEE MEMBER: Do you feel that abortion is permissible under any circumstance?

MR. McKERNAN: I think that an abortion should be permitted in our day and age only if the life of the mother is in imminent danger.

COMMITTEE MEMBER: And who will decide that?

MR. McKERNAN: I think that the doctor, the obstetrician, who is taking care of the mother can well make the decision based on his medical indications to him whether or not the life of the mother is in immediate danger.

COMMITTEE MEMBER: And, therefore, don't you think that the law certainly needs a revision in order to protect the doctor making the decision?

MR. McKERNAN: I said that, to define that that is the only grounds on which an abortion can be performed.

COMMITTEE MEMBER: Would you agree that the doctor under the present legislation is not protected sufficiently even under the category that you suggest.

MR. McKERNAN: I think the doctor is protected. I think he's protected. I see the doctor worrying about his position, I see it and I can appreciate it since the Gleitman v. Cosgrove case especially. But I think that he is protected, as the Prosecutor pointed out, more under our law than he would be under the Colorado law. I can see the doctor being less protected if there are specific categories mapped out in which he can or cannot do an abortion because, as the Prosecutor also pointed out, then the Prosecutor has specific instances in which he most likely would have to prosecute.

COMMITTEE MEMBER: Then this would defeat your purpose because abortions in other areas may be done by the doctor in the case of our legislation.

MR. McKERNAN: That's true.

COMMITTEE MEMBER: So would you be in favor of a revision in either case?

MR. McKERNAN: I would be in favor only of a revision to spell out that the justifiable cause, which is now undefined, be defined, that an abortion is justified only when the life of the mother is in imminent danger.

COMMITTEE MEMBER: As determined by the doctor.

MR. McKERNAN: As determined by the doctor. Yes, I would have complete confidence in the doctor.

ASSEMBLYMAN CRANE: Further questions?

RABBI SCHWARTZ: Yes. Do you see, in following out that idea, any conflict between the civil rights of a woman and the rights of the unborn child?

MR. McKERNAN: Not in the area which I have suggested where the life of the mother is in imminent danger. I would say that in that case the doctor should be allowed to make a decision. Speaking in terms of civil rights, and I've heard the term cast about here tonight. That is my point that I think that one of the things we have to decide in this measure is, does this child, this unborn fetus, have any civil rights. If he does, we may, by all this legislation throughout the United States, be posing a whopper of a case in the United States Supreme Court one of these days because this is the question- if this is a human being, if he is a

human being and if he has an equal right to life or does he have an equal right to live.

RABBI SCHWARTZ: And if he does have an equal right, is that right equal to the mother and the father or any other people concerned?

MR. McKERNAN: It's equal to the mother and the father, the same as an unwanted child who is two or three years old and who is a brat, who is incorrigible.

RABBI SCHWARTZ: So, therefore, under what justification would they save the life of the mother who is in danger, according to your thinking, since they would be both equal?

MR. McKERNAN: Well, I think the doctor should have some liberty there. I think that perhaps the life of the mother is more important if she perhaps has three or four babies at home.

RABBI SCHWARTZ: In other words, it is not equal.

MR. McKERNAN: Not perhaps in those circumstances. That's one of the problems that has to be worked out.

I think it highlights, Rabbi, the very serious problem of determining whose rights are going to be equal and who will have inferior rights.

RABBI SCHWARTZ: But there are rights which make unequal - in other words, one life is more important in certain circumstances -

MR. McKERNAN: No, I don't think that.

RABBI SCHWARTZ: -- such as saving the life of the mother.

MR. McKERNAN: I don't think anybody's life is

more important than another person's life. I don't think that. I do say that in an area where a doctor must make an immediate decision he should have guidelines.

RABBI SCHWARTZ: Why can't that same thing be carried out when you have to make a decision in other areas?

MR. McKERNAN: Such as what other areas?

RABBI SCHWARTZ: Rape?

MR. McKERNAN: Well, rape. Of course, rape is all right. I've done a lot of reading about rape too. Now let me say this about rape. I think that this rape clause is something which - I wouldn't permit an abortion for rape, and I'll tell you why.

RABBI SCHWARTZ: You would not.

MR. McKERNAN: No. I'll tell you why. Let's say that a woman is raped. She has been subjected to an outrageous attack. Now, if this be true, it would seem to me that if you are going to put this in the law, for instance, that there should be a requirement that she immediately report that. If she has actually been outraged, it would seem to me that she would want to go to a doctor immediately, as much to avoid possible infection from gonorrhea or sphyilis as to find out if she is going to have a baby. And if she goes to a doctor within 24 hours, he can perform something which is not an abortion. He can perform a curettage and scrape the womb.

RABBI SCHWARTZ: But at the very moment of conception some --

MR. McKERNAN: Conception doesn't occur at the very moment of intercourse.

RABBI SCHWARTZ: Not necessarily but it could occur

very shortly after that. And you are still killing a potential human being.

MR. McKERNAN: Oh, no.

COMMITTEE MEMBER: Mr. McKernan, when you're referring to rape are you also referring to statutory rape?

MR. McKERNAN: I'm referring to statutory rape and to --

COMMITTEE MEMBER: Felonious rape?

MR. McKERNAN: -- felonious rape.

COMMITTEE MEMBER: Well, take a 14 year old girl subjected to statutory rape who, you say, should report this right away but who quite obviously, in very many cases, does not. This is not in the same sense as you are thinking of felonious rape but in the sense that sometimes there is reluctance on the part of the parents or on the part of the girl herself and there is no knowledge that it takes place other than between she and the man involved in it until such time as she is pregnant and at this time she goes to her mother and tells her. Now what happens in that situation?

MR. McKERNAN: In that instance, gentlemen, I do not believe - if she has a child, if she is pregnant - and let me say in that connection, in studying the statistics pregnancies resulting from rape you'll find that they are extremely minimum. But in that connection, I admit this girl has had a very severe traumatic experience. I say that the situation ethics would demand that she be aborted but I do not believe she should be aborted because I believe that at this point you have another human being who is living, who has a right to life. I don't believe that this girl should



be burdened with this child after it's born necessarily but I do not believe, on the other hand, while she might not want this child, that any child who is born is unwanted. I happen to have a lot of adoption cases. I know that there are 500 homes for every child that's born, illegitimate, the product of rape, and I've even had people who will not take a child - they have three - they would not take a child unless he had an anomaly. So there is no such thing as an unwanted child.

This is the very thing. You can pass a law, you can sit here and you can hear the case of the poor girl of 14 that's raped, this, that and the other thing, and I sympathize with them - I have three daughters and I wouldn't like it, but, again, you can't base laws on one given situation if everyone is going to be equal before the law. That is the thing I think that the Legislature has to do.

If we recognize that this fetus of this girl, even though she's been raped, is a human being who is innocent - he didn't cause her condition - what are we going to do? As soon as you do this, as soon as you pass a general law - as Mr. Werner said, "It's going to be on the books," and you're saying that one class of people, all fetuses as a result of rape, are to be aborted. You're passing a law which condemns to death a certain class of your society, and these fetuses are part of our society, we were all fetuses.

COMMITTEE MEMBER: May I ask, do you believe in capital punishment?

MR. MCKERNAN: Yes, I do believe in capital punishment. Let me say this about that. I think it's pretty ironic that

there are certain quarters crying out the loudest against capital punishment and who are, on the other side of their mouths, coming out for the killing of the fetus. And I can't understand how in one breath you can defend a convicted murderer's right to live and in the other breath doom an innocent fetus. I don't think that's for the common good.

COMMITTEE MEMBER: Yet the same irony can exist in those who advocate not killing the fetus, not killing a being which has not yet developed into its potentiality and yet taking away the life of the convicted murderer.

MR. McKERNAN: Oh, I think that is entirely reconcilable. A murderer has offended society. He has more or less knowingly, willingly subjected himself to the sanctions of the law. A fetus is entirely innocent, it has not knowingly submitted itself to the sanction of the law, it's entirely innocent. I don't think there's any analogy in sponsoring death for convicted murderers who knew what they were doing and defending the right of the fetus to live.

ASSEMBLYMAN CRANE: Thank you, Mr. McKernan.

MR. McKERNAN: Thank you gentlemen for inviting me.

Doctor and Mrs. Clarence Jaggard, please.

D R.   C L A R E N C E   J A G G A R D:   Gentleman, I am Dr. Clarence Jaggard. I am a Doctor of Medicine, a graduate of Temple University School of Medicine, and a general practitioner in Woodbury, New Jersey. In my education I have a degree in biology from Bucknell University. In working for this degree, I earned membership in Phi Beta Kappa.

I would like to state that I agree with what has just been said that the unborn fetus from the time of its conception is an independent, living being. And that fetus obviously is human tissue and is an existing human being, and, therefore, I do not believe in abortion in any form.

I would also like to state that as a general practitioner of medicine, I find laws such as the Colorado law very difficult to live with. This is permissive legislation, it is true, but the public doesn't always interpret this as permissive. They have the right to have an abortion performed in the situations spelled out, and this puts the doctor under a lot of pressure from the patient and from the family of the patient.

I talked to one of these people and they had one of these nebulous reasons. This person had never had any psychiatric care, but she was awfully upset at being pregnant and was going to jump off a bridge, which probably isn't true to start with. If you try to talk these people out of it, you not only have the patient but you may have twenty or thirty members of the family to contend with, and this type of legislation I find is very hard to live with.

ASSEMBLYMAN CRANE: Did you wish to make a statement, Mrs. Jaggard?

M R S. S A L L Y J A G G A R D: Yes. I am a mother; I have had ten pregnancies starting with my first at 28 years of age, which I lost by spontaneous abortion, and ending with my last when I was in my forties. I'm sure I wouldn't have jumped off a bridge, but I think for a matter of less than a week I cried a bit. Fortunately my husband didn't offer me an abortion; I didn't seek one. I have delivered this child. She is growing beautifully. I think if I had had an abortion and been deprived of such a lovely youngster, I would have missed a great deal. I think this business of people saying they can't stand this is a lot of nonsense.

As Secretary of the Board of Directors of the Psychiatric Clinic in our county, I know of cases we have had where a scientist has recommended that the woman be aborted because of psychiatric reasons, and when it has gone before the State Board of Psychiatrists, Psychologists and Psychiatric Social Workers they voted it down, and none of these cases have ever had any post partum problems. They have adjusted to the pregnancy. They have gone along and been as well adjusted afterwards as they were before.

In our own practice I have seen it, because I work with my husband frequently. In the case of a head nurse who had been a student of mine and who had had a post partum psychosis -

ASSEMBLYMAN CRANE: Will you explain that medical term you just used?

MRS. JAGGARD: A post partum psychosis means she had a mental breakdown about three months after she delivered

her baby. She has had three pregnancies since. No one thought to offer her an abortion because she had had a post partum psychosis before. Her children now are of school age. She is now a public health nurse and she has a wonderful situation.

We know of a doctor whose wife is a schizophrenic. This is a psychiatric diagnosis, and she will never be well. She has had two babies since she was hospitalized. She is nutty as a fruit cake but does a beautiful job with her children.

Now who is to say that these people should be aborted? You men have wives - some of you don't, of course - and you all know that your wife at some time becomes a psychiatric problem. She is positively depressed. She is hell to live with, and you are all aware of this. It may happen once a month; it may happen every couple of months, and yet if, when your wife was pregnant during this period and got depressed, you immediately gave her an abortion, you might have problems even greater than her occasional depression because of her hormones. I just think you have to have a little bit more awareness as to this going insane. As for criminal abortion, I don't think that is ever going to stop. If you legalize abortion, how many women would take advantage of this because they don't want to be pregnant. You can hardly explain that to your bridge club, you know, that you've had an abortion done because you really didn't want to have that baby. It just wouldn't set right. They would still be going around the corner looking for someone who would do it clandestinely. I don't think think that this is the answer.

ASSEMBLYMAN CRANE: Will you conclude, please. We are running out of time.

MRS. JAGGARD: I'm finished.

ASSEMBLYMAN CRANE: Are there any questions? Rabbi?

RABBI SCHWARTZ: Is it conceivable - I don't like to use that word. [Laughter] Do you admit there may be the slightest possibility that someone who has had the privilege and pleasure of bearing nine children may not be able to bear having a tenth child as well as you? Is there a slight possibility?

MRS. JAGGARD: No, I don't think so.

RABBI SCHWARTZ: None whatsoever.

ASSEMBLYMAN CRANE: There are times when my six children who are living almost drive me nuts. I have a friend who has 16 and she almost goes nuts.

RABBI SCHWARTZ: Is there a slight possibility that there may be someone, yourself excluded, who may not be able to bear up under the pressures of having nine or ten children.

DR. JAGGARD: Isn't that what is called the worn-out housewife's syndrome?

MRS. JAGGARD: Every woman has that. She gets cabin fever. It's normal. No, I don't think that that would be so.

RABBI SCHWARTZ: You don't think there could be a condition or there could not be a situation where a woman would not be able to -

MRS. JAGGARD: If a female talks herself into that, I am sure she thinks so. You would have to do a lot of talking -

RABBI SCHWARTZ: One final question, Doctor.

DR. JAGGARD: This doesn't negate the inalienable right of that human being which is present from the time of conception to his life or birth.

RABBI SCHWARTZ: Now you mentioned three words at the beginning. You said the fetus is a human, living, being. These are three independent words. Could you define these for me, Doctor? What is the difference between human, living and being?

DR. JAGGARD: First of all, this is obviously human tissue. This is not just some blob, some substance - out of where? It is living tissue.

RABBI SCHWARTZ: Are there other tissues in the body other than the fetus which are human?

DR. JAGGARD: The entire body is human.

RABBI SCHWARTZ: Right.

DR. JAGGARD: Now the fetus is living from the time of conception, and this is a thing that I am convinced of in the study of biology and embryology. If we want to give you the technical terms, the reproduction and the development of the human being and its progress through the final genetic scale, it starts off as a fertilized egg. It's a one-celled animal such as you can find in a drop of water, etc. This is not a paramecium or an amoeba. This is a human cell. This cell can absorb nutrients from the fluids that it finds itself in, usually in the fallopian tube, not even inside the uterus. It might reach into the uterus but at the time it does, it is formed into a ball of cells, a morula stage, where you get into the final genetic reproduction, into the sessile form, so that the thing embeds itself in the wall of the uterus and a human pregnancy does just that. Part of the tissue develops into what we call an after-birth or placenta, which, like the roots of a tree

sinks into the wall of the uterus and by osmosis there is this solid membrane barrier between the contents of the mother and the contents that it soaks up as nutrition and grows on its own, and it is in this stage of life in which it lives as a parasite, but it lives on its own.

RABBI SCHWARTZ: Are there things in the human body that are living but not considered human medically?

DR. JAGGARD: What's the body's cells.

RABBI SCHWARTZ: So, therefore, a living cancer cell would be considered what?

DR. JAGGARD: Living tissue.

RABBI SCHWARTZ: Would that be considered human tissue?

DR. JAGGARD: It's human tissue, yes. Maybe it's not a being.

RABBI SCHWARTZ: In other words, it's classified as two of those qualifications.

DR. JAGGARD: Two of them, yes.

ASSEMBLYMAN CRANE: Thank you. Are there any further questions? Thank you very much for coming here.

I will call Rev. Charles West, please.

Will you identify yourself, please, Reverend?

R E V. C H A R L E S W E S T: My name is Charles West, and I am Professor of Christian Ethics at Princeton Theological Seminary, and a Presbyterian Minister.

I want to say that I am not representing any group but simply whatever authority my work in the field of ethics may have. I would like to distinguish two questions first in this area, which I think we need to keep clearly separated.



One is the question of the morality of abortion; that is to say its wrongness or its rightness and the conditions when it might be permitted or commanded or when it might not be. This is basically, I think, a question of concern of the individual conscience, of the family as a responsible fellowship, of concern to the church as a supporting and critical spiritual community, perhaps also of concern to the wider community of friends and neighbors and, of course, so far as the question of health is involved, it is of concern to the medical profession.

There is another question, and that is the question what, if any, role the law and the State should play in enforcing or supporting or defining this morality.

Now it is my conviction, which I will try to support in these few minutes, that the abortion laws of the State should be drastically liberalized in such a way as to place responsibility for decision and action with relation to abortion on the individual, the family, the church, the neighborhood and the medical profession where it belongs. I advocate this in the interest of a stronger control over irresponsible abortion than exists today. I believe that the principal activity of the State with relation to this problem should be in greatly increased care and education for poor children, for physically and mentally handicapped and disturbed children, and children whose family situations prevent them from growing into responsible maturity, all of these supporting and supplementing other community work toward those goals.

In other words, activity which will reduce the pressure for abortion in these ways.

My reasons are two: first, the right of a fetus to life in this world depends on and is a response to the calling of God and the promise of God to the parents and the future child in their relation to each other. The right of the fetus to life in this world does not depend upon the supposed endowment of that fetus with a soul at a certain point in its development. No State that I know of has ever defined or punished abortion as murder. It would be not only legally but theologically wrong to do so, because the human being is not a combination of soul and body as two separable parts. This psychology goes back to Aristotle and the Greeks but it does not go back to the Bible. A person becomes a person because he is called into being at a given time and place by God as a whole being. He becomes this being, this person, as an entity over against his parents and, therefore, with rights to be protected by law at birth. The parents, especially the mother, normally sense the promise of this person-to-be much earlier and rejoice in it as a calling of God to them. But the fetus cannot exist independently of the parents' or the mother's response to this calling until birth.

Secondly, although normally parents are called to bring a conceived fetus into the world as a child, called by God, there may be other callings which have to be weighed against it, or the mother may be unable to face the responsibility involved. The psychological rejection of a child born

out of rape is an example of the second. The responsibility of a mother with diminishing energies for an already large family may be an example of the former. In neither case, nor in many others that we could mention, can we make a law which will make abortion the commanded thing to do. But the point is that there is before God and man an area of freedom here, in which the parents, in consultation with the community around them whom they know and trust, must decide for themselves where their responsibility lies and what they are called to do. The State can at best try to ensure, as in the case of marriage, that the decision is made responsibly, and that some agency of the community will vouch for it.

I propose, therefore: a. That abortion be permitted by law during the first six months of pregnancy; that is, before the question of the independently viability of the fetus arises, upon consent of both parents in marriage or the mother alone in case there is no marriage, with the concurrence of a doctor, clergyman, or other authorized representative of a community to which the parents or the mother are related, giving the reasons which make this abortion a responsible act.

b. That the State seek to create an ethos which will discourage abortion by greatly improved facilities for helping disadvantaged children of all kinds to find their place in society.

ASSEMBLYMAN CRANE: Thank you, Doctor West.

Any questions?

MR. RITTENHOUSE: Just one. Doctor, you say during the first six months with the permission of both parents and doctor or clergyman or other responsible member of the community. Is that your wording?

DR. WEST: Yes, sir.

MR. RITTENHOUSE: This with the suggestion that the statute define in this instance who the other responsible people in the community are?

DR. WEST: I would suggest this possibility be explored. I am thinking here primarily here of the community of the church and the natural fact that a mother in a situation like this will go to a clergyman. There may also, however, be other persons to whom a pregnant woman might go who is not religious and I want to leave the possibility open to her.

MR. RITTENHOUSE: You mean her family physician. But would it have to be the family physician? Could it be just her clergyman and the mother and father?

DR. WEST: I feel there would have to be a physician involved in it because a physician would have to perform the operation.

ASSEMBLYMAN CRANE: Thank you, Doctor. Could you leave a copy of your statement with Mr. Alito, please.

Dr. Richard Hicks, please.

D R.     R I C H A R D     E.     H I C K S: I am Dr. Richard Hicks. I am a Board Certified Psychiatrist, a resident of New Jersey, currently practicing in Philadelphia where I am Assistant Professor of Psychiatry and Assistant Director of

Psychiatric Education at the Hahnemann Medical College.

I have a prepared commentary here, but I am not going to read it. There are many other things to take up. I will submit that.

I will mention that in that I discuss the three patients whom I have seen in twelve years experience who reported to me any mental distress associated with having had an abortion, two of which were illegal and one of which was a therapeutic abortion and I have described the nature of the psychiatric disturbance and the mental distress related to the abortion within that context.

I have also made some other comments here, but I want to speak now in a more off-handed manner. I am sure this will be quite at random. My point of view in listening to this is that it kind of all depends on how you look at it and I certainly do sympathize with you and I don't envy you your position in this. But there are so many questions which simply cannot be answered categorically. It seems to me nevertheless that the Legislature should do one or two things. It should either take this question of therapeutic abortion out of the physician's hands entirely in defining what represents justifiable reasons or it should place it entirely in the hands of the physician and his patients. I favor the latter.

Now I have brought, along with the statement I have prepared, which I must say is typed very poorly - my secretary is ill and I was short of help today - but I have brought along also copies of four reports, one of which in particular I want to call to your attention and urge you to read, and this is an article which

appeared in the Journal of Comprehensive Psychiatry, March, 1968, entitled "Psychiatry and the Abortion Laws: An Overview." It is an excellent overview. It is a review of most of the major literature, not only in the field of psychiatry, but represents demographic studies, studies of adoption statistics which will contradict some testimony you heard a little while ago from an attorney. There is a great deal of very valuable information in this and they also cite here, I think it is some eight studies, the only eight perhaps statistically significant studies that have been done concerning the psychiatric status of women who experience abortions, following abortion. They are, I think, quite important discussions and perhaps the original papers would be more helpful.

I don't see the problem as basically a medical problem or a psychiatric problem. I think basically it is a moral problem, the question of abortion - legal, illegal or what have you.

One of the things I feel has been rather lacking in the comments this evening, however, concerning conditions which represent threats to pregnant women, is the threat represented to pregnant women by the condition of seeking an illegal abortion. I am sure you are familiar with the estimated statistics on this. Some five to ten thousand women die for one reason or another subsequent to illegal abortions in this country each year.

ASSEMBLYMAN CRANE: Excuse me. Could you conclude, please, Doctor?

DR. HICKS: Yes. I conclude by making one other comment that hasn't been made this evening - it has probably been made before -

that the threat of any law which would prohibit a woman from obtaining an abortion or even of the current existing laws all over this country which permit abortions for any reason is greater to the economically-deprived woman and I think that serious attention should be given to this. It is possible if you pass something on the order of the American Law Institute's recommendations or the AMA's and some others - if you pass such legislation, women in an economic situation of middle-class or upper-class standards are going to reap the benefits of this. Economically-deprived women probably will not, as other statistics demonstrate from situations in which these laws currently exist, and I think this is something which needs considerable attention.

[Dr. Hicks' written statement can be found starting on page 215 of this transcript.]

ASSEMBLYMAN CRANE: Thank you, Doctor. Any questions?

MR. RITTENHOUSE: Are you suggesting that the law, as you say, either take it out of the hands of the physician, which you don't recommend, or place it in the physician's hands and the parents? You are saying to take it out of the criminal code altogether?

DR. HICKS: Yes, indeed. I agree with Mrs. Smith and others who recommended that it be part of the Medical Practices Act. I think that is where it appropriately belongs without the intrusion of another party into the doctor-patient relationship on the issue. The moral aspects of this are so obscured by so many different personal points of view that I think it is impossible to reach a decision that can be applied generally to society. I think this is something that legitimately people should decide

for themselves.

MR. RITTENHOUSE: Thank you.

ASSEMBLYMAN CRANE: Thank you, Doctor.

Is Dr. Leonard G. Scott here, please? Will you identify yourself, please, Dr. Scott.

D R. L E O N A R D G. S C O T T: My name is Leonard G. Scott, M.D. I am a practicing physician in Bridgeton, New Jersey. I am a graduate of Upsala College, '31, and of Medical College in '36. I did post graduate studies in the University of Pennsylvania, Hahnemann Hospital and Harvard Medical School. I am on the staffs of Our Lady of Lourdes Hospital in Camden and Bridgeton Hospital in Bridgeton, New Jersey. I am a member of the Immaculate Conception Church, the Knights of Columbus and the Knights of St. Gregory. I am one of those Catholics that was referred to a few moments ago.

I think first of all there should perhaps be established some norm here, in particular, "What is life?" I have heard it kicked around. Life begins - and it has been so adequately explained I probably don't need to do it again - but it begins with conception and the reason why this is a human being is because it has 23 chromosones in each egg, which makes 46 chromosones in man.

I kept a few statistics of my own in this regard. Having practiced over 30 years, I have seen almost 50,000 people. I have done a thousand deliveries and out of that thousand there were 330 illegitimate babies. I have had six incest cases and two rape cases and six babies died of deformity not due to



measles. But it comes to my mind at this moment and also in the minds of the black community that one wonders whether or not a law is intended to discourage births among the black community. We feel that it has a sinister implication. Or is this law being considered because of the large number of welfare recipients which are ever increasing?

If I may, I would read this. It is entitled, "Birth Control Plot," and it was in the Star Herald. I won't read it all, but part is applicable here. [Reading] "Recently three Negro doctors pointed out that such family planning campaigns had been used in the past to curb the American Indian and Eskimo populations. Naturally the racists would like to see the Negroes included now, but black militants are not falling for the propaganda that would make people believe that sterility and everlasting joy go hand in hand."

Anyway, in the black community there is kind of a happiness in bringing life into the world. They are basically religious and in the black community these illegitimate children are absorbed in the community and there are deep family ties.

Now if abortions were done so widely as they would lead me to believe and as I have heard here tonight, I would have seen a whole lot of them. I have had the opportunity to discourage people, but there have only been a few.

Of the rape cases, the two cases, the female did not get pregnant. Of the cases of incest, one I do know left town and did have an abortion. The others - I don't know what happened to them. That is over the course of 30 years.

One wonders with a change in the law in any way whether or

not it can be controlled. This can be seen by the seven physicians that were arrested - at least their licenses were attached - in California. They didn't even wait.

I also want to cite a case of a woman who was pregnant a good many times - I think five or six times. She was tuberculous, very badly tuberculous. Her husband was very, very, syphilitic. I would like to pose the question to you: "Should this woman be aborted with that type of history?" If your answer is "yes," then you would have aborted and killed Ludwig van Beethoven because that is his history. The only point I am making here is that in many of these so-called necessary therapeutic abortions ---

ASSEMBLYMAN CRANE: Excuse me. Could you conclude, please, Doctor?

DR. SCOTT: I am not half finished, but I will stop.

ASSEMBLYMAN CRANE: We do have a time limitation. That's the only reason. Any questions of Dr. Scott?

MR. RITTENHOUSE: I have read comments, but this is the first time I have heard the argument put forth that this might be construed as some sort of plot against the black community and I think that it is well that it be stated, Doctor, because I think that Dr. Burch who could be said to be a member of your community from the northern end of the State has testified as an obstetrician that he did not feel in his practice it was a problem and, in fact, endorsed, the AMA recommendations.

Are you referring to the American Law Institute and AMA recommendations, Doctor, when you say that?

DR. SCOTT: Yes, I am, because the black community is

suspicious.

MR. RITTENHOUSE: Any form of birth control, whether it be abortion or any form of contraceptive device --

DR. SCOTT: Right.

MR. RITTENHOUSE: -- could be construed to be against the expansion of the black community as such?

DR. SCOTT: Yes.

MR. RITTENHOUSE: There has also been testimony that the AMA proposal and so on might provide an out for those in the middle-or upper-income brackets and so on, but it might not include the black community in its present state. Would you agree with that? In other words, would you say it would have relatively little effect upon persons who would be in the black community today if this law were amended so as to include the AMA recommendations?

DR. SCOTT: They are suspicious of the whole thing.

MR. RITTENHOUSE: Well, would you say then the law should remain in its present state?

DR. SCOTT: Exactly as it is.

MR. RITTENHOUSE: With the reference as it is to lawful justification?

DR. SCOTT: No. I think when our forefathers wrote that law, they foresaw all this. The fact that it is ambiguous makes it a deterrent because if you open the doors, then we are going to have mass abortions. It won't be a reason; it will be an excuse.

MR. RITTENHOUSE: So you say, leave it in its present form - it will then act as a deterrent to the medical profession as well as to private individuals.

DR. SCOTT: Right.

MR. RITTENHOUSE: And you maintain that at least in your contact with the community - whether we call it the black community or whatever - you feel that there is not a major problem of illegal abortions?

DR. SCOTT: No, because they won't even use the pill and they are not supposed to be educated or anything.

MR. RITTENHOUSE: I didn't mean to limit it, Doctor, to the black community, but we can talk with respect to that if you wish.

DR. SCOTT: I am speaking in that way.

MR. RITTENHOUSE: That's fine. But you say in the black community, it is your opinion that illegal abortion is not a problem as such.

DR. SCOTT: No.

MR. RITTENHOUSE: It is simply not being performed.

DR. SCOTT: That's right.

ASSEMBLYMAN CRANE: Doctor, do you have any idea or guess - since we haven't been able to get good statistics - as to what the illegal abortion problem might be in the black community, itself?

DR. SCOTT: No, I don't have any statistics on it, but as I say, I come in contact with them every day. You would hear it via the grapevine if there was much of it. I haven't heard that. I have heard in many instances that they fear the pill because of its side effects and they ask me many questions relative to the pill and they were given the pill not only by physicians,

but by organizations in an attempt to make them use it so that there wouldn't be an increase in pregnancies. I have delivered babies and my number of deliveries, strangely enough, has only fallen a little per year. We found that it has cut down a great deal the number of pregnancies, but it is not among the black community.

ASSEMBLYMAN CRANE: Doctor, you referred before to the fact that some persons had approached you to talk about an abortion.

DR. SCOTT: Yes.

ASSEMBLYMAN CRANE: Your recommendation to them was not to have it done?

DR. SCOTT: Exactly.

ASSEMBLYMAN CRANE: Are unwanted pregnancies not a problem in the black community?

DR. SCOTT: Oh, they may be a problem, but they see it as a mistake and they go ahead with it.

ASSEMBLYMAN CRANE: They go ahead and bring the pregnancy to term and bear the child?

DR. SCOTT: That's right.

ASSEMBLYMAN CRANE: You also testified that you had delivered several hundred illegitimate children, I believe.

DR. SCOTT: About 330.

ASSEMBLYMAN CRANE: Do you know what happened to those illegitimate children - where they went from the hospital?

DR. SCOTT: Yes, I have a pretty good knowledge. I am in the throes now of trying to get all the pictures of all the children. I have about 400 of the thousand and a good many of

them have gone to college and made teachers out of themselves. They have done some advanced studies beyond high school.

ASSEMBLYMAN CRANE: Were they adopted by someone else, Doctor?

DR. SCOTT: No, strangely enough, the Negroes don't do much adopting. As I said before, they are absorbed in their own families. Somebody will take them.

ASSEMBLYMAN CRANE: I see. Thank you.

REV. DENTICI: Doctor, is there anything that you can suggest in the way of positive legislation that would help your community, especially the poor people, relative to their family life, relative to the having of children, the size of their family?

DR. SCOTT: Well, I don't think legislation could do any more than an interested person such as a country doctor like myself, trying to teach, going around to different churches and communities giving various types of health talks. But like the minister and the priest, some of it falls on cold ears.

REV. DENTICI: Is there a need, Doctor, for more of that type of work that you just described in bringing better health methods to your community?

DR. SCOTT: Yes, there is. President Johnson in his last speech mentioned that. So if we don't have more people, we won't have more to educate and more to lead, the thousands he asks for in various educational fields. Mr. Nixon is now trying to get a number of persons and I am sure he doesn't designate color. He wants a person with ability and training. And I feel that it is a sinister thing too - I always did - with my past experience and the experiences I have had. Any more questions?

ASSEMBLYMAN CRANE: No, I don't think so. Thank you, Doctor.

ASSEMBLYMAN CRANE: Mrs. Fletcher, please.

MRS. FLETCHER: I presumed you might like to see a housewife.

ASSEMBLYMAN CRANE: We are very happy to see you, Mrs. Fletcher. Please identify yourself.

M R S. M A R T I N F L E T C H E R: I am Anna Fletcher.

ASSEMBLYMAN CRANE: Where do you live, please?  
In New Jersey?

MRS. FLETCHER: I live in New Jersey, yes.

ASSEMBLYMAN CRANE: All right.

MRS. FLETCHER: Abortion was no issue in England before 1803 or in the United States before the Civil War. Under common law abortion was not punishable if performed before quickening.

In 1858 the New Jersey Supreme Court emphasized the purpose of the abortion law, ruling the design of the statute was not to prevent the securing of abortions so much as to guard the health and life of the mother against the consequences of such attempts.

No society by law or religion has extended full rights to the fetus. There is almost no required registering of fetal deaths before 20 weeks and often 28 weeks. Aborted fetuses are not buried with religious ceremony. Punishment for performing abortions was varied from penance to excommunication to the present day fining and imprisonment. Notice that it has never been and is not now punished by capital punishment. Society by its actions, mores and laws denies that a loss of a fetus at five months is a loss of life.

Gentlemen, the opponents of abortion insist upon calling a fetus a child and call abortion murder. Where is the death sentence for abortion? Where has it ever been? Why are they not opposing the statute by calling for mandatory death sentences for the crime of abortion? It is because neither they nor any of their predecessors have truly considered it murder.

I do not believe in liberalization of the abortion laws, basically because abortion should not be subject to legal jurisdiction. Some of my other reasons for opposing liberalization are:

1. Liberalization leaves the physician with the uncomfortable feeling of having the district attorney watching over his shoulder.
2. Liberalization will not grant the woman the right to not bear a child.
3. Liberalization will not reduce illegal abortions appreciably for where one finds restrictions, which are inherent in liberalization, one finds many trying to avoid these restrictions. And also, when one breaks the law it is reasonable to assume there will be emotional trauma of some sort accompanying it.
4. Liberalization is a way of avoiding making a decision, is abortion murder, by legislatures and the denial to the woman of a right to make a decision regarding the number of children she will bear.

I do believe in liberalization of the law because it appears unlikely to me that any legislature is willing to



be the first with repeal.

You should not tolerate abortion if you find abortion is murder. If you do not find that abortion is murder you should not recommend any restrictions for if you do it would be hypocrisy.

I would like to impress you a little bit with the fact that I have a master's degree in physiology but I did not finish my doctorate. I gave it up for home, hearth, husband and child. I would like to tell you one thing that has not been brought before the Commission and that is the fact that crowding in itself is harmful. It is harmful physically. Rats which are crowded will spontaneously abort. If they do carry to term, some of the young, and more than should be, will not be healthy, they will not be as healthy as others will be. It is harmful also mentally for the same rats which can live together in enough space, all other things being equal, will not fight and carry on. When they are crowded they do attack one another and kill one another.

Thank you.

ASSEMBLYMAN CRANE: Thank you, Mrs. Fletcher.

Any questions of Mrs. Fletcher?

REV. DENTICI: How many children do you have, Mrs. Fletcher?

MRS. FLETCHER: I have one.

REV. DENTICI: Have you ever given consideration to abortion for yourself?

MRS. FLETCHER: Yes. I would like to say before I answer that fully that I can readily understand, as a woman,

any woman's reluctance to come before you and testify and say that she at one time wanted an abortion. I can also, as an aside to the Doctor, say that I could understand why she doesn't want to go reeling off to a doctor and tell him that she's been raped within a couple of hours.

Yes, I did at one time desire an abortion. I was very upset. I had been upset for another reason. I went to a psychiatrist. During the time I went to the psychiatrist, I thought that I was pregnant and I planned with absolute completeness my departure from this earth. I was not going to have a child and I knew at that time, not knowing as much as I know now, that there was no way for me to get out of it outside of an illegal abortion. I was not going to go through that. And it is a terrible thing to go through. I must add that you heard Dr. Guttmacher's speech and he said that he started in many years ago because he had examined a woman who had attempted an abortion on herself and then found out when they autopsied that she was not pregnant. This was also my case.

REV. DENTICI: I'm glad you decided to stay with us.

MRS. FLETCHER: Thank you.

ASSEMBLYMAN CRANE: Any further questions?

Thank you, Mrs. Fletcher.

Is Dr. Peter Amenta here, please?

Will you identify yourself, please, Doctor?

D R. P E T E R S. A M E N T A: My name is Peter S. Amenta. I am Associate Professor of Anatomy dealing with Cell Biology and Embryology in Hahnemann Medical College

and Hospital in Philadelphia.

I would like to address myself to problems of the cell, if I may.

In his book - "The Cell in Development and Heredity", E. B. Wilson declared that the key to every biological problem must finally be sought in the cell; for every living organism is, or at some time was, a cell. At this very moment, a whirl of activity is taking place in our bodies, a process we call "mitosis" or cell division. Every second, unseen, unnoticed, millions of new cells are born in the body's ceaseless program of self-renewal.

You and I began life as a single cell, containing instructional material, deoxyribonucleic acid, or DNA, contributed in equal proportions by our parents. Contained in that single cell were the complete plans for making you and I as we are today, and as we shall be tomorrow. This tiny bit of DNA, weighing 6 trillionths of a gram, told the single cell to multiply in such a way as to produce us and not an ameba, not an insect, a frog or carrot.

Not only are nucleic acids apparently the repositories of genetic blueprints, but they are also the basic organizers and controllers of all life processes, from the relatively simple metabolism of an ameba, to - and most molecular biologists assume - the last and most complex process to evolve, human intelligence.

The original cell divided by mitosis into 2, 4, 8, 16, 32, and 64 cells, etc., until we were a small amorphous cone of cells, all precisely alike, all containing the same plans.

As we continued to develop, these cells began to take different routes - we call this "differentiation" - so that by the time we were ushered into a terrestrial from an aquatic existence, we were composed of the various tissues of bone, muscle, liver, etc., but nevertheless a mass of cells specialized to perform specific functions.

At what point in development does a hitherto "undifferentiated" cell become a liver cell, and ignore all the genetic instructions for making bone, muscle and the other tissues? We postulate a mechanism for switching genes on and off at certain times in certain cells. However, it must be emphasized that liver DNA is identical to bone, muscle, or brain DNA or, as a matter of fact, to any other cell of the body. Everything else except the liver genes are switched off. To my medical students I liken this to a piano keyboard. In the fertilized ovum, every key is being sounded or perhaps not being sounded. The cells may simply be duplicating the keyboards for daughter cells. In a player piano, a roll of punched tape determines which keys are to be depressed for a particular song, different chord sets making different songs. Imagine the kidney cells playing the same type of keyboard that is in a liver cell or a heart cell.

We contend, therefore, that the newly formed cell, following union of sperm and egg is a new human being, since it has the same keyboard as it will use all through life; that is, it possesses all the characteristics required for its physical and intellectual development and control of all life processes. The presence of a moving arm or leg is not a

requirement for humanness, but the potentiality for intelligence and rationality is.

ASSEMBLYMAN CRANE: Dr. Amenta, could you conclude your remarks and leave your written statement with us, please?

DR. AMENTA: I will.

To disregard the right to life of any one period, or to declare any one stage of development as human or non-human is an extremely dangerous assertion. If this right to survival can be surrendered for the fertilized ovum, the embryo, or the fetus, in the guise of "progressive civilization", then a "more progressive society" may seek to weed out, or cull the aged, the infirm, the terminal cancer patient, the Helen Kellers or the Steinmetzs.

Our understanding of these basic principles lies at the heart of all moral problems in medicine and law. Of all the creatures that ever lived, we are the first to understand this process, the first to understand how we came to be, the first to read the "Book of Life". Man's role on earth is changing, he can direct his environment or his own future. Ours is an age of transition. We hope that this transition will be such that to paraphrase Konrad Lorenz, "Man will be seen to be the missing link between the ape and the human being".

Thank you.

ASSEMBLYMAN CRANE: Thank you, Doctor. Any questions?

REV. DENTICI: Dr. Amenta, we were given testimony by a lawyer in Trenton that had me a bit puzzled and this I would like to ask your opinion on. It's in reference to a question, when does human life begin. It's a very short statement and

I would like to read it and ask your comments. It's entitled, The Sanctity of Life.

The question regarded as central by most debaters on both sides of the abortion law liberalization controversy is, when does human life begin? And there is only one correct answer, it does not begin. The sperm of the man is both alive and human in the sense that it is distinguishable from the sperm of every other animal. The ovum of a woman is both alive and human in the same sense. Each of these gametes before the moment of fertilization contain 23 chromosomes. Each chromosome is alive and human in the sense that it can be distinguished from the chromosomes of all other animals. At the time of fertilization all that occurs is that the two squads of 23 chromosomes rearrange themselves into a single platoon of 46 chromosomes. There is a new pattern on the genetic drill field but there is no new life and no different life than there was just before fertilization. There is just the same old life rearranged.

Now would you comment on that?

DR. AMENTA: Yes, I would. First of all, I think that's a very naive statement. The sperm indeed does have 23 chromosomes. It's what we call a haploid number of chromosomes; it's exactly half of what the newly fertilized egg contains. It is not human in the sense that it does not have potentiality for further development. Sperm is a differentiated cell in the sense that it can do nothing else and it cannot be interfered with to form any other type of cell. It cannot form liver, it cannot form brain, it cannot form a total. This sperm contains

only the materials which can assist in forming a human being. In like manner the egg contains 23 chromosomes. These are contributed by the mother to the formation of a newly formed human being. When these are formed you just don't have a rearrangement on a squad field but you do actually have not rearrangement but exchange of chromosome parts. These chromosomes exchange themselves so that these chromosomes are no longer identical to those that belong to either the father or the mother. There is a completely new set of chromosomes involved in which there is a new human being, unlike the father and unlike the mother.

Now when this new human being is formed, this single cell -- and as a Cell Biologist myself I can't conceive of a human being as an individual that can be called human only when an arm moves or, as we call this, quickening. I think this is again a very naive statement and it's part of our ignorance in understanding the development of the individual.

I think we have to go back to the single cell. I can't conceive of the single cell as not being human because, as I said before, I likened this to a piano keyboard. A frog may have a keyboard like you have on these little xylophones that you give kids, of only 8 notes. A human has 88 notes, it has in-between notes, as my daughter says. We have all the requirements for differentiating the individual. All the other species have different types of chromosomes, those which will make a frog, that which makes a tree, whatever you have. But only when the sperm and the egg are combined can you have an individual.

I think that this testimony of the sperm being the human being is not accurate because this was debunked back in the early 1800's when we had the theory of the homonculus. People used to look at the sperm and say that there was a human being all rolled up inside and all it took was for this sperm to enter the egg and this little human being would unravel itself. And this is entirely false according to modern-day genetics and molecular biology.

ASSEMBLYMAN CRANE: Thank you, Doctor.

Any further questions?

Thank you very much, Doctor.

Mrs. Hazel Stix.

M R S. H A Z E L S T I X: Mr. Chairman and members of the Commission, I am speaking as Vice President of the Board, Family Service Agency, Princeton, New Jersey.

The Family Service Agency of Princeton, Inc., a private nonsectarian and community-supported agency, - it's purpose to protect and enhance family life by helping families and individuals to resolve or reduce problems which seem to go beyond their own capacities - wishes to take the position and to go on record as being in favor of modification and liberalization of the existing New Jersey Statute on Abortion.

The Family Service Agency of Princeton, committed to promoting healthy family life, believes that if healthy family life is to be achieved marital harmony should prevail, economic security should exist, children should be wanted and loved, and children should be born with the physical and psychological capacities and opportunities to develop healthily



and to achieve within their potential.

The Family Service Agency of Princeton is in favor of liberalization of the grounds for legal abortion because it believes that children are presently being born into home situations and atmospheres where these conditions do not exist and under circumstances which deny them the opportunity for healthy development. It recognizes as well, and is concerned about the risk which some expectant mothers are willing to take, legal and medical, out of their desperate need to terminate an unwanted pregnancy.

We, therefore, vote and are in favor of the State of New Jersey carefully considering the following situations and circumstances as appropriate grounds for legalizing abortion:

1. Continued pregnancies seriously endanger the expectant mother's physical or mental health.
2. The infant may be born with severe physical or mental abnormalities or deficiencies.
3. Pregnancy as the result of rape or incest.
4. The new-born child would seriously jeopardize the physical or mental health of the existing children.
5. The expectant mother is under 16 years of age and unmarried.

The Family Service Agency of Princeton wishes to emphasize that strictly defined safeguards should be included in any legislation so as to guarantee and protect the civil liberty and freedom of choice of the expectant mother, whether it be to request, to agree to or to refuse to submit to an

abortion.

Information regarding the possibility of a legal abortion being performed should not be withheld but the expectant mother should be protected from any and all forms of direct or subtle pressure or coercion directed toward influencing her decision.

The Family Service Agency wishes to emphasize as well that any liberalization of the existing abortion law must also insure and provide the means for appropriate expertise, medical, legal, psycho-social, to be available so that a knowledgeable and objective determination can be reached with regard to the appropriateness and advisability of a legal abortion.

ASSEMBLYMAN CRANE: Thank you, Mrs. Stix.

Any questions?

MRS. STIX: I would like to add, since you didn't ask me, that we do take into consideration in these proposed five points the 95 percent that you've been asking about who want to have abortions but can't - but who want to have them for social and economic reasons, because one of the points mentioned here which has not been mentioned too often is the physical and mental well-being of the rest of the family and I think that this might be some solution to the problem of all of the people who want to have abortions legally but might not be able to under the other standards.

ASSEMBLYMAN CRANE: Thank you, Mrs. Stix.

Is Dr. Dede here, please?

D R.     A N T H O N Y     D E D E: My name is Dede. I practice obstetrics in Princeton, New Jersey. I'm a Diplomate of the American Board of Obstetricians and Gynecologists. I lecture at Rutgers University Medical School. I have an appointment to the Columbia Presbyterian Medical School and I have done work with the Planned Parenthood Group in Trenton.

I have a prepared text but for reasons that are quite apparent I'm afraid that you'll find that I'm unable to read this completely.

Although I feel competent to advise you about abortion I am totally unable to cope with the laryngitis which afflicts me.

The prepared text you will have access to. I did feel compelled to take some notes on the testimony that has been presented tonight because I think there are a variety of points that cry out for clarification.

No. 1. I believe that a physician who has been in practice in the State of New Jersey for 30 years and has attended only 1,000 deliveries is not quite on a par with a physician who has devoted his life to the specialization of obstetrics. And I might say that in approximately a six months period of time, during my residency, I delivered fully that number and I'm afraid to say almost as many were illegitimate. In this same period of time I saw approximately as many apparent criminal abortions treated at that hospital as the State of Colorado has performed legally during the past 15 months since legal abortion, under the new AMA recommendations, has been carried out. I, therefore, concur with the point

that has been made consistently this evening, that the AMA recommendation is pitifully inadequate. We are barely talking about the top of an iceberg which threatens to ruin the social fabric under which we live.

I think any man who has been educated within the past ten years, both in the liberal arts and in the specialties, is well aware that one cannot define a medical physician as being concerned solely with the number of 23 chromosomes or whether the sperm is an homonculus, he must practice in the entire social sphere in which he lives. He, therefore, cannot decide that a person merely is a case of malignant hypertension or that she is merely a case of cervical carcinoma but that she is an entire human being about whom a family pivots and an environment and community exists.

Therefore, when we deal with her pregnancy, we are not dealing with a certain trillion numbers of cells with unique chromosome configurations but an entire social awareness.

I, therefore, say that rather than codification of a variety of situations of which abortion may be considered legal by a certain amount of theologic syllogism, we must look more for compassion for the human being in the society in which she lives.

I do not think that the legal status of the fetus is by any means clear, despite the erudite presentation by the lawyer earlier today. For example, the fetus who is born as the result of an artificial insemination, - the legal status is quite unclear in this State and in many other states

throughout the Union. For example, the question of inheritance. This is far from clear.

I agree that the question of how safe an abortion is certainly cannot be asked of a man who has performed only nine in his entire medical career. I think we have to look to the areas in which this is done more or less as an open procedure, for example; in many of the countries in Eastern Europe abortion is done by demand. We have access to their statistics and their statistics we have no reason to question. In a one-year period in Czechoslovakia, for example, over 200,000 abortions were performed by a technique which is virtually unheard of in this country and they reported a total of 4 cases of complications - these consisted of 3 infections and one lady who bled somewhat heavily and required a transfusion.

I might say that those statistics are superior to any hospital in the State of New Jersey delivering women of full-time pregnancies, and certainly a hell of a lot better than my son's tonsilectomy performed in Princeton by a board-certified ear, nose and throat specialist.

I have to stop now.

ASSEMBLYMAN CRANE: Thank you, Doctor.

Any questions of Dr. Dede?

Thank you very much, Doctor. I hope your laryngitis gets better.

DR. DEDE: Thank you very much.

ASSEMBLYMAN CRANE: Doctor Tricarico, please.

Will you identify yourself, Doctor?

D R. M I C H A E L T R I C A R I O: Yes. My name is Michael Tricarico. I am an M.D., Child Analyst and Psychiatrist practicing in Trenton and Princeton, New Jersey. I am School Consultant for 21,000 children in the Princeton-Trenton area. I am Instructor of Child Psychology at Trenton State College, and so forth.

ASSEMBLYMAN CRANE: You're a busy man, Doctor.

DR. TRICARIO: Very busy. I just want to say that I had a prepared speech and I threw it away. My job relates to feelings, compassion, and love, which is lacking in so many people - the little things, the little nuances and subtleties that you can't define and that you can't put a statistic on.

A little boy said to me, "My mommie told me I was born in a toilet," and as a result he would play with fecal matter. How do you define this? It cost that mother and father before they got through four thousand dollars for treatment for their little hang-ups that they thought could be resolved by having a pregnancy.

I have a school of 35 schizophrenic children that I administer chemotherapy to. Of these 35 children in that school, 20 parents are known schizophrenics. The other 15 - one or both of their parents have some form of schizophrenia which has not been identified and classified. The justifications that they get along and they are just a bunch of nuts who are getting along fine doesn't hold water. These children have received over 22,000 therapeutic hours by psychologists,

social workers, and psychiatrists. Is this justifiable? Is this a way we want to push our manpower in the psychiatric field? Incidentally, there is a reference here to psychiatrists and medical reasons. I want you to remember that I am an M.D., a medical doctor and a psychiatrist. I consider every patient I treat as a medical case. We use psychiatric techniques. Psychiatry is a branch of medicine; it is not a part of it. So we do not hold and I do not hold to the foundation of any mental health or mental complications. A woman is a person with feelings. In every case that I see and that every psychiatrist sees, because of the oath we have taken, we ask "What do I do for this person? What do I do for his family?" You must look at the total family picture. You cannot and you must not just isolate yourself to what potential is in this child tomorrow. What will this child get to be if we allow him to go at this point? You don't ignore a whole constellation; you don't ignore a community problem; you don't ignore the fact that the child is in a ghetto; you don't ignore the fact that he is a Negro and what the chances of his survival are in a Negro community with 1,000 deliveries. Incidentally, I am a psychiatrist and I delivered 67 babies in six weeks. So he is pretty small. I would say that I would like to see this procedure followed up,- not the 300 illegitimate children but the 700 that were legitimate but they didn't have a buck in their pocket, and what happens to those kids? I'm not interested in the 300 illegitimate; I've got an idea of what happened to them. I am interested in the so-called deprived children.

I would just like to say, in mentioning feelings and the

little things, I have never treated a child - never, never - with a small neurotic problem that the mother or the father did not have a significant hang-up. Now pregnancy has never helped a husband and wife to get together. It does not make for a better marriage. It does not necessarily mean that the child will be disturbed but let me tell you that at the Hawthorne Medical Center in Michigan, 2,000 cases were studied and only three, by the most lenient of ratings, were found not to have disturbances; that is, the parents were found not to have disturbances.

So I am a little overwhelmed and a little amazed at what I hear, but I guess I should learn not to be. I guess people come here with charged emotions and charged feelings, and I just wish they were out on the street like me. I'm the last guy to get the case after the priest, the rabbi, and the counsellors and the psychologists. I see them when they can't do anything more for the kids and they fall into my hands for shock treatment or chemotherapy. They tried and they did other things but it ends up in my hands. What do we do with this kid now? What we do many of the times - it's really tragic because there is so little for us to do yet.

A study in Sweden by the Kallen brothers is significant. They proved beyond doubt that schizophrenia, a crucial disease, is hereditary, and you can't help past histories. They studied cases growing up together in similar environments and in dissimilar environments, and schizophrenia was apparent.

I don't think I want to say much more. I was a practicing



Catholic until I started my second year in child psychiatry. I think there was just too much conflict in the laws of the church. "Do you follow the laws of contraception? Do you think abortion should be legal?" I think when the church and the laws of the State of New Jersey are clear and they are humane toward all the people of the world where there are all these possibilities of poverty, of food regressions and the possibility of a starving earth in a few years - the possibility of all these different functioning aspects down to the small details of the person who does not want a child or who has a child because he wants to clear up a neurotic hangup.

I think we should start solving or looking at these things realistically. I know what happened in my case and I certainly would willingly turn back to the church when they start giving you more answers than just that you must believe. I do. I believe in people and I believe in love and that is primary. Love must come but the love has to be there. There has to be two healthy people who know how to love - not neuroses, not pushed by some false ego or super ego. It's got to be there and it's got to be healthy. An adopted child, a foster child, a child coming from a schizophrenic mother or father - there is no love; there cannot be love. They are clouded by delusions, hallucinations, paranoia, feelings of suspicion, ideas of reference. How could there possibly be a healthy love aspect.

So I hope New Jersey gets on the band wagon of the move which I feel will be successful in solving many of the problems of the United States. Abortion is not the answer

incidentally, but contraception, socialization, education of people, psychiatrists getting out in the community, talking to teachers - I suggest these are all the answers. The answer is not in abortion but until we get to that point, until we reach that point, let's not turn our back on having doctors in hospitals with licenses, with a nurse standing by, doing it, rather than having somebody in a little, dark side alley or in a small room sticking a tube in and trying to get it between the cervix and the placenta wall. I have seen cases - I was at Kings County Hospital and St. John's Episcopal and one out of every four cases that came into that emergency room was a self-induced abortion. I can't forget that. That was five years ago or six years ago. I'll never forget that.

Nurses have said to me, "You can help me. You like me, Doctor. You're my friend. Tell me what to do?" And I couldn't tell them what to do and I wouldn't tell them what to do. I was afraid. I knew what the right answer was for them but I just couldn't do anything to help them.

ASSEMBLYMAN CRANE: Doctor, I think your time is up.

Are there any questions?

MR. RITTENHOUSE: Doctor, I don't question for a minute your sincerity, and I certainly don't question your technical knowledge, but I am left with the feeling that I don't know just where you stand with respect to the New Jersey statutes. Are you suggesting that the prohibition be removed altogether and the Penal Code again be made a part of the Medical Practice Act?

DR. TRICARIO: Yes, I am.

MR. RITTENHOUSE: That is your feeling?

DR. TRICARIO: That is my feeling, yes, sir.

MR. RITTENHOUSE: Thank you, sir.

ASSEMBLYMAN CRANE: Thank you, Doctor. Is

Dr. McDermott still here?

Is Dr. Frank Hughes here?

Dr. George Sheehan?

Dr. Garrett Keating?

Dr. Jerome A. Dolan?

Dr. Severino Ambrosio?

Will you identify yourself, Doctor?

D R. S E V E R I N O A M B R O S I O: I am  
Dr. Severino Ambrosio of Parlin, New Jersey, and I am in  
general practice.

ASSEMBLYMAN CRANE: Not that it's important but  
where is that?

DR. AMBROSIO: Outside of South Amboy, about two hours  
from here.

As a practicing physician in Middlesex County and the  
father of four of eight children who were born with inborn  
error of metabolism, a very crippling disease, I am opposed  
to any change in the abortion laws in the State. After  
considerable reflection in these times of changing opinion,  
I find that my view on abortion remains unaltered. I base  
my opinion on the following: One, that life begins at the  
moment of conception and, as such, abortion would be the taking  
of a human life without provocation by that human life. Now  
if one believes this basic premise as I do, it follows that

abortion by itself should not be allowed. My feeling is not predicated on any religious beliefs or views but on the fact that human life is involved, as I said before.

Another reason is because of the possible consequences which would follow if we once open up this Pandora's box of abortion. If we allow the taking of a human life because it might be born deformed or because its presence would cause the parents much anguish or financial distress, then why not take the life of an infant already born deformed? Why not take the life of a Mongol, a mental retardate, the life of the blind, the deaf, and the dumb? Why not take the life of the aged, the hopelessly sick, or the useless? These certainly arouse great sympathy in us and place great financial stress and emotional distress on the fathers.

As a doctor who handles many cases each day, some of them elderly and very sick who we know will not get better, I know it is a strain on the physician, as well as the family, to take care of these patients. But should I say I should do something about this life so that I won't be bothered by the illness which I am required to take care of?

Now the reason I say that we think nothing or not too much about ending or terminating a pregnancy in the first, second or third month is because we have no feeling for this thing, this protoplasm, this embryo. And I have no feeling for something that is small and microscopic to start with. But these other persons which I mentioned - the blind, the Mongols, the retardates - once they are born, we have a certain attachment to them no matter how deformed

they may be to other people not directly involved with their care. And which of us would vote or raise his hand first to eliminate these people from our lives.

Most of our arguments are based on emotions, on feelings - the unwed mother, the raped child, the 42-year old pregnant wife, the pregnant woman contracting Rubella in the first trimester. Certainly these people are arousing our sympathy and certainly need our help, but not in the sense that we have to terminate a pregnancy for them.

I have spoken to a number of patients who fall in some of the above categories and it is not the fact of the deformity or the retardation which is the most upsetting, for the parents grow to love those children with a love greater than the parents can have for any child ordinarily. It is the frustration in their attempt to obtain help for these children, for although we live in a society of great wealth, it has failed to provide an efficient, centralized, easily accessible source of help for these parents.

I have a patient born without arms, with a marked curvature of the spine, a receding chin and a cleft palate who was told that she would never walk, never speak, and would be mentally retarded. I remember very well the fight this mother has had to wage and is still waging to obtain for her child the help that she so badly needs. This child has had to go to a foreign country to obtain arms which she could use because in this country they said she was too young for them. She did obtain those arms, she did learn how to walk, and at present she is receiving treatment in another State

for the curvature of the spine.

ASSEMBLYMAN CRANE: Doctor, would you conclude your remarks.

DR. AMBROSIO: Yes, I will.

I have something regarding my own personal life that I would like to relate. Four of my children out of the eight were born with inborn error of metabolism where certain enzymes existing in the body allow sulphur compounds to accumulate, causing damage to the brain system. As a result, we have a child who can't see, who has muscle spasms, who is subject to constant infection and requires much attention. In each one of my wife's pregnancies she ran a calculated risk, there being a fifty per cent chance of her giving birth to such a defective child. If we followed the advice of certain people, we would have had abortions and would not have had, as a result, the four healthy, normal children that we do have.

Now in medicine, as in any other field, necessity is the mother of invention, and tragedy may be the wellspring of knowledge. The question is also raised as to what effect will the presence of such deformed or defective children have upon the family. Now in my personal family it has had nothing but good effect. Now the other children that we have, from the youngest to the oldest, and the grandparents also, have grown, I believe, in their own stature because of the care which they have given to the child - one of which lived for three years. I have seen where the person has been the source of inestimable satisfaction to the other children,

enabling them to grow in their own person.

If I were asked or my wife were asked once again if we would consent to abortion to prevent the birth of other children, our answer would be no.

ASSEMBLYMAN CRANE: Thank you, Doctor. Are there any questions?

ASSEMBLYMAN CRANE: Is Rev. George Fitzgerald here, please?  
Identify yourself, please, Reverend.

R E V. G E O R G E F I T Z G E R A L D: Mr. Chairman and members of the Commission: I am George Fitzgerald, chaplain of Princeton Hospital. My own perspective is that of a clergyman, with several years experience as a pastor, presently engaged in the teaching and practice of pastoral care and counseling, and speaking in favor of a revision in a liberalized form of the existing New Jersey abortion law. While many facets of this issue deserve comment, and the commission may well question receiving any new revelation at this point, I feel my remarks may helpfully and appropriately be confined to the areas of religion and pastoral counseling.

Religious spokesmen can readily invoke a long list of venerated names - Clement of Alexandria, Tertullian, Gregory of Nyssa, Anselm, etc. - whose renown rarely extends beyond the cloistered halls of religious colleges and seminaries. In regard to marriage, the perennial question has revolved about its purpose or goal: Is its purpose procreation or interpersonal fulfillment? I happen to subscribe to the latter position, one which has become more accepted. Not only does the present population growth obviate against the procreation answer, but most people reject the animalistic image of marriage existing for the purpose of producing offspring. In terms of abortion reform, this suggests that a husband and wife should have a voice, including access to appropriate means, in determining the size of their family. Obversely, no family should be legally



limited in the number of children they desire.

On the level of popular religion we hear emotional cries, at times approaching hysterical proportions, concerning the "murder of innocent infants" or a denial of the gift of God. I think at this time religious scholarship must come clean, acknowledging that there has not existed a universally accepted definition as to when life begins - medieval arguments range from the moment of conception to birth itself. As to the "gift of God" argument, it must equally be noted that modern medicine - which extends and enhances life, as well as providing safe procedures for abortions - is also a gift of God.

Religion, therefore, can provide guidelines, but certainly no definitive answers regarding abortion reform. We can emphasize the right and responsibility of families to plan their own households. Further, we can acknowledge that the situation is rarely one of life against death; rather we more often struggle with how life may best be fulfilled for individuals, families, and society - knowing that the "average" abortion candidate is a victim of rape or incest, involved in a premarital pregnancy, or a mother who feels she already has more family responsibilities than she can cope with.

As a pastoral counselor involved in premarital counseling as well as individual and marriage counseling, I find that every pregnancy includes ambivalent and conflicting feelings. This not only covers the extreme and traumatic instances mentioned above, but even "normal" pregnancies, so called, entail family realignments: a childless couple often finds their freedom of movement curtailed, a single child no longer receives all the attention, etc.

Obviously abortions unlimited will not answer pregnancy problems. Yet its readier access as a viable option, in conjunction with a physician's recommendation, counseling or psychiatric consultation, may very well avoid making a bad situation worse.

It should also be noted, from a psychological standpoint, that an abortion does not automatically dispel feelings of guilt and anxiety. This is simply the concomitant of any mature and difficult decision, regardless of whether or not a child is born. Failure to realize this basic psychological truth may tend to produce the liberal fallacy of making abortions as available as aspirin.

May I then submit three conclusions derived from my religious-pastoral care perspective:

1. Like the majority of our difficult decisions, abortion is a second best solution.

2. No one should be forced against her will to receive a therapeutic abortion. We rightfully reject this kind of state control.

3. The State at this point has an opportunity to achieve a closer approximation of love in practice, by reforming the present abortion law. This, in turn, relieves individuals of the guilt of having to transgress the present laws. This accommodation to compassion, which can hardly be misconstrued as a license to immorality, is, I take it, the highest function of a responsible legislative body.

Mr. Chairman, I have a statement of Rabbi Reeve Brenner which I also would like to submit if I may.

ASSEMBLYMAN CRANE: Yes, we will be happy to take that.

[Rabbi Reeve Brenner's statement can be found on page 267 of this transcript.]

Any questions? [No response.] Thank you very much.

Is Edward Dolan here, please? [No response.]

Dr. Noel Galen? [No response.]

Dr. Charles Oestreicher? [No response.]

Rev. John J. McCaffrey? [No response.]

Robert Doherty? [No response.]

Mrs. Richard J. Corbett? [No response.]

Gordon V. Lewis? [No response.]

Seymour Plawsky? [No response.]

Dr. Seymour Bronstein?

DR. BRONSTEIN: I have a prepared statement.

ASSEMBLYMAN CRANE: Could you just summarize it. It will be made a part of the record.

D R. S E Y M O U R B R O N S T E I N: I am Dr. Seymour Bronstein from Montclair, New Jersey. I am a physician licensed to practice medicine in the State of New Jersey. I am an internist by training. I did post graduate work at the Leahy Clinic in Boston, Newark City Hospital and the Indiana University Medical Center. I was a physician and chief of the Mayo Institute for Medical Research. I am presently Deputy Director of Medical Pharmacology Research at one of the large New Jersey pharmaceutical companies. I spent some of my working time at Newark City Hospital and some of the comments I want to make refer specifically to that.

My prepared statement in support of abortion law repeal you have and many of the arguments which I make in here you have already heard tonight.

My stand is that abortion should be put entirely within the regulations that govern medical practice and should be completely removed from the criminal code.

Before I get to my prepared statement or a few summaries of it, I think it would be important to go back to a few points that were raised tonight - some questions raised by members of the Commission which I felt were not answered completely and other points which came to my mind.

One of the questions that came up is the point that only 5 per cent of illegal abortions will be affected by the American Law Institute proposed law. The American College of Obstetrics and Gynecology has also included a statement to the effect that all factors of the woman's environment should be considered, not only physical health and mental health, but all factors in the environment. Now if this was to be included, I think it would significantly increase the effect in reducing the number of criminal abortions.

I want to disagree with the statements made by the gentleman who had some experience in Colorado. I think that the law is working, but it is pitifully small. All the indications that he mentioned, namely, psychiatric indications, come within the law which says that abortion may be done for reasons related to the health of the mother and psychiatric illness is related to the health, so that these are not, as he implied, being done extra-legally.

We heard the former legislator of the State of New Jersey say that we want to play God with the offspring. Well, what we are really doing is playing God with women. We are forcing women

to compulsory motherhood. The present statute forces us to just sit back and force a woman to bring a new life into this world and I think this is equally reprehensible as the question of taking any life. As to wheter this is a human being, I don't even want to debate this. This is purely a theological point as to when two cells come together and life is formed. The real point is that the law now is obscure. The physician is the one who is hanging out on the limb. It is perfectly all right for a legislator to say, "Well, let's leave the law and let the poor physician stew," but we are the guys who have to be out there stewing. Each time the problem comes up we are the ones that have to interpret whether -- "Yes, it is justified for me. I feel it is perfectly justifiable to go ahead. But will the prosecuting attorney agree with me? Will a jury agree with me? How do I know who is going to be on that jury?" I don't want to put myself in the position that I have to interpret or wonder how a completely unknown group of people will interpret justification. So the law is obscure and I think it needs clarification. Effectively the law now might just as well say that abortions are prohibited completely because a physician unless he is willing to stick his neck out and make his own personal interpretation is prohibited.

Another thing that came up tonight - you asked about statistics.

ASSEMBLYMAN CRANE: Doctor, your time is up. Would you conclude, please. The bell isn't working for some reason. It is tired too, I guess.

DR. BRONSTEIN: Well, we have moved to a new day, according to the clock, and I hope we have moved to a new day as far as

abortion law reform is concerned.

The arguments that have been presented tonight - I think some of the people have been talking in a vacuum when they talk about having more children than they really wanted, but everything worked out well. These aren't the girls who are having their sixth or ninth child who don't have any income, who don't even have a husband. It is perfectly all right for a physician's wife whose husband is in the top 2 percent income in this country to say that eventually everything worked out fine for her.

I can also say that at Newark City Hospital we have over 500 cases a year of illegitimate births in girls sixteen years of age and under. We have over 600 abortions in girls nineteen years of age and under and our opinion is that over 40 per cent of these are criminally induced. Now if you want statistics, I can only give you from one hospital. But 40 per cent of over 600 a year are criminally induced in the under nineteen-year age group and we have over 500 illegitimate deliveries in girls sixteen years of age and under. Projecting this to the State, we figure there are about 20,000 criminal abortions a year and we figure there are 20 to 50 deaths from criminal abortions. These are what we are concerned about; not when life started, but how do we save 20 to 50 lives a year from criminal abortions?

[Statement submitted by Dr. Bronstein can be found beginning on page 242 of this transcript.]

ASSEMBLYMAN CRANE: Thank you, Doctor. Any questions?

DR. BRONSTEIN: I also have statements that were given to me by two other physicians and a rabbi. I will leave these.

ASSEMBLYMAN CRANE: Please give them to Mr. Alito.

Is Father Guenther here please? Identify yourself please, Father.

R E V. C H A R L E S G U E N T H E R: I am Father Guenther, a native of the City of Camden and at present a resident of Woodbury in the County of Gloucester.

The statement which I am about to make is that of the Roman Catholic Bishops of the State of New Jersey. It was first issued in May of the year 1968 and read in the form of a pastoral letter to all the people of all the parishes of the State. The Bishops wish that their remarks be made part of the record at this public hearing.

The letter is addressed to "all men of goodwill in the State of New Jersey." It reads as follows:

[Reading]

"At times, we the Bishops of New Jersey are bound by the responsibilities of our office to speak to all men of goodwill in our State. We now believe that this is such a time.

"We are deeply aware that our pluralistic society needs open and sincere dialogue on the important issues that confront our society and we believe abortion is an issue of this kind.

"As members of the community and spiritual leaders, we have not only a right but an obligation to make known to you our convictions on a question which so profoundly affects the moral standards of our society. The health of any society can be gauged by the value it places on human life.

"We welcome the study which is being made in our State on the study of abortion law. However, we urge this Commission to

address itself to those deeper conditions which have caused abortion to flourish. Many grave social ills exist today, economic hardship, inadequate housing, family instability, insufficient preparation of our youth for marriage and parenthood, sexual irresponsibility, birth defects, and malformations. All these demand our concern and our attention.

"We disagree most profoundly, however, with those who look upon abortion as a solution to any of these problems.

"It has always been the purpose and the glory of science and the art of medicine to preserve life and to improve its condition. Under the providence of God this field has been blessed with tremendous progress. Could such progress have been made if physicians and scientists had been willing to accept the simplest and the easiest of all solutions?

"Our legal system in this nation has always protected innocent life. The direction of today's legal philosophy is towards greater protection than ever before of every individual, but cruel irony if our laws should now decide to grant to any person, a mother or a doctor, the right to take the life of an innocent human being. The unborn child is the most innocent, the least articulate of all our citizens. He above all, gentlemen, needs our protection and the protection of the laws that you have been charged to produce.

"Therefore, the Bishops of this State clearly voice our opposition to any relaxation in the abortion statute.

"As to whether the unborn child is indeed human, we refer to the great weight of scientific testimony which clearly states that life begins at the moment of conception and that from the



moment on we are dealing with the life development of a human being. The significant fact is that although the unborn child is dependent on its mother during the time of gestation, science regards this child in the womb as a separate human being and an individual.

"So we ask you gentlemen in the name of God, Our Father - we extend our hands to all men of goodwill and we ask that this be our common parent effort, to seek with energy and resourcefulness, with sincerity and courage, to preserve human life and to defend the inviolable right of life of this the innocent, unborn child."

The Statement is signed by Thomas Boland, Archbishop of Newark; George Ahr, Bishop of Trenton; Lawrence B. Casey, Bishop of Paterson; George H. Guilfoyle, Bishop of Camden; Joseph A. Costello, Auxiliary Bishop of Newark; Martin W. Stanton, Auxiliary Bishop of Newark; John J. Dougherty, Auxiliary Bishop of Newark and President of Seton Hall University; James L. Schad, Auxiliary Bishop of Camden; John C. Reiss, Auxiliary Bishop of Trenton; and Stephen J. Kocisko, R.F., of the Eastern Rite Diocese of Passaic, New Jersey.

ASSEMBLYMAN CRANE: Thank you, Father. Any questions?

MR. RITTENHOUSE: I don't know the answer to this and I don't know whether you can speak in your capacity as a witness presenting the statement on behalf of the Bishops. We have heard a statement here tonight from one of the witnesses who indicated that this human being is the least articulate and most defenseless, as you characterized the unborn child, and is not given protection in the murder statutes.

Do you believe that there should be some further sanction than we presently have for the protection of this child?

REV. GUENTHER: Mr. McKernan in his testimony cited to you legal cases and legal references where the rights of the unborn are protected. He referred to the right to legal inheritance.

MR. RITTENHOUSE: They were civil rights and inheritance rights - that's correct - and the law does recognize the child in that capacity. But at the same time, for instance, there is a distinction between the child within and without the womb with respect to the right one has in taking a life. The abortion statute itself is distinctive from the murder statute. I am just asking you from the church's point of view -- would it be the church's point of view that there should be a greater penalty imposed by the Legislature for the taking of life within the womb by abortion?

REV. GUENTHER: I don't think I could answer that on behalf of the church.

MR. RITTENHOUSE: -- for the church. That's fair enough. I am not sure it is a fair question to pose to you on behalf of the church. But there is a distinction now between the abortion statute and the law with respect to homicide. Abortion is not considered as homicide, as such. Carrying your position to its logical extreme, one would think it should be. Is that not correct?

REV. GUENTHER: The church law in itself makes distinction in the code of canon law in providing for penalties for abortion and the church has never considered itself to be the competent authority to say, "This man shall die," and it is

the function of civil government to go into capital punishment. It is not the job of the church to provide penalties in civil law.

MR. RITTENHOUSE: But the function of the civil government has been by legislation to define certain penalties when one takes the life of another and we have that in our homicide section. But there seems to be a distinction between the child in the womb, the unborn child, and the born child.

REV. GUENTHER: We are taking the position of the defense of human life. We are arguing on the grounds that the overwhelming evidence, at least as we see it, is that this thing within the womb is a human being and is protected by the Constitution and guaranteed the inalienable right to life, to liberty and to the pursuit of happiness. We are basing the argument on a principle that didn't come up here in any way tonight - on the word of God: "You shall not kill."

MR. RITTENHOUSE: Father, I do appreciate that.

REV. GUENTHER: I know you do.

MR. RITTENHOUSE: The problem that I have, carrying this back, is why that being so, there is any distinction from the point of conception to the point of death. Should there be any distinction in our law as far as treatment of an individual who takes the life of another -- should there be any distinction between the point of conception and the point of death?

REV. GUENTHER: I am not following you.

MR. RITTENHOUSE: Now there is a distinction at the present time. Our law provides one penalty for the taking of a human life from the point of conception to the point of birth. We

deal with that in terms of abortion in our present abortion statute. It has another entirely distinct entity when it comes to homicide from the time of birth to the time of death. When I say "homicide," I am talking about manslaughter, degrees of murder, and so forth.

REV. GUENTHER: There are different penalties for each one of those things under the law.

MR. RITTENHOUSE: But that does not depend upon the age of the decedent who was killed. It depends entirely upon the degree of motivation or justification for the killing. Now you are indicating that there may be a greater degree of justification for killing a child within the womb. That's a different point though than to say that the child ---

REV. GUENTHER: I am certainly not advocating imposing a death penalty on anyone who practices abortion.

MR. RITTENHOUSE: The point is: Is there or is there not a distinction in the mind of the church between a child within the womb and a child without the womb?

REV. GUENTHER: I would think there would be a distinction.

MR. RITTENHOUSE: And that distinction is what?

REV. GUENTHER: The child outside the womb is born. He is living. He is a person. Everybody admits it. In the womb, he is still being formed. He needs the protection of law. He needs help. He is not standing on his own.

MR. RITTENHOUSE: But now we give him less help in the womb than we do outside.

REV. GUENTHER: We are protecting him. We are not letting you kill him under the present law.

MR. RITTENHOUSE: We are not going to have him killed on the outside either. In fact, we are making the penalty greater when he is outside. We are providing less protection for the child in the womb. I am just asking - following logically what you are presenting here - I am not questioning you - I guess I am questioning the church's position when I say this - but I want it clear in my mind because I think this is very important.

ASSEMBLYMAN CRANE: Maybe the church hasn't taken a position.

REV. GUENTHER: It really hasn't.

ASSEMBLYMAN CRANE: We have heard many witnesses throughout these many hours of hearings say an abortion is murder. Is this the position of the church that abortion is murder?

REV. GUENTHER: I would think it would be quite the position of the church. You are taking a human life.

ASSEMBLYMAN CRANE: Yes, but do you know whether the church has ever issued a document on this? The church certainly has taken many positions with regard to many different things and certainly with abortion they have taken a position. Do they actually call it murder or equate it with murder?

REV. GUENTHER: I would have to look over documents and do a little research on that.

ASSEMBLYMAN CRANE: Of course, I couldn't ask you a personal opinion because you are here as a spokesman of the Bishops tonight.

REV. GUENTHER: I can move over to the next chair and switch to another hat.

ASSEMBLYMAN CRAEN: That might be unfair. But if you care to do it, I would be happy to hear you.

REV. GUENTHER: Oh, I think it is murder. You are killing a human being, unless I see some overwhelming evidence to the contrary.

ASSEMBLYMAN CRANE: May I ask you, Father, if you would do that research and address it to me or to Mr. Alito at the State House in Trenton - Mr. Samuel Alito. If there is some sort of an official position, I am sure the Commission would appreciate having it.

REV. GUENTHER: Copies of this, I am told, have been already forwarded to all the Commission members.

ASSEMBLYMAN CRANE: Thank you very much, Father.

Is Dr. Matty still here?

H. B. M A T T Y: I am Dr. H. B. Matty, a psychologist practicing in Camden, and a resident of Cherry Hill. As Chairman of the South Jersey Chapter of the American Civil Liberties Union, I am here to present a summary of its position on abortion legislation.

In our view, State law should be silent in regard to abortion. We assert that every woman ordinarily has the right to have her pregnancy terminated by an abortion done by a willing physician. Any State law which would restrict that right seems likely to violate the Constitution in several respects.

Both the Fifth and Fourteenth Amendments state that no person shall be deprived of liberty without due process of law. That is an abstract statement, but it is given concrete meaning in Mr. Justice Goldberg's opinion in a Supreme Court Case, the Griswold case: "Where there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling... The law must be shown to be necessary and not merely rationally related to the accomplishment of a State policy."

There can be little quarrel with the proposition that child-bearing is probably the most uniquely personal and intensely private experience a woman encounters in her lifetime. As a consequence, interference by the State with her free choice of whether to conceive or not and whether to carry an unwanted fetus to full term or not must be justified

by the most "compelling" State interest.

Historically what has been advanced as a "compelling" State interest was the health of the mother. In one of the earliest judicial opinions regarding our present abortion laws, the New Jersey Supreme Court said, in State vs. Murphy, in 1858, that the purpose of the law primarily was not to prevent the procuring of abortions so much as to guard the health and life of the mother against the consequences of such attempts. There is little doubt at the time the law was originally written that abortion was considered generally medically dangerous. That seems to be not the case today.

In Czechoslovakia and Hungary, physicians have perfected a technique for abortions which requires only about three minutes. In 1964 their results were in Czechoslovakia that there were no deaths of the 140,000 abortions, and in Hungary only two deaths out of 358,000 legal abortions.

In the apparent absence of any other necessity for the State to restrict a woman's right to terminate her pregnancy by abortion or have it terminated, we believe that any law restricting this right, any State law, is likely to violate the Fifth and Fourteenth Amendments to the Constitution by undue deprivation of liberty.

The Fourteenth Amendment to the Constitution further states that no person may be denied the equal protection of the law. In our view, any State law which would restrict a woman's right to have her pregnancy terminated would be likely to violate this "equal protection" clause, because the poor would be more restricted than would the well-to-do.



This is because any State law would have to make some provision for therapeutic abortion, and it is a demonstrable fact that it is far more difficult for the poor woman to establish the need for a therapeutic abortion than it is for the well-to-do woman. For example, the University of Iowa Hospital statistics for the years 1960 through 1964 show that abortions permitted in that hospital were at a rate which, for private patients, was seven times as high as for ward patients. Likewise, in New York hospitals, 93 per cent of the therapeutic abortions are done on white patients with private rooms. This is in sharp contrast, incidentally, to the New York death rate from illegal abortions: 94 per cent Negro or Puerto Rican,

Laws which give rise to these consequences cannot be said to be laws offering equal protection to all.

And finally there is the argument which I will forward with the rest of my statement that the right to abortion is a part of the right to privacy.

ASSEMBLYMAN CRANE: Thank you, Doctor Matty.

[The following was submitted as part of Dr. Matty's statement but was not read:]

In a long line of cases, the U. S. Supreme Court has recognized that certain specific guarantees in the Bill of Rights have penumbral areas of protection which give these guarantees life and substance. As a most appropriate example, the Court has held that there is a penumbral right to privacy in the marital relation, and that it is safeguarded against incursion by the States. We contend that the extension of that right into so intensely personal an experience as child-bearing, is a logical necessity.

In regard to married women, the Court has many times affirmed that the right "to marry, establish a home, and bring up

children" is an essential part of the liberty guaranteed by the Fourteenth Amendment. Implicit in these marital rights is a recognition that the decision whether, and when, to have children belongs solely to the parents. The notion of State interference in this area is repugnant.

In regard to the unmarried prospective mother, we contend that the State may not intrude into the personal intimacy of prospective parenthood, regardless of whether it is the product of marriage. Once the nature and the degree of personal rights involved are recognized, it is equally as repugnant for the State to intrude into the privacy of the unwed prospective mother as into the privacy of the marital relation. For the State to compel an unwilling mother to bear an unwanted child is an act of cruelty to both, not qualified by a redeeming State interest. Our earnest belief is that, in the apparent absence of a compelling State interest, laws restricting abortions are not likely to withstand a test of constitutionality, since the intrusion of such laws into the domain of personal freedom is clear, unequivocal, and unquestionable.

ASSEMBLYMAN CRANE: Rev. Adamczyk, please.

R E V. J O H N T. A D A M C Z Y K: I am John Adamczyk, Pastor, First Baptist Church in Moorestown, speaking on behalf of The New Jersey Clergy Consultation on Abortion.

It is not important any longer to play the "numbers game" about how many illegal abortions or how many are physically maimed or die. Does it matter whether there are 1,000 or 2,000 a day in America? We do not believe in statistical morality. If what we are doing to women in this society is wrong and unjust, it doesn't matter how many. An unjust and inhuman law becomes no more endurable when we prove that there are only 500 rather than 5,000 deaths by non-medical abortion practices.

The present law is both undesirable and unenforceable in the context of our present society. It is undesirable because it is highly punitive, making criminals out of women with problem pregnancies; it makes hypocrites out of physicians who declare legal what is blatantly illegal and it is creating an underground, non-medical, illicit practice that is running into millions of dollars. The present law, by the way in which it is circumvented, is highly discriminatory, allowing remedy only for those who have access to money and private doctors and private hospitals.

It seems self-evident that the majority of the American people want to do something about the present legal situation. The great debate is about what we should do and how.

We believe that the case for withdrawing the law from

the area is not only more ameliorative but is both more morally and legally justifiable, for the following reasons:

1. When the common convictions and consensus which originally supported a law with criminal sanctions has eroded, it is much better for the law to withdraw its sanctions rather than the law be brought into disrepute by open disobedience and unpunished defiance. This is now the case with our abortion law.

2. The large majority of women seeking the termination of their pregnancies are married women between the ages of 30 and 40 years with two or more children who have conceived by their husbands. This is on the basis of consultation with the New York Clergy Consultation Service and our experience here in New Jersey. The present abortion laws tend to undermine family relationships and stability.

3. Removal of the law, that is, having the state remove itself as arbiter in the rights of the fetus to continue, would be some guarantee that all persons would have the right to plan their families or determine the direction of their lives. Thus the minorities and the poor would have the same individual choice that white middle-class people have now or under the proposed reform measure.

4. The withdrawal of the law would avoid the odious position of legalized abortion. The state then would not be approving or justifying certain abortions, it would simply decline to regulate it. When the law is silent about the abortion or fetuses it neither concedes nor denies the moral right of the individual to abort the unborn fetus. The state

simply leaves this area unregulated in the same way the law refuses to regulate in other areas where moral issues are involved. The repeal of the law at least has the merit of not involving the society in having to select those fetuses whose existence may be legally terminated.

We believe that present considerations for liberalizing the law are a false cure for an authentic social and legal dilemma, and will delude the public into thinking that they have acted decisively and meaningfully in dealing with the suffering and mental anguish of thousands of women.

As a number of people have noted, the changes will probably only affect five percent of the women who now seek abortions for one reason or another, and this has also been borne out by Consultation Services of New York City, Philadelphia, Los Angeles and New Jersey.

What the proposed law would do is not to enable many more women to get therapeutic abortions, but it would only make legal what is now practiced on the part of many doctors and hospitals, when they aren't too intimidated to do what they really feel they should do.

2. The reform of the law as contemplated would be as discriminatory as the present situation. The people who have means, access to doctors and private hospitals, or a history of psychiatric treatment would be affected. In 1966 there were 18,000 out-of-wedlock births among the poverty stricken in New York City. How many of these would be eligible for therapeutic abortion in hospitals under the reform measure? - that is, similar people in New Jersey. The ghetto poor, black

or white, will not be the beneficiaries of this kind of reform law, at least the one that's been talked about most popularly at these hearings.

3. There is some truth in the assertion that "reform" means "state-selected abortions". In any form of legalized abortion, the state determines which fetuses shall survive and which shall die. Therefore, for those Roman Catholics and some Orthodox Jews who believe that abortion is homicide, the state decides which human life the doctor is permitted to kill. And for those who believe abortion is not homicide, the state would be interfering unnecessarily in the rights of privacy of a physician and his patient whenever termination of pregnancy is being considered.

4. Finally, this reform law and its proponents seem to be practicing discriminatory compassion, namely the concern is only for certain fetuses. For example, there is more concern for those fetuses which may be deformed by rubella than those deformed by syphilis or thalidomide, or fetuses that might be emotionally crippled by continual rejection after birth. Honest concern for the fetus cannot and should not depend on the social status of the pregnant woman.

In an effort to humanize and liberalize the law, we would be enjoined in restrictive compassion for only some fetuses and some women who are unwilling to bear the unwanted.

The Clergy Consultation Service, therefore, urgently requests that immediate consideration be given to withdrawing all laws concerning abortion performed by a duly licensed

physician and that abortion be governed by the general laws regulating medical licensure and practice.

Thank you.

ASSEMBLYMAN CRANE: Any questions?

Thank you very much.

Does anyone else wish to testify?

Will you please identify yourself?

R I C H A R D     K I N S E Y: Richard Kinsey is my name. I was supposed to be on the list, but, no matter.

ASSEMBLYMAN CRANE: How do you spell it, sir?

MR. KINSEY: K-i-n-s-e-y.

ASSEMBLYMAN CRANE: Any relation to the --

MR. KINSEY: I speak as a citizen.

Mr. Chairman and members of the Commission, I urge great liberalization of the present abortion laws. I urge disassociation from any criminality. I urge that it be the mother who shall decide whether or not she shall have her child.

The whole question is, is it our collective wish to improve the quality or the quantity of life? The phrase isn't mine.

If any woman wants to forego abortion for whatever scruples, let her be free to do so. But I find it monstrous that the state or the priesthood or both can blight the lives of those people, myself included, who don't believe such superstitions. I refer to religious superstitions.

I recall William Blake who says, the caterpillar lays its egg on the fairest leaf. The priesthood casts its

blight on the fairest human joy. The human joy we're speaking of here is motherhood.

We heard the argument again and again tonight how life is started. Sometimes it's even a pun that this cell should be called human. Consider that it's an adjective human, not a full human functioning and breathing. And do not be persuaded by this catholic claim for the holiness of life. The claim by itself is, of course, unassailable, but remember that warfare never reached the refinement that it has reached today except when it got to a Christian era.

So, to sum up, I urge the removal of the law from the criminal code.

ASSEMBLYMAN CRANE: Thank you, Mr. Kinsey.

Any questions of the witness?

Thank you, Mr. Kinsey.

Is there anyone else who wishes to be heard?

Will you please identify yourself.

S H A R O N     C L A R K: My name is Sharon Clark, I'm a person, wife, mother, in that order, and a teacher by profession.

Is it so unreasonable today, in the light of every individual asserting his civil right, that I should choose not to be a mother? And should you have the legal right to force me into such a role. A great many people have children as readily as they walk down the street. I think there is more to life than the hallowed, oft-times sanctified role of motherhood. I see myself as more than a wife and mother. I have a responsibility too outside the home. A complex society needs



trained people. Educated women cannot and must not hide from today's turbulent times.

I will not bore you with statistics. I'm not sure that something as "evil" as abortion is able to be polled by Harris or Gallop. Figures are extremely difficult to obtain. Therefore, let us use common sense when approaching the termination of an unwanted pregnancy. First a murder charge; intrusion upon the sanctity of life. Which culture values and cherishes life? The Japanese or the Indians? What nation or person would bless continued production of children born without hope of living, to die of starvation?

There is no need to become emotional about starving to death. It's an everyday happening in Biafra, Calcutta, Singapore. Death from starvation is common there. This kind of half life is not sacred to any God nor can we call it humane, nor is the life of children always special in this country - daily accounts of child abuse, children for adoption, abandoned children, all make us question our 20th century high concepts. Surely we see no sense in perpetuating the deadly cycle of unwanted children. Please do not counter by saying any life is better than non-life.

My second point is concerning promiscuity. Do they maintain that all women will lose their sense of morality with liberal laws? First of all, the United States Government is not the keeper of American women's morals. The overwhelming request, 80 percent, for pregnancy termination comes from married women. My body is my concern. If I choose to conceive and carry a fetus to term, this is my right. I plead with

you to strike down any law that forces me to carry and deliver a baby I do not want. You will not be able to force me to love it, care for it or into the role of motherhood.

ASSEMBLYMAN CRANE: Thank you, Mrs. Clark.

Any questions?

MR. RITTENHOUSE: What about your husband?

MRS. CLARK: If I'm married, my husband has a say concerning the fetus.

MR. RITTENHOUSE: How much?

MRS. CLARK: I think I would have to go along with the psychiatrist's view, depending on my mental state. You know, if there's something wrong with me then perhaps he should have more to say. Assuming we're both normal, happy individuals, then I think he should have as much say as I do.

REV. DENTICI: And if you end up in a Mexican standoff, what happens? You have the baby?

MRS. CLARK: If I have a happy, normal marriage we won't end up in a Mexican standoff.

REV. DENTICI: It's conceivable that this could happen.

MRS. CLARK: It is conceivable but I would like to think that our relationship - that there's more to it than that.

REV. DENTICI: That's all.

ASSEMBLYMAN CRANE: Thank you, Mrs. Clark.

There being no other witnesses to be heard, I declare this legislative hearing closed at 1 A. M.

\* \* \* \* \*

STATEMENT OF

BERNARD J. PISANI, M.D.

DIRECTOR, DEPARTMENT OF OBSTETRICS AND GYNECOLOGY

ST. VINCENT'S HOSPITAL AND MEDICAL CENTER

NEW YORK CITY

TUESDAY, NOVEMBER 26, 1968

RESIDENCE: 209 Sunset Avenue  
Englewood, N.J. 07631

To the State's Commission to Study the New Jersey Statutes Relating to Abortion

Gentlemen:

The indications for therapeutic or medical abortion have always been among the more complex and difficult decisions in medicine. Medicine is essentially a dynamic science, with changes in the patterns of treatment occurring at all times. There has been marked progress in the control of serious medical complications of pregnancy in recent years and the future development of new techniques will result in additional changes. Because of this progress, there has been marked improvement in both maternal and fetal mortality during the past decade. At the present time, there are few medical indications which require serious consideration for termination of pregnancy. The entire environment, actual or reasonable foreseeable, cannot be accurately evaluated in terms of documented medical evidence to warrant the use of such social or socio-economic factors as a legitimate indication for termination of pregnancy.

It should be firmly stated that physicians will not condone nor support the concept that an abortion be considered or performed for any unwanted or unplanned pregnancy or as a means of population control. It is emphasized that the inherent risks of a therapeutic abortion are serious and may be life-threatening; this fact should be fully appreciated by both the medical profession and the public. In nations where abortion may be obtained on demand, a considerable morbidity and mortality have been reported.

Speaking to you as a Catholic physician specializing in Obstetrics and Gynecology, let me say that in 30 years of practice I have never found it necessary to wear two hats or to change hats. Historically, moral laws and traditions have done much to encourage, even to force, the advancement of scientific knowledge and progress. For instance, in my lifetime in obstetrics I have never been faced with

the dilemma of the EITHER/OR -- saving the life of the mother OR the child -- although many Catholic women are still convinced that this could be an issue in childbirth.

It is my opinion that much of the ferment regarding changes in legislation on therapeutic -- so-called therapeutic -- abortion, is still in the realm of "old wives' tales" in a medical and professional sense, and that the legislature might better turn its attention to the root of the abortion dilemma rather than the end product; namely, poverty, education, and the multitude of social (not medical) ailments that beset our American society. I have seen, over years of training at Bellevue and in Boston and Baltimore, the tragic results of illegal abortion. As Director of Obstetrics and Gynecology at St. Vincent's Hospital and Medical Center in New York I continue to see these patients frequently. I have great concern and despair for these patients, but I cannot go along with the belief that legislation concerning medical practice and procedure can be in any way a solution to the total problem.

Speaking professionally, I would like to respond to some proposals about abortion.

A. Given good obstetrical and hospital care, there is today no prior illness or condition of the mother which should constitute a "substantial risk" to the life of the mother. This does not account for the patient brought into Bellevue or any other hospital in a crisis -- an emergency situation due to a complicated illegal abortion -- but proposed liberalized laws on abortion and most thinking on the subject do not take these patients (hundreds of them) into account and will not help them or reduce their incidence by their enactment. Today, every single one of these patients is legally entitled to full prenatal and postpartum care under welfare and Medicaid. Education, economic support, and social help is a far better and a more far-reaching answer to this demand than abortion.

About the mental health of the mother: get any group of psychiatrists

together -- call it a panel of specialists or what you will. With all respect, I do not believe that the mental health of any given woman can be decided by one, or three or more specialists judging a patient's status from conception, through pregnancy, to delivery. The physical changes alone, plus the hormonal and the psychic, have to be looked at as well as the sociological, economic and ethnic background. It is asking rather much of any expert or panel to predict authoritatively about the future mental health of a given patient. As an obstetrician, I must emphasize that what I see in my practice, and with ward and clinic patients, is more often the traumatic (both psychic and physical) ruining result of a previous abortion. Mental health in our society, and within the limits of our mores, is a matter of opinion and not always an objective one. It is certainly not a science.

B. Logically, it would seem that even the mother has no right to request destruction of the fetus unless its existence is a direct and serious threat to her physical health or to her life. The fetus is not like an appendix, a polyp, a malignant lesion or a gallstone. It is no more a parasite at the sixth week of intrauterine life than it is at the first day of extrauterine life. There is no scientific support for the notion that the fetus passes through a subhuman stage before qualifying for humanity. Functional maturations occur and not changes in essential makeup -- this is true all through life.

Only a few years ago it was unthinkable that a human being might benefit from study and treatment before birth. The protective wall of pregnancy was inviolable; the pregnant uterus sacrosanct. But the unborn infant became a patient with the dawn of the new science of fetology, and his problems during intrauterine life are now a prime target of medical and surgical interest. Normal life before birth has also begun to yield its secrets to an impressive array of techniques for seeing, hearing, testing and monitoring the unborn child.

By the tenth week of pregnancy, ultrasound can detect fetal life, says Dr. Horace E. Thompson of the University of Colorado Medical Center. "A major

problem that has beset the obstetrician in the past has been the inability to estimate fetal maturity and size at a specific point in pregnancy," he commented. "By the use of ultrasound we are now for the first time offered a method by which fetal structures can be seen in utero and measured accurately." Clearly, the world of the unborn is not the impenetrable mystery that tradition claimed. The fetus is now coming of age as a candidate for the best that modern diagnosis and treatment can provide. He may be the littlest patient, but he is by no means the least.

C. Substantial risk that the child will be born with physical or mental defect: As I said earlier, medical science would not have come as far as it has today if it had not strived to. It is now on the threshold of a vaccine for German measles just because of professional discovery of and concern over the incidence of congenital deformity which may occur when a prospective mother contracts that disease in the first trimester. The cause of mental defect in the newborn commands the attention of experts in many fields. It is difficult to see how it can be "legalized" out of existence.

D. Social workers, sociologists, psychiatrists, and many other professional persons would probably split in half in their respective definitions or opinions of what constitutes legally-established statutory or forcible rape. Proven forcible rape is only a legal proof; medically and psychiatrically it is suspect. Any decision about an abortive procedure in these conditions has to be a legal one because there is no medical problem involved.

In conclusion: I have completed many incomplete "abortions" which I considered valid under hospital conditions in a Catholic hospital, and I have taken care of innumerable patients after an extra-medical abortion. No one can support illegal abortion, but the question before us now is whether liberalization of prevailing abortion laws will do away with, or at least decrease, the number of

illegal abortions. It might ... but I think only in small and select numbers (members) of our society. It has not done so in other cultures. I do not think that new laws are the proper antidote to the existing evil which we all recognize and acknowledge. It is difficult for the lay person caught in a personal medical problem to appreciate the fact that his or her problem can advance medical progress at the price of his own adversity. It is a hard judgment, but it is a true one, and we cannot learn by falling backwards. Any well-trained intern in this country can be taught to perform an abortion, but this knowledge does not make him a good obstetrician, much less a good doctor in terms of knowledge and wisdom. Granted, a law liberalizing abortion may prevent some useless deaths, but it will not promote any better physical or mental health until and unless we create those educational, economic, and social changes in American society which would make "therapeutic" abortion meaningful. Any attempt to change the law at this time will mask the basic issues of poverty and ignorance and impede progress in those areas.

What we are facing here is really not a medical issue. At issue is the danger of an ever-increasing base of justification for "legal abortion" and, even more important, the growth of a movement to enact more legislation in the realm of life and death. The attention of the legislative body might better be turned to education, welfare, housing, and all the multitude of social ills that exist in our society rather than to spell out to the doctor when and where and why he may legally perform an abortion -- in due time, you will be telling us how.



TESTIMONY ON THE LEGALIZATION OF THE TERMINATION  
OF PREGNANCY UP TO THE 20th WEEK.

Dr. Dryden Morse  
500 Chester Ave.  
Moorestown, N.J.

As a practicing heart surgeon I am everyday called to make decisions involving life and death, - whether or not to do a high risk heart operation on a patient crippled and dying of a potentially operable heart disease. I live in Moorestown, Burlington County, N.J., and practice at the Deborah Hospital in Browns Mills, N.J. I am assistant professor of Thoracic Surgery at the Hahnemann Medical School in Philadelphia and Head of the Department of Thoracic and Cardiovascular Surgery at the Albert Einstein Medical Center in Philadelphia.

As you know the recent availability of heart transplantation has raised many questions regarding the definition of death as it relates to the donor. The medical profession has come to the opinion of the advisability of adopting the definition given by the Harvard Study Group; namely that a person is dead as a human being when his brain is irreversibly and totally destroyed. Methods of determining this point include in addition to the absence of the usual pupillary and other reflexes the absence of any brain wave activity on repeated 6 lead electroencephalogram taken at normal body temperature.

The focus and the critical question in transplants was recently asked by one of America's greatest surgeons, Dr. Denton Cooley: "The question is not whether we will do cardiac transplants, but whether we will deny life to a particular suffering and dying potential recipient." It seems to me that the same focus should be applied to the termination of pregnancy up to the 20th week. (The 20th week is the point before which the fetus is incapable of independent life, in medical eyes, thus presenting no murder issue in the termination of pregnancy.) The real question is whether by keeping the present archaic law we will deny to the mother and society the obvious benefits of a law such as the Eugenic Protection Law of 1948 of Japan. This law comes as close to termination of pregnancy on demand as any.

The alternatives to such a modern law are the various forms of marital strife with unwanted children, divorce, child abandonment, impoverishment of the children, child battery, delinquency and crime. As Dr. Garret Hardin has stated, "Non-abortion causes great mischief, that may extend for an entire lifetime".

A woman should have a legal right to control her own reproductive life. A doctor should have a legal right to practice medicine according to the highest principles of his profession.

Neither should have these rights infringed by the archaic law now in force in New Jersey or the limited type of legislation which has been passed in Colorado. A law on the product of rape, incest and deformed children although necessary is almost inconsequential in view of the magnitude of the problem.

It is estimated that there are approximately one million illegal abortions annually in the United States. What a multitude of mentally tortured women driven to illegality, and then mutilated by life threatening procedures and yet beyond the reach of the medical profession to help!

It should be stressed that no one is asking for a law to force anyone to have pregnancy terminated. All that is required is permissive legislation: No one need act against his or her principles.

In Roman Catholic France the annual number of abortions equals the annual number of live births. In Roman Catholic Chile 27% of the women reported they had induced abortions (According to Alice S. Rossi). In America roughly one in five of the women in the Kinsey Study who were ever married reported induced abortions. If there is still anyone who would seriously propose outlawing all forms of birth control on religious grounds when one of the worlds greatest problems is the population explosion, surely the attitude of catholic women in these foreign countries and our own speaks of their desires. Over 60% of catholic women in our own country use the birth control pill. Catholic bishops favor leaving this matter to the conscience of the woman. One factor in their decision is the desire of the church to preserve and strengthen the marriage.

## CONCLUSION

The New Jersey Legislature should continue its progressive advance as the governing body of one of the great States of the Eastern United States by allowing the women of New Jersey control of their own reproductive life. Decision on the termination of pregnancy should be left to the patient and under her wishes to the physician acting in accord with the highest principles of his profession to promote both the physical and mental well being of his patients.

STATEMENT OF DR. RICHARD E. HICKS

Hearing on Abortion Law Reform

Camden, New Jersey

November 26, 1968

My personal point of view is admittedly a minority point of view, although I am hopeful the commission will not find the logic of it wanting because it is a minority opinion. ( Perhaps they might wish to for some other reason, but I submit that the fact that it is a minority position should in no way jeopardize giving it serious consideration.)

I believe the basic reason the current laws throughout the United States regarding therapeutic abortion, even in those states which have adopted laws modeled on the recommendation of the American Law Institute, are an unnecessary intrusion into the doctor-patient relationship. I do not accept the basic argument of the Roman Catholic church that abortion is an act of homicide which is sinful, nor the argument that it is an act against an individual, a society, nor humanity in general. It is, however, a procedure which should be performed according to proper medical considerations (I include here general medical, surgical, and psychiatric) considerations and techniques in the interest of the physical and emotional health of the pregnant woman. I find no logical <sup>or necessary</sup> basis for introducing a third party, <sup>the</sup> state, into the doctor-patient relationship concerning this question. I believe rather strongly that it is a question which properly may be left to the moral judgment of the individual woman and her husband, if there is one, and to the moral and medical judgment of her physician. I think quite properly there might need to be laws to prevent the ~~coercion~~ <sup>coercion</sup> of women of child bearing age into submitting to an abortion, except perhaps in situations in which there is <sup>a known</sup> serious hazard to either society or to the <sup>life</sup> of a mentally incompetent woman. I doubt ~~there~~ <sup>that</sup> there are

many instances <sup>of</sup> ~~that~~ either of these two possibilities, but I am not familiar with any statistics in this area. My position, therefore, on the question of therapeutic abortion is that <sup>this</sup> ~~xxxxx~~ should be a procedure governed only by the statutes and ethics applicable to any surgical procedure. This is my point of view as a person, and as a physician.

The remainder of my comments are based on my knowledge and experience as a psychiatrist. ( First let me say that I am not an expert in the rather large body of medical (including psychiatric) literature on the subject of abortion. My knowledge of this literature is probably about that of the average practicing psychiatrist. ) Having been informed of this hearing last week I reviewed my own limited file of journal articles and have brought copies of several which I believe should be of particular interest to the Commission. Time does not permit reading them or even presenting an abstract ~~xxxx~~ of them here. It is probable that the Commission has already become familiar with them, but if not, they are articles which present reports of highly relevant studies, and a bibliography which I believe should be an effective part of the Commissioners' self-education in their efforts to reach the very difficult decisions asked of them, on the basis of the best information available. For instance, there is general agreement in the best studies reported to date that therapeutic abortion <sup>es</sup> ~~do~~ not represent a serious hazard to the mental health of the woman thus aborted, as has been asserted strenuously by a number of people, who have not made statistically significant surveys of this question. I would like to recommend to the Commission that if this question is a bothersome one, it is quite likely that the National Institute of Mental Health could provide con-

sultants who are well qualified to aid them in determining the validity and reliability of the studies which have been done, <sup>and</sup> ~~and~~ which are referred to in the articles I have available here.

The rest of what I have to offer is opinion based on three years experience in a state mental hospital ~~with~~ <sup>of</sup> some four thousand patients, 4 1/2 years experience in part-time private practice of Psychiatry, and 4 years in full time private practice in psychiatry. My additional experience includes two years as a psychiatrist with United States Naval Hospital, Philadelphia, Pa., two years as chief of the mens In-patient Service of the Eastern Pennsylvania Psychiatric Institute, and 1 1/4 years as Assistant Director of Psychiatric Education at the Hahnemann Medical College of Philadelphia.

In the course of this experience I have seen three woman who have reported any degree of mental distress which they associated with having had an induced abortion. I have no available account of how many women I have seen in comparable therapy situations as these three women, but there is no question it is a large enough number, that, considering the estimated incidence <sup>of</sup> illegally induced abortions alone, in the general population, I <sup>conclude that I must</sup> have treated many other women who have had abortions. A few women without any mental distress related to the event have reported having had an abortion, or more than one, in the past. In one such woman it was my opinion that her illegitimate pregnancy and abortion was <sup>symptomatic</sup> ~~systematic~~ of her borderline schizophrenic illness. She was not disturbed by the abortion, but glad for it, and from my personal views, the aborted fetus, had it been permitted to be born to this woman, would have been <sup>unfortunate as</sup> ~~as~~ her one young child who was then being subjected to the continuing effects of this ladies' psychopathology, which incidentally I was unable to do anything to <sup>ameliorate</sup> ~~emulate~~.

Getting back to the three women I mentioned who reported, ~~xxxx~~ and genuinely appeared to have mental distress resulting from having acquired an induced abortion. Two of these women had illegal abortions for premarital pregnancies, during teenage years. Each was in her thirties when I saw her. Both had emotional illnesses caused by other factors in their lives, chiefly factors which were present in their childhood family relationships, and would have been emotionally ill whether or not there had ever had been the illegitimate pregnancy or the abortion, in my opinion. Mental distress related to the past abortions was only one symptom of a much more pervasive illness in which these women were in mental distress in relation to many real and fantasied aspects and events in relationships in their lives.

Neither ~~xxxx~~ woman was psychotic. One was a woman with a hysterical character disorder and the ~~xx~~ other had a conversion reaction ( a neurosis ) associated with depressive symptoms. Both of these women were Catholic and believed their abortions to have been sinful.

The third woman was a patient I had in treatment prior to her abortion. She was a seriously disturbed woman with a profound character disturbance, diagnosed in standard terminology as an emotionally unstable personality. She had previously made a serious suicide attempt. She was a very difficult patient to treat by virtue of the type of psychopathology present. She was unable to function in an adequate and stable manner in any of her relationships, including her psychotherapy, <sup>and</sup> over-reacted greatly and <sup>at</sup> times dangerously to ordinary frustrations. When she became pregnant illegitimately she sought an illegal abortion.

She was then preoccupied with the idea of suicide, in open and panicky threats, when her attempt to find an abortionist failed on the first try. She subsequently obtained a therapeutic abortion.. Months later, when she was in the process of heaping blame upon herself for everything she



could conceive of since childhood, ~~sh~~ seeing herself as a totally despicable and hopeless person, then she <sup>railed</sup> against herself, about many things, included among which was her shame and guilt for not even being healthy enough to raise a child, and for having found it necessary to have ~~to have~~ an abortion. She ~~did~~ still did not consider herself capable of raising a child, and indeed she was not healthy enough to be a fit mother. It took a long, long time to work out her very deeply rooted feelings of unworthiness as a person, which derived from her own early ~~xxx~~ relationship with her parents particularly her mother. This woman is now married and is hopeful of becoming a mother, now that she feels that she can do justice by her child.

I want to add only this, in the 12 years that I have spent in Psychiatry, since beginning my training, I have had many more woman, than I have just described above, come under my care for pre- and post-partum psychoses, that is, with very serious illnesses precipitated by the fact ~~xxxx~~ of being pregnant, and I have had some of these woman under my care during subsequent pregnancies which were delivered without the complications of a psychotic breakdown. <sup>To my recollection</sup> I have not recommended abortions to any of these woman, since they could be safely treated without an abortion. This is not to say that I might not at some time see a patient who had a previous pre- or post-partum psychosis for whom I would believe an abortion was essential, during a later pregnancy, if there was a serious risk of suicide or of a repeat of a prolonged psychotic episode. The point being, that it is not psychiatrically sound to generalize about who should or who should not have an abortion.

But my main thesis is this, that in my experience and on the basis of the statistically significant studies~~es~~ which have been made, I see no reason to straddle physicians with restrictive laws concerning therapeutic abortions. The decision whether or not to medically induce abortions <sup>should</sup> ~~can~~ be made on medical grounds and the physician should take into consideration the physical and emotional welfare of the potential mother, at times the potential father, and the potential off-spring, and at times social and economic factors should be considered important as regards the emotional~~w~~ well being of the potential mother and her family.

The greatest need is to take abortions out of the hands of the very dangerous, not so clandestine~~d~~, untrained, unskilled and uncaring hands of the ~~psy~~ sociopathic abortionist, who is a true criminal, and permit women the best that medical science and good common sense can offer them.

*Richard E. Hicks, M.D.*

Richard E. Hicks, M.D.

STATEMENT OF DR. ANTHONY DEDE  
THE ABORTION QUESTION

"To make one-half of the human race consume its energies in the function of housekeeper, wife, and mother is a monstrous waste of the most precious material God ever made."  
Rev. Theo. Parke, Boston 1853

No subject is less amenable to a dispassionate review than that of the place of abortion in modern Society. However, dispassion is needed to appraise the restrictive effects of a powerful recalcitrant theology on an ever more crowded, ever more self-aware and an increasingly less tractable population.

The facts which emerge from the morass of polemics obscuring this subject are clear cut, incontrovertible, and cry out for redress. Each year between 650,000 and 113 million criminal abortions are performed in the United States. In the words of Dr. Michael Burnhill of Princeton, induced abortions among lower socio-economic groups constitute a medical problem of epidemic proportions. Any physician who establishes a reputation for compassionate listening to his patients will be quickly impressed by the extent of the problem in his own locale. Any physician who has worked at a metropolitan hospital for a time will attest to the widespread nature of the criminal abortion problem, both in terms of total numbers of cases and the appalling morbidity and mortality of the botched-up victims. Any social order which drives its economically--and educationally--marginal citizens to the clutches of the renegade abortionists can ill afford to use the guise of theologic syllogisms to justify its unwillingness to reform.

Recent events make the necessity for reform all the more pressing. Incontestable evidence of the ability of a variety of biologic, chemical, and environmental agents to adversely affect the developing has been gathered by scientists throughout the world. Through the efforts of physicians, sanitation engineers, and public health officials, the death rate has fallen to remarkably low levels whereas the arable land, mineral resources, and potable water supply has remained relatively constant. Thus, the ingredients for the population explosion have evolved.

Inevitably, agitation against the status quo has reached the usual channels for change. Among the medical specialties, obstetricians and psychiatrists have been most sensitive to the outcries. Other professions, including the legal and the modern clergy have also appreciated the dimension of the danger to the social fabric our present restrictive laws impose. Mobilizing support for reform among these groups has not been difficult. Converting this moral outrage to legislative action has not been so easy, however.

Providently, within the past few years an important advance in medical technology has made the road to reality much easier. In China the suction curet was developed. It has proved to be a device which rapidly and painlessly evacuates the pregnant uterus with no appreciable risk of complications. The use of this instrument has spread first through Eastern Europe and more recently to the United States. With this technique 30 seconds are required to terminate an early pregnancy. With this technique over 200,000 procedures were carried out in Czechoslovakia with only four instances of side effects, such as fever or infection.

Armed with this knowledge, the proponents for change were able to hammer out the abortion plank of the Model Penal Code and have it accepted by the American Bar Association, the American Medical Association, and the National Councils of the YMCA. The American College of Obstetricians and the American Psychiatric Association quickly lent their support to get a bandwagon rolling. Various state chapters of these societies have given assent and the consequent discussion with clear enunciation of the facts has resulted in law reform in the several states.

In New Jersey a program of education, discussion, and enunciation springing from the local base of the aforementioned groups has proved successful enough to spark this hearing.

A comment by Thomas Jefferson is certainly relevant at this point:

"I am certainly not an advocate for frequent and untried changes in laws and constitutions. I think

moderate imperfections had better be borne with; because, when once known, we accommodate ourselves to them, and find practical means of correcting their ill effects. But I know also, that laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths disclosed, the manners and opinions change with the change of circumstances, institutions must advance also, and keep pace with the times."

*John Jay*

SOME LEGAL CONSIDERATIONS  
CONCERNING THE PROPOSED  
REVISION OF THE NEW JERSEY  
CRIMINAL LAWS DEALING  
WITH ABORTION

November 26, 1968

Submitted by:

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The ultimate benefit which should be sought by any Government is the Common Good. This must be the goal especially when the State is a Republic or a Democracy, for in such States the sovereign is the people.

It was for the Common Good that the American Colonies felt obliged to declare themselves independent of Great Britain, because "all men are created equal and are endowed with certain inalienable rights, including the right to life, liberty, and the pursuit of happiness."

It was for the Common Good that the Constitution of the United States was ordained and established, since its Preamble reveals the Constitution's reasons for being, among others, the establishment of justice, the promotion of the general welfare, and the securing of Liberty's blessings to ourselves and our posterity.

Now it appears that instead of securing Liberty's blessings to our posterity, we are asked to embark on a course designed to legally destroy a great number of our posterity and deny them the primary right to life before they see the light of day.

Unless this Republic is ready to deny that all men are created equal; unless it is ready to deny that all men are

endowed with an equal right to life, then any law which sanctions the destruction of an innocent man ought not to be enacted. If we believe that such a law should be enacted, then I say we should not give hypocritical lip service to our Declaration of Independence and our Constitution with its Preamble, but we should discard those documents with their outworn notions and relegate them to the scrap heap of interesting, but useless, historical curiosities. And the presently proposed liberalization of the criminal law dealing with abortion brings us to this crossroad. It makes necessary the choice to change or not to change our long held legal philosophy concerning Man's basic rights, because the proposed enactment is a startling departure from our concepts of both substantive and procedural law.

When our Founding Fathers used the word "man", they referred to the entire human race and to every human being. They did not intend to exclude women and children. They did not mean only healthy men or sane men, or brilliant men or strong men. They used the word in its generic sense to embrace all of mankind and all human beings.

And the law of New Jersey recognizes that an unborn child, from the very moment of conception, and at all stages



of its gestative life is a legally existing entity. This was recognized in three leading New Jersey cases decided by our Supreme Court, <sup>1</sup>Smith v. Brennan, decided in 1960; <sup>2</sup>Raleigh-Fitkin Hospital v. Anderson, decided in 1964; and <sup>3</sup>Gleitman v. Cosgrove, decided in 1967. Smith v. Brennan allowed a child after birth to recover damages for injuries it received before it was born. Raleigh Hospital v. Anderson required a mother, against her religious scruples, to have a blood transfusion to save the life of her unborn child. Gleitman v. Cosgrove denied recovery by parents against the obstetrician because their child was born with defects and the doctor had not advised them to procure an abortion.

Our criminal law regards an unborn child as a separate entity. Our law of property and decedent's estates considers an unborn child in being for purposes beneficial to his interest. Our Workmen's Compensation law allows a posthumous child to recover as a dependent of his deceased father, on the ground that he is both a "child in esse" at the time of his father's death, and when born, a "posthumous child". Hence the law recognizes the property rights of every unborn child no matter what the stage of gestation, and will appoint a guardian ad litem if necessary to protect those rights. With the proposed modification of the abortion law, what

kind of legal anomaly will we have which stands firm for an unborn child's property rights but denies his absolute right to live and enjoy them?

In the Gleitman v. Cosgrove case which I cited above, our Supreme Court said: "If....(the unborn child) could have been asked as to whether his life should be snuffed out before his full term of gestation could run its course, our felt intuition of human nature tells us he would almost surely choose life with defects as against no life at all. . . . The right to life is inalienable in our society...Though we sympathize with the unfortunate situation in which these parents find themselves, we firmly believe that the right of their child to live is greater than, and precludes their right not to endure financial and emotional injury. . . .and even if such damages were cognizable, a claim for them would be precluded by the countervailing public policy supporting the preciousness of human life."

The Gleitman cases highlights two important facets. First it reiterates the principle enunciated in our Declaration of Independence, that the right to life is inalienable. Secondly it describes the unborn child, the fetus, as "human life". Most importantly, it upholds the unborn child's right to life as being more important, because of the preciousness

of that very life, than the parents' right not to endure emotional and financial injury.

The three cases which I have cited are most important however, not because of their particular dealing with the matters involved; not because of their vindication of the unborn's rights to life and property in those particular matters, but, for our purposes, and particularly the purposes of this Commission, because they reveal the philosophy of highly-trained, carefully disciplined, and extremely expert legal minds, regarding the unborn child, its status as a human being, and its legal rights, including its right to keep the life which Nature gave it.

Those opinions reflect the trend of current judicial thought, which is to expand the rights of unborn children rather than to circumscribe them. The law and its application by our judiciary must relate to, and keep abreast of, modern scientific and technical knowledge. Opinions and laws of an earlier day based on an assumption of facts inaccurate because of then incomplete knowledge are neither reliable nor binding on today's courts in the light of intervening scientific discoveries that have vastly broadened our knowledge of the world in which we live. The ancient belief that the fetus was a part of its mother and had no life apart from hers; that it became alive only when it

quicken in its mother's womb and she could feel that life, has been proven error. We now know that each and every person ever born, was a separate living entity, a human being, from the very moment of his conception.

The law disfavors the doing by indirection of that which may not be done by direction. Legislation mandating the destruction of every fetus in the categories defined by the American Law Institute's Model Penal Code would be denounced. However, we are asked to pass permissive legislation which puts the fate of the unborn child in the hands of others whose reasons for destroying it may be purely subjective and personal.

We then have a situation wherein the Law says to the unborn: "The State does not compel your destruction, but it will permit others to destroy you if they do not want you to be born". The one type of legislation is as vicious as the other.

And that is the heart of the matter. Professor George H. Williams of the Harvard Divinity School has said that those who are fighting against abortion are fighting for the "very frontier of what constitutes the mystery of our being". Unless those frontiers are defended, Professor Williams stated: "the future is grim with all the prospects of man's cunning and contrived manipulation of himself and

others."

For when the right to life of one class of human beings is eroded by legislative fiat, whose life will then be safe?

A law which sanctions the destruction of an unwanted human life in its mother's womb springs from the seeds of a distorted legal philosophy which in a brief time could easily sanction the extermination of unwanted children already born by demonstrating that there is no great difference between the destruction of such children and the destruction of children in utero. And really, there is no great difference. From this point of departure, the classes of those members of society who could be legally executed without due process of law as we think of it, could be expanded to include the burdensome aged, the hopelessly handicapped, the incurably ill, and the hopelessly insane.

It becomes fairly obvious that any law which opens the door to a corrosive influence affecting a fundamental right is not for the common good. The common good can never be served by a law which allows death to be inflicted on certain members of society who are unwanted. This was tried in Germany during our time, but I doubt if anyone will maintain that the common good was served.

If liberalized abortion is thought necessary for socio-

economic reasons, then I submit that it is not the sophisticated solution of those problems worthy of our advanced day and age. Rather, it is a retreat to the barbaric and primitive; an easy answer, and an admission of defeat.

That illegal abortions are performed with some frequency no one will deny, but I submit that the widely divergent statistics which have been circulated are totally unreliable and cannot be proven valid. At the abortion conference held in Washington in September, 1967, and sponsored by the Kennedy Foundation and the Harvard Divinity School, it was made clear that the figure of one million illegal abortions a year, which is so popular with the American press, is only a guess. It has gained respectability by constant repetition and has no scientific basis.

In any event we do not curb crime by liberalizing the criminal law; we encourage it. Those women seeking anonymity and a cheaper price will still patronize the illegal abortionist, and abortion, both legal and illegal will become more frequent and more common because it will have been given a certain acceptance by the law.

It is deadly ironic too, that some of those who most strongly advocate legal extermination of innocent human beings are the same people who cry out the loudest against capital

punishment for the guilty as inhuman and uncivilized. How can a murderer's right to live be justified in the same breath that dooms an innocent baby to die? Will anyone say this manifests the common good?

Future historians may well label this century as the age of shameful contradiction. A generation which sent its sons to die for the oppressed in remote corners of the world, but which sanctioned as lawful the destruction of its own most defenseless; a society in which love was on the lips of all but was denied to its most inarticulate; a time wherein man physically probed the heavens but refused to some the light of day; an age in which both time and space were conquered, but were both denied to those who were unwanted; an era which abolished capital punishment for the guilty but decreed it for the innocent; a civilization wherein man most forcefully asserted his human dignity, but denigrated by his laws, his right to life.

In conclusion, I would only add that mankind cannot win any game in which the opening gambit is the destruction of his offspring. This is the antithesis of progress, for with the unborn lies the future, and if the price of progress, so-called, is the most minimal erosion of man's fundamental right to life, it is a price which is too high, and a price we dare not pay.

CASES CITED

<sup>1</sup>Smith v. Brennan (Supreme Court 1960) 31 New Jersey 353

<sup>2</sup>Raleigh Fitkin - Paul Morgan Memorial Hospital v.  
Anderson (Supreme Court 1964) 42 New Jersey 421

<sup>3</sup>Gleitman v. Cosgrove (Supreme Court 1967) 49 New Jersey 22



*Enrolled copy*

House Bill No. 88.

Introduced by Delegate Spector.

Read and Examined by Proof Reader:

.....  
Proof Reader.

.....  
Proof Reader.

Sealed with the Great Seal and Presented to the Governor, for his

approval this.....day of.....

at..... o'clock.....

.....  
Chief Clerk.

CHAPTER.....

AN ACT to repeal Section 3 of Article 27 of the Annotated Code of Maryland (1967 Replacement Volume), title "Crimes and Punishments," subtitle "Abortion"; to repeal and re-enact, with amendments, Section 145 of Article 43 of said Code (1967 Supplement), title "Health," subtitle "Practitioners of Medicine"; and to add new Sections 149E and 149F 149F AND 149G to said Article 43 (1967 Replacement Volume and 1967 Supplement), to be under the said subtitle "Practitioners of Medicine," and under the new sub-heading "Abortion," repealing the laws concerning criminal abortion in this State, removing a reference to that crime from the laws concerning the revocation or suspension of the licenses of physicians, relating to employees or other persons associated with hospitals being called upon to take part in the termination of a human pregnancy, and establishing under the Medical Practices Act certain misdemeanors concerning the termination of human pregnancy; and relating generally to the termination of human pregnancy in this State.

EXPLANATION: *Italics indicate new matter added to existing law.*  
[Brackets] indicate matter stricken from existing law.  
CAPITALS indicate amendments to bill.  
~~Strike out~~ indicates matter stricken out of bill.

1 Whereas, the possible repeal or modification of the laws concerning  
2 criminal abortion have been the subject of extended discussion in  
3 the State of Maryland during recent years.

4 This subject has been discussed not only on the floor of both  
5 Houses of the General Assembly but also in 1967 by a special Sub-  
6 committee under the Legislative Council of Maryland.

7 This Subcommittee recommended after careful and thoughtful con-  
8 sideration of the entire subject that Maryland should repeal its  
9 criminal laws on abortion. The Subcommittee pointed out that such  
10 a repeal would mean that abortions hereafter would be solely a  
11 medical procedure and therefore performed by physicians subject  
12 to the standards of accepted medical practice and in licensed hospi-  
13 tals.

14 In addition to the repeal of the laws on criminal abortion, it is  
15 desirable to remove references to that offense from the laws in the  
16 Medical Practices Act and also to make illegal certain forms of  
17 advertising concerning abortions performed in places other than  
18 hospitals and also the sale or promotion of certain drugs or devices  
19 which might be used for such purpose in a place other than a hospital;  
20 now, therefore

1 SECTION 1. *Be it enacted by the General Assembly of Maryland,*  
2 *That Section 3 of Article 27 of the Annotated Code of Maryland*  
3 *(1967 Replacement Volume), title "Crimes and Punishments," sub-*  
4 *title "Abortion," be and it is hereby repealed.*

1 SEC. 2. *And be it further enacted,* That Section 145 of Article 43  
2 of said Code (1967 Supplement), title "Health," subtitle "Practi-  
3 tioners of Medicine," be and it is hereby repealed and re-enacted,  
4 with amendments, that new Sections 149E and ~~149F~~ 149F AND  
5 149G be and they are hereby added to said Article 43 (1967 Re-  
6 placement Volume and 1967 Supplement), to be under the said sub-  
7 title "Practitioners of Medicine," and under the new subheading  
8 "Abortion," and all to read as follows:

9 145.

10 The Board of Medical Examiners of this State may, by a vote of  
11 five members, revoke or suspend any license which has been issued,  
12 and may cause the name of any physician so licensed to be removed  
13 from the register of the licentiates of the city or county where it may  
14 be recorded, or may place a physician on probation, for any of the  
15 following causes, to wit: the use of fraud or deception in obtaining  
16 the license provided in this subtitle, habitual drunkenness, insanity  
17 as determined in accordance with the provisions of Article 59,  
18 addiction to narcotics, [criminal abortion,] *termination of human*  
19 *pregnancy involving a violation of Section ~~149F~~ 149E of this subtitle,*  
20 conviction of crime involving moral turpitude or unprofessional or  
21 dishonorable conduct; provided that any revocation or suspension  
22 proceedings before the Board of Medical Examiners selected by the  
23 Medical and Chirurgial Faculty heretofore adjudicated shall not be  
24 revived by reason of the provisions hereof. Before proceeding to  
25 revoke or suspend any such license, the person against whom com-  
26 plaint is made shall be furnished with a copy of the complaint and  
27 charges made against him, and shall be given an opportunity for a  
28 hearing before the Board, in person or by attorney, and at such  
29 hearing testimony may be offered for and against the person so  
30 charged. The action of the Board shall be reduced to writing,  
31 stating also the reasons for said action, and a copy thereof shall be  
32 delivered or mailed to the person against whom complaint is made;  
33 said party shall have the right of appeal to the circuit court of the  
34 city or county wherein he may reside or where the license is recorded,

35 the judge or judges of which said court shall fully hear and deter-  
 36 mine all matters connected with the action of said Board from which  
 37 appeal is taken. Both the party and the Board shall have a further  
 38 right of appeal from the decision of the circuit court to the Court of  
 39 Appeals of Maryland, subject generally to the time and manner pro-  
 40 vided for the taking of such appeals to the Court of Appeals. At any  
 41 time within two years from the revocation or suspension of any  
 42 license, the Board revoking or suspending the same may, by a vote  
 43 of five members, issue without examination a new license to the  
 44 person whose license was so revoked or suspended; but after the  
 45 expiration of two years such person can obtain a new license only by  
 46 compliance with the same requirements which are imposed on other  
 47 applicants for licenses under this subtitle.

1 149E.

2 (A) A PHYSICIAN LICENSED BY THE STATE OF MARY-  
 3 LAND MAY TERMINATE A HUMAN PREGNANCY OR AID OR  
 4 ASSIST OR ATTEMPT A TERMINATION OF A HUMAN PREG-  
 5 NANCY IF SAID TERMINATION TAKES PLACE IN AN AC-  
 6 CREDITED HOSPITAL AND THAT ONE OR MORE OF THE  
 7 FOLLOWING CONDITIONS EXIST:

8 (1) THERE IS SUBSTANTIAL RISK THAT CONTINUANCE  
 9 OF THE PREGNANCY WOULD GRAVELY IMPAIR THE  
 10 PHYSICAL OR MENTAL HEALTH OF THE MOTHER;

11 (2) CONTINUATION OF THE PREGNANCY IS LIKELY TO  
 12 RESULT IN THE DEATH OF THE MOTHER;

13 (3) THERE IS SUBSTANTIAL RISK OF THE BIRTH OF A  
 14 CHILD WITH GRAVE AND PERMANENT PHYSICAL  
 15 DEFORMITY OR MENTAL RETARDATION;

16 (4) THAT THE PREGNANCY RESULTED FROM A RAPE  
 17 COMMITTED AS A RESULT OF FORCE OR BODILY  
 18 HARM OR THREAT OF FORCE OR BODILY HARM, AND  
 19 LESS THAN SIXTEEN WEEKS OF GESTATION HAVE  
 20 PASSED AND THAT THE STATE'S ATTORNEY OF  
 21 BALTIMORE CITY OR THE COUNTY IN WHICH THE  
 22 ALLEGED RAPE HAS OCCURRED HAS INFORMED  
 23 THE PHYSICIAN IN WRITING OVER HIS SIGNATURE  
 24 THAT THERE IS PROBABLE CAUSE TO BELIEVE  
 25 THAT THE ALLEGED VIOLATION DID OCCUR.

26 (B) AN ANNUAL REPORT OF THE THERAPEUTIC ABOR-  
 27 TIONS PERFORMED IN MARYLAND SHALL BE MADE BY  
 28 THE DIRECTOR OF THE HOSPITAL AND ITS GOVERNING  
 29 BOARD TO THE JOINT COMMISSION ON ACCREDITATION OF  
 30 HOSPITALS AND THE STATE BOARD OF HEALTH AND  
 31 MENTAL HYGIENE FOR THE PURPOSE OF INSURING THAT  
 32 ADEQUATE AND PROPER PROCEDURES ARE BEING FOL-  
 33 LOWED IN ACCREDITED HOSPITALS. SAID REPORTS SHALL  
 34 BE CONSIDERED CONFIDENTIAL INFORMATION AND WILL  
 35 COME UNDER THE PROVISIONS OF ARTICLE 43, SECTION  
 36 149C OF THE MEDICAL PRACTICE ACT.

1 *Abortion*

2 140E. 140F.

3 A person who is an employee, a member, or associated with the  
 4 staff of a hospital (as defined in Section 556 of this Article) in which  
 5 a human pregnancy is being terminated, and who states in writing,  
 6 on moral or religious grounds, an objection to the termination of  
 7 human pregnancy, shall not be required to participate in the  
 8 medical procedures which result in the termination of the pregnancy;

9 and the refusal of that person to participate in those medical pro-  
 10 cedures shall not be a basis for any disciplinary or other recrimina-  
 11 tory action against him.

12 140F. 140G.

13 (a) A person is guilty of a misdemeanor if he

14 (1) knowingly prints, publishes, advertises, or circulates, or  
 15 knowingly causes to be printed, published, advertised, or circulated,  
 16 a pamphlet, notice, reference, or printed matter which (i) names,  
 17 refers to, or hints at any place (other than a hospital as defined in  
 18 Section 556 of this Article) at which a termination of human preg-  
 19 nancy may be obtained or performed; (ii) names, refers to, or hints  
 20 at the name of any person (other than an employee, member, or  
 21 associate of such a hospital) who may obtain or perform a termina-  
 22 tion of human pregnancy; (iii) names, refers to, or hints at any  
 23 drug, medicine, preparation, instrument, or device for causing  
 24 inducing, or obtaining (other than in such a hospital) a termination  
 25 of human pregnancy;

26 (2) (1) sells or trades GIVES, or causes to be sold or traded  
 27 GIVEN, any drug, medicine, preparation, instrument, or device for  
 28 the purpose of causing, inducing, or obtaining a termination of  
 29 human pregnancy (other than in such a hospital or as prescribed by  
 30a a licensed physician);

30 (3) (2) gives advice, counsel, or information for the purpose of  
 31 causing, inducing, or obtaining a termination of human pregnancy  
 32 (other than in such a hospital);

33 (4) (3) knowingly assists or causes by any means whatsoever the  
 34 obtaining or performing of a termination of human pregnancy  
 35 (other than in such a hospital).

36 (b) (4) The furnishing or providing of FURNISHES OR PRO-  
 37 VIDES a drug, or medicinal preparation, by the prescription of a  
 38 licensed physician, having the possible effect when taken internally  
 39 PURPOSE of terminating a human pregnancy WHEN TAKEN IN-  
 40 TERNALLY, UNLESS SUCH DRUG OR MEDICINAL PREPARA-  
 41 TION IS FURNISHED OR PROVIDED IN AN ACCREDITED  
 42 HOSPITAL, is specifically not included within the enumeration of  
 43 misdemeanors in subsection (a) of this section. (D) Also, the termina-  
 44 tion of a human pregnancy by a licensed physician, under emergency  
 44a conditions at a place other than such a hospital, is specifically not  
 44b included within the enumeration of misdemeanors in subsection (a)  
 44c of this section IF THE PHYSICIAN SHALL FORTHWITH  
 44d REPORT SAID TERMINATION TO THE DIRECTOR OF AN  
 44e ACCREDITED HOSPITAL IN HIS COUNTY, AS HEREIN  
 44f DEFINED.

45 (c) Any person who violates any provision of this section, upon  
 46 conviction, is subject to a fine of not less than one hundred dollars or  
 47 more than five thousand dollars for each offense, or to imprisonment  
 48 for not less than one year or more than three years, or both such fine  
 49 and imprisonment. The penalties in this section are in addition to  
 50 and not in substitution for any other penalty or penalties applicable  
 51 to particular classes of persons under other laws of this State.

1 149E.

2 (A) (NO PERSON SHALL TERMINATE OR ATTEMPT TO  
 3 TERMINATE OR ASSIST IN THE TERMINATION OR AT-  
 4 TEMPT AT TERMINATION OF A HUMAN PREGNANCY  
 5 OTHERWISE THAN BY BIRTH, EXCEPT THAT) A PHYSI-  
 6 CIAN LICENSED BY THE STATE OF MARYLAND MAY

7 TERMINATE A HUMAN PREGNANCY OR AID OR ASSIST  
8 OR ATTEMPT A TERMINATION OF A HUMAN PREGNANCY  
9 IF SAID TERMINATION TAKES PLACE IN A HOSPITAL  
10 ACCREDITED BY THE JOINT COMMISSION FOR ACCREDI-  
11 TATION OF HOSPITALS AND LICENSED BY THE STATE  
12 BOARD OF HEALTH AND MENTAL HYGIENE AND IF  
13 ONE OR MORE OF THE FOLLOWING CONDITIONS EXIST:

- 14 (1) CONTINUATION OF THE PREGNANCY IS LIKELY  
15 TO RESULT IN THE DEATH OF THE MOTHER;
- 16 (2) THERE IS A SUBSTANTIAL RISK THAT CONTINU-  
17 ATION OF THE PREGNANCY WOULD GRAVELY  
18 IMPAIR THE PHYSICAL OR MENTAL HEALTH OF  
19 THE MOTHER;
- 20 (3) THERE IS SUBSTANTIAL RISK OF THE BIRTH OF  
21 THE CHILD WITH GRAVE AND PERMANENT PHYS-  
22 ICAL DEFORMITY OR MENTAL RETARDATION;
- 23 (4) THE PREGNANCY RESULTED FROM A RAPE COM-  
24 MITTED AS A RESULT OF FORCE OR BODILY  
25 HARM OR THREAT OF FORCE OR BODILY HARM  
26 AND THE STATES' ATTORNEY OF BALTIMORE  
27 CITY OR THE COUNTY IN WHICH THE RAPE OC-  
28 CURRED HAS INFORMED THE HOSPITAL ABOR-  
29 TION REVIEW AUTHORITY IN WRITING OVER HIS  
30 SIGNATURE THAT THERE IS PROBABLE CAUSE  
31 TO BELIEVE THAT THE ALLEGED RAPE DID  
32 OCCUR.

1 (B) IN NO EVENT SHALL ANY PHYSICIAN TERMI-  
2 NATE OR ATTEMPT TO TERMINATE OR ASSIST IN THE  
3 TERMINATION OR ATTEMPT AT TERMINATION OF A HU-  
4 MAN PREGANCY OTHERWISE THAN BY BIRTH UNLESS ALL  
5 OF THE FOLLOWING CONDITIONS EXIST:

- 6 (1) NOT MORE THAN TWENTY-SIX WEEKS OF GES-  
7 TATION HAVE PASSED (EXCEPT IN THE CASE  
8 OF A TERMINATION PURSUANT TO SUBSECTION  
9 (A)(1) OR WHERE THE FETUS IS DEAD); AND
- 10 (2) AUTHORIZATION THEREFOR HAS BEEN GRANTED  
11 IN WRITING BY A HOSPITAL ABORTION REVIEW  
12 AUTHORITY APPOINTED BY THE HOSPITAL.

13 (C) THE HOSPITAL ABORTION REVIEW AUTHORITY  
14 SHALL KEEP WRITTEN RECORDS OF ALL REQUESTS FOR  
15 AUTHORIZATION AND ITS ACTION THEREON. AN AN-  
16 NUAL REPORT OF THE THERAPEUTIC ABORTIONS PER-  
17 FORMED IN MARYLAND SHALL BE MADE BY THE DI-  
18 RECTOR OF THE HOSPITAL AND ITS GOVERNING BOARD.  
19 SUCH REPORTS SHALL INCLUDE THE NUMBER OF RE-  
20 QUESTS, AUTHORIZATIONS AND PERFORMANCES. THE  
21 GROUNDS UPON WHICH SUCH AUTHORIZATIONS WERE  
22 GRANTED, AND THE PROCEDURES EMPLOYED TO CAUSE  
23 THE ABORTIONS AND SUCH REPORTS SHALL BE FOR-  
24 WARDED TO THE JOINT COMMISSION ON ACCREDITA-  
25 TION OF HOSPITALS AND THE STATE BOARD OF HEALTH  
26 AND MENTAL HYGIENE FOR THE PURPOSE OF INSURING  
27 THAT ADEQUATE AND PROPER PROCEDURES ARE BE-  
28 ING FOLLOWED IN ACCREDITED HOSPITALS. SUCH IN-  
29 FORMATION, WHICH IS NOT SUBJECT TO THE PHYSI-  
30 CIAN-PATIENT PRIVILEGE, MAY BE MADE AVAILABLE  
31 TO THE PUBLIC. SAID REPORTS SHALL NOT INCLUDE  
32 THE NAMES OF THE PATIENTS ABORTED.

1 149F. (11)

2 (A) NO PERSON SHALL BE REQUIRED TO PERFORM  
3 OR PARTICIPATE IN MEDICAL PROCEDURES WHICH RE-  
4 SULT IN THE TERMINATION OF PREGNANCY; AND THE  
5 REFUSAL OF ANY PERSON TO PERFORM OR PARTICI-  
6 PATE IN THESE MEDICAL PROCEDURES SHALL NOT BE  
7 A BASIS FOR CIVIL LIABILITY TO ANY PERSON NOR A  
8 BASIS FOR ANY DISCIPLINARY OR ANY OTHER RE-  
9 CRIMINATORY ACTION AGAINST HIM.

10 (B) NO HOSPITAL, HOSPITAL DIRECTOR OR GOVERN-  
11 ING BOARD SHALL BE REQUIRED TO PERMIT THE TER-  
12 MINATION OF HUMAN PREGNANCIES WITHIN ITS INSTI-  
13 TUTION AND THE REFUSAL TO PERMIT SUCH PROCE-  
14 DURES SHALL NOT BE GROUNDS FOR CIVIL LIABILITY  
15 TO ANY PERSON NOR A BASIS FOR ANY DISCIPLINARY  
16 OR OTHER RECRIMINATORY ACTION AGAINST IT BY  
17 THE STATE OR ANY PERSON.

18 (C) THE REFUSAL OF ANY PERSON TO SUBMIT TO  
19 AN ABORTION OR TO GIVE CONSENT THEREFOR SHALL  
20 NOT BE GROUNDS FOR LOSS OF ANY PRIVILEGES OR  
21 IMMUNITIES TO WHICH SUCH PERSON WOULD OTHER-  
22 WISE BE ENTITLED NOR SHALL SUBMISSION TO AN  
23 ABORTION OR THE GRANTING OF CONSENT THEREFOR  
24 BE A CONDITION PRECEDENT TO THE RECEIPT OF ANY  
25 PUBLIC BENEFITS.

1 149G. (11)

2 (A) A PERSON IS GUILTY OF A MISDEMEANOR IF HE

3 (1) SELLS OR GIVES, OR CAUSES TO BE SOLD OR  
4 GIVEN, ANY DRUG, MEDICINE, PREPARATION, IN-  
5 STRUMENT, OR DEVICE FOR THE PURPOSE OF  
6 CAUSING, INDUCING, OR OBTAINING A TERMI-  
7 NATION OF HUMAN PREGNANCY OTHER THAN  
8 BY A LICENSED PHYSICIAN IN A HOSPITAL AC-  
9 CREDITED BY THE JOINT COMMISSION FOR AC-  
10 CREDITATION OF HOSPITALS AND LICENSED BY  
11 THE STATE BOARD OF HEALTH AND MENTAL  
12 HYGIENE; OR

13 (2) GIVES ADVICE, COUNSEL, OR INFORMATION FOR  
14 THE PURPOSE OF CAUSING, INDUCING, OR OB-  
15 TAINING A TERMINATION OF HUMAN PREG-  
16 NANCY OTHER THAN BY SUCH PHYSICIAN IN  
17 SUCH A HOSPITAL; OR

18 (3) KNOWINGLY ASSISTS OR CAUSES BY ANY MEANS  
19 WHATSOEVER THE OBTAINING OR PERFORMING  
20 OF A TERMINATION OF HUMAN PREGNANCY  
21 OTHER THAN BY SUCH PHYSICIAN IN SUCH A  
22 HOSPITAL.

23 (B) ANY PERSON WHO VIOLATES ANY PROVISION OF  
24 THIS SECTION, UPON CONVICTION, IS SUBJECT TO A  
25 FINE OF NOT MORE THAN FIVE THOUSAND DOLLARS  
26 FOR EACH OFFENSE, OR TO IMPRISONMENT FOR NOT  
27 MORE THAN THREE YEARS, OR BOTH SUCH FINE AND  
28 IMPRISONMENT. THE PENALTIES IN THIS SECTION ARE  
29 IN ADDITION TO AND NOT IN SUBSTITUTION FOR ANY  
30 OTHER PENALTY OR PENALTIES APPLICABLE TO PAR-  
31 TICULAR CLASSES OF PERSONS UNDER OTHER LAWS  
32 OF THIS STATE.

*Recommended  
by the  
Essex County  
Medical  
Society*

1     **SEC. 3.** *And be it further enacted,* That nothing in this Act applies  
2 to, or affects the prosecution or penalty for, any event or occurrence  
3 prior to the effective date of this Act.

1     **SEC. 4.** *And be it further enacted,* That this Act shall take effect  
2 July 1, 1968.

Approved:

.....  
Governor.

.....  
Speaker of the House of Delegates.

.....  
President of the Senate.

A Statement in Support of  
Abortion Law Repeal

by

Seymour B. Bronstein, M. D.  
Montclair, New Jersey

A Physician duly licensed to practice medicine in the State of New Jersey.

November 26, 1968



## A Statement in Support of Abortion Law Repeal

Almost fifty years ago, when the struggle for women's rights was in its infancy, Margaret Sanger said, "No woman can call herself free who does not own and control her body.... No woman can call herself free until she can choose consciously whether she will or will not be a mother."

The struggle for human freedom - particularly the struggle to free the American female - is still being fought. The struggle for female freedom is the real subject of our discussion here tonight. The laws in this state which force a woman to bear a child against her will are an archaic vestige of degradation of the female by a male dominated society. As Hardin said, these laws are a "residue of an ancient world in which women were, quite literally, put in a legal class with children, idiots, and slaves."

There can be no dispute about the statement that the major problems that afflict our society have no single cause and no single solution. Innumerable social problems affecting different ages, races, and the sexes go into the sum of grievances that cause the suffering, hostility, resentment, social unrest, and even major overt disruptive action, that threaten our society. Disruptive social behavior stems from grievances, frustrations, and discontent. The discontent may have its roots in many factors - major and minor. It may exist in covert form for many years. The sources of irritation each play a part in increasing the pressure of the emotional frustrations. Each social factor that is considered arbitrary, dominating, or discriminating adds its weight to this pressure. If, in addition, the causes of frustration or resentment are interpreted as an attempt by one

social, religious, or political group to impose its beliefs or standards upon all others in the society the resentment can only but be magnified.

These evidences of disturbance in our social fabric are the symptoms of the despair and frustration that exists, for many reasons, among a large percentage of the citizens of New Jersey. These are problems that require urgent consideration, and wise and early solutions. The problems include housing, health care, education, equal employment, and recreation. There are also problems related to the ambitions and goals for each man and each family. The problems are obviously complex. There is no single solution.

Among all these problems is a complex and major one about which some urgent action is essential. It is, in itself, a composite problem and it has its origin primarily in an archaic, punitive, inhuman statute. This is one social problem that we can go a long way toward solving simply by eliminating a poor, unjust, and discriminatory law. It is the problem of compulsory motherhood. It involves the denial of their human rights to pregnant girls and women, for it denies them the right to determine how their own bodies will be used. It involves the compulsory maintenance of pregnancy. Testimony has been presented by the experts describing the conditions as they exist in New Jersey; the tragedies that are associated with the problems of unwanted or irrational pregnancies. These include the problems of pregnancies as a result of rape or incest, and pregnancies in children, in psychotics, and in the mentally retarded. We have heard how the present law is discriminatory against the poor and the unintelligent. The intelligent or wealthier women in New Jersey can get to hospitals sometimes outside of this state, where the performance of

therapeutic abortion for private patients is up to 40 times its frequency in municipal hospitals for public patients. Present laws do not permit medical solutions to medical problems. The problem for patients with fetuses with known severe congenital or hereditary disorders cannot be solved even though there are means of detecting some of these conditions in utero with great accuracy. Present laws preclude any assistance to the desperate pregnant woman with too many children, who has no hope of providing adequate love, care, education, or living conditions for those she already has. Or for the pregnant woman with severe marital problems who knows that another child will be totally rejected and live a life of living hell. Or the pregnant woman with a severe - but not lethal - health problem who is not capable of looking after the children she already has. And finally, the present law, by precluding a safe, legal, therapeutic abortion forces thousands of New Jersey women each year to obtain cruel and dangerous self-induced or criminal abortions with serious morbidity and, based on national statistics, about 20 to 50 deaths/year. Deaths from criminal abortion are now the leading cause of maternal mortality in the U. S. (approximately 3 to 4 deaths per 10,000 live births).

These problems are now universally recognized. Hundreds of national, state, professional, religious, and lay organizations have studied these problems and have voiced their support of legislative reform or repeal of abortion statutes. The majority of these statements are identical with or similar to the recommended wording of the American Law Institute's Model Penal Code. The American Medical Association statement on this subject is in support of the performance of therapeutic abortion when there is documented medical evidence that:

- "Continuance of the pregnancy may threaten the health or life of the mother; or
- "The infant may be born with incapacitating physical deformity or mental deficiency; or
- "Continuance of a pregnancy resulting from legally established statutory or forcible rape or incest may constitute a threat to the mental or physical health of the patient."

As of one year ago, the medical societies of at least 17 states had passed resolutions generally similar to that of the AMA.

The American College of Obstetrics and Gynecology, representing approximately 10,000 specialists in this field, has approved a similar policy stand to the AMA with the addition that all factors in the woman's environment that might affect her health - including social and economic factors - should be considered in assessing the risk to her health by a pregnancy.

The American Psychiatric Association has also adopted a statement supporting abortion, similar to the statement of the AMA.

Numerous religious groups have voiced their support for legislative reform of abortion statutes and various clergymen's committees and abortion consultation services are most active in many cities.

The Episcopal Diocese of New York, the New York State Council of Churches, and the American Lutheran Church, have all supported abortion law reform. The Unitarian Universalists General Assembly resolved that efforts should be made to "abolish existing abortion laws except to prohibit performance of an abortion by a person who is not a duly licensed physician, leaving the decision as to an abortion to the doctor and his patient". The resolution holds that the government should not interfere

with the right of a woman to decide whether she will bear a child.

The American Baptist Convention adopted a resolution calling for abortion law reform stating that abortion prior to the end of the 12th week of pregnancy be performed "at the request of the individual(s) concerned and be regarded as an elective medical procedure governed by the laws regulating medical practice and licensure." The remainder of the resolution supports abortion after the 12th week only under conditions which generally agree with the AMA resolution.

The three national institutions of Conservative Judaism, the Jewish Theological Seminary, the Rabbinical Assembly, and the United Synagogues of America, all actively support abortion law reform.

The American Civil Liberties Union policy statement holds that abortion, by a physician should be left to "the woman's personal discretion and the doctor's medical opinion" without threat of criminal actions. The policy is based on the "rights of privacy and equality and the freedom of each individual to decide for what purposes her body should be used."

The Advisory Council on the Status of Women established by President Johnson, and headed by former Senator Maurine Newberger, of Oregon has strongly recommended the repeal of laws making abortion a crime. The report states that "no woman should be forced to be the unwilling parent of an unwanted child." In its recommendations on how to improve the status of women the Council states that governmental agencies "should not exercise the power of decision over the woman's personal right to limit the number of children she will have and her right to decide whether to terminate a particular pregnancy she does not wish to carry to term." The Council adopted the report of its Task Force which "recommends that laws making

abortion a criminal offense be repealed and urges state commissions on the status of women to assume responsibility for educating the public on this issue."

Numerous other societies and associations, including various PTA groups, specialty societies, and so on have supported or been formed to support the program to change abortion laws.

The Parliament of Great Britian has passed new legislation that concurs with the AMA and American Law Institute positions but, in addition most significantly, allows consideration to be given to all aspects of the woman's environment - including social and economic factors that relate to her health and the welfare of the family unit.

Polls of many groups - obstetricians, psychiatrists, the general population, housewives, have all unanimously reported support for some liberalization of abortion laws. A study by the National Institutes of Health of 5,000 American wives, including 22% Catholic, showed that 91% were in favor of abortion under certain conditions. Eighty-seven percent were in favor of abortion if pregnancy seriously endangers a woman's health (not only her life). Good Housekeeping reports that 70% of U. S. women favor abortion reform. The Gallup Poll reports that 83% of Americans favor abortion "where the health of the mother is in danger". In the Modern Medicine poll, of 40,089 physicians who responded, 87% favored liberalization of abortion laws. The American Psychiatric Association polls, nationally and by state, show 86.5% of psychiatrists favor abortion if the health of the mother might be impaired. In some states the figure was over 90% in favor.

This overwhelming evidence of tragedy and suffering and overwhelming support of so many expert and concerned groups must be recognized by those responsible for formulating our legislative policies. In the words of Victor Hugo, "Nothing else in the world, not all the armies, is so powerful as an idea whose time has come".

I urge each of you to understand and study all the facets of the problem and to propose and support legislation to repeal or, at minimum, humanize abortion laws in this state. The time is now.

Seymour B. Bronstein, M. D.

AMERICAN JEWISH CONGRESS

Resolution on

Abortions

Adopted at its Biennial Convention

Miami, Fla.

May 14 - 19, 1968

Present restrictive abortion legislation deprives women of the right to control their own lives and falls with particular force upon the poor. Such laws often pose grave risks to the physical and mental health of the mother and to family stability, thereby aggravating already grave social problems.

The American Jewish Congress supports liberalization of existing restriction on abortion and will support repeal of such laws. Short of that goal, we will seek liberalization of existing restrictions in at least the following instances:

1. Where there is a substantial risk that a continuance of the pregnancy would endanger the life of the pregnant mother; or
2. Where there is a substantial risk that a continuance of the pregnancy would cause or aggravate a material impairment of the physical or mental health of the pregnant woman; or
3. Where there is a substantial risk that the child, if born alive, will be physically or mentally impaired to a significant degree; or
4. Where the pregnancy of the woman resulted from an act of rape or incest or the pregnancy occurred while the female was thirteen years of age or less; or
5. Where the pregnancy occurred while the woman was a mentally disabled or incompetent person.



## BRIEF BIOGRAPHICAL SKETCH

FRANK J. AYD, JR., M.D., received his medical degree from the University of Maryland, School of Medicine, in 1945. The American Board of Psychiatry and Neurology, Inc. certified him as a Diplomate in Psychiatry in 1951. Dr. Ayd is an internationally known lecturer, writer, and psychiatrist. He has lectured in Europe, Asia, Africa, The Orient, Australia, New Zealand and North America. He is a member of numerous national and international medical societies. He is a Fellow of the American Psychiatric Association, a Fellow of the American Academy of Psychosomatic Medicine, and a Fellow of the American Geriatrics Society. He is a founder of the American College of Neuropsychopharmacology. In 1955, Dr. Ayd was the recipient of the Distinguished Service Award and designated Most Outstanding Young Man of the Year by the United States Junior Chamber of Commerce for Baltimore and the State of Maryland. In 1960, Dr. Ayd was the recipient of the Holy Name Society Award for outstanding service to Church and Community. Since 1962, Dr. Ayd has been broadcasting over the Vatican Radio on a program called Religion and Science. In 1963, Dr. Ayd was honored by being the first American layman to be appointed to the Faculty of the Pontifical Gregorian University in Rome. Dr. Ayd has published over two hundred scientific articles. He is a contributor to over thirty books. He is editor and publisher of The Medical-Moral Newsletter and the International Drug Therapy Newsletter. He is associate editor of Medical Science and on the editorial staff of several other medical journals. Dr. Ayd is listed in Leaders in American Science, American Men of Medicine, and the American Catholic Who's Who. Xavier University (Cincinnati) conferred on Dr. Ayd an honorary Doctor of Laws Degree in 1964. Dr. Ayd is former Chief of Psychiatry, Franklin Square Hospital, Baltimore, Maryland. Dr. Ayd is an associate member of The National Association of Science Writers, Inc. Dr. Ayd is married and the father of twelve children.

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## REFLECTIONS ON LIBERAL ABORTION LAWS

by

Frank J. Ayd, Jr., M.D.

Abortion is birth control which achieves its objective by the destruction of fetal life. Some deny that this intrauterine life is human, (when a child is wanted, the fetus is human; when a child is not wanted, the fetus is nothing more than tissue or a blob of protoplasm), but there is no doubt that when this life arbitrarily is declared devoid of value by the mother that this judgment, in her view, justifies its extinction. There are a variety of ways by which intrauterine life can be terminated and to appreciate what an abortion is, a description of how it can be performed is necessary.

When pregnancy has existed for less than 12 weeks, an abortion is done most often by what physicians call a D & C. This consists of dilating the entrance of the womb and the destruction and removal of the living fetus by repeated scraping out of the womb until it is empty. A recent substitute for a D & C to accomplish an abortion is the use of a vacuum extractor which removes the living fetus and empties the womb by suction.

When a pregnancy has existed for more than 12 weeks, by which time the living fetus is well formed and makes its viability known by its movements in the womb, an abortion is done by an operation known as a hysterotomy. This is comparable to a cesarean section. It consists of incising the abdomen and the womb and then removing the living baby who dies because it is incapable of independent existence. Yet, this living baby could be kept alive, if scientists ever succeed in developing an artificial placenta, as some now are attempting to do. In fact, the living babies being used in experiments to develop an artificial placenta have been obtained from what euphemistically are called therapeutic abortions.

Instead of removing a live baby and ensuring its death by a hysterotomy, which is not a minor surgical operation, some physicians prefer to perform an abortion in another way. This involves inserting a needle through the abdominal wall into the pregnant womb, the withdrawal of some of the amniotic fluid which surrounds the living baby and the replacement of this by a concentrated solution of salt or sugar. This concentrated salt or sugar solution is a lethal poison which kills the infant in the womb in a matter of hours. Thereafter the mother goes into labor and delivers her dead baby.

Regardless of how or when an abortion is performed, what must be stressed is that the desired objective is the death of the child in the womb, for it is a living child outside the womb who most often is a threat to the mother. Thus, abortion is not simply a method of birth control. It is a denial of the sanctity of life. It is an affirmation by abortion supporters that the value of human life is not intrinsically determined. This proposition demands critical evaluation, for if human life of and by itself has no value, then why prohibit murder, make any effort to prevent suicide, advocate the abolishment of capital punishment, denounce war, or refuse to legalize euthanasia?

-2-

In most areas of the world medical indications for abortion have become practically non-existent. There is no doubt that social and economic reasons, often disguised as psychiatric indications, now are the prime justification for abortion. This suggests that society is undergoing a drastic alteration in ethics and mores leading to a new social policy which determines who shall live. It means that society sanctions the destruction of the fetus so that the mother may have a better life or society may be rid of a potential burden. Thus, the socio-economic abortion is a part of a search for happiness by the mother or society to be achieved by denying the fetus the right to life. The socio-economic abortion is fetuscide to eliminate an unwanted child, for when a woman wants her child, regardless of the medical, social, or economic circumstance, doctors generally would not suggest or insist on abortion, but would do all in their power to help her have the baby she wants. Hence, it must be emphasized that more liberal abortion laws are desired by women who do not want children. What they seek is the right to destroy a life deemed deserving neither of protection nor preservation but only of "elective death." Can such power be given to any segment of society without doing individuals and society harm?

Abortion proponents, especially those who champion abortion-on-demand, proclaim that a woman has an "inalienable" right to destroy her unborn child. She has this right, they assert, because man is the owner and not just the custodian and user of his life and body. Because a woman is the owner of her life and body, she wants to decide what should grow within her body, and under what conditions. The law, says abortion supporters, must recognize this alienable right of a woman and allow her to have an abortion whenever she wishes. The law has no right to deny a woman her right to abortion, they argue.

Does a woman have the right to choose to kill her baby for her own happiness? Does this not encourage a woman to destroy her child during what may be a period of emotional instability, for often when she first learns she is pregnant, she may not want to be, but very much want the child as the pregnancy progresses? Does this not deny the child the right to life and the protection of the law guaranteed by our Constitution? Also, does this not deny the right of the physician to decide whether or not an abortion is indicated? Are physicians to be compelled to ignore the fact that the socioeconomic abortion is a part of a search for happiness?

A moment's reflection on the implications of the argument that a woman is the owner of her life and body raises vital questions which cannot be disregarded. If this is true, and abortion proponents categorically affirm that it is, then valid arguments also can be advanced by these people to justify suicide, euthanasia, mutilation of the body, submission to dangerous human experimentation and other human actions which society now condemns. After all, if the law says I own my life and body, how can I be denied the right to suicide or to request and have a merciful extermination, when I decide my life is worthless?

In recent years, there have been letters to the editor of medical publications, articles, and even books on the right to die. Some of these affirm an individual's right to suicide and charge that physicians should not save the life of a person who has attempted suicide. They argue, "A man has a right to live - a man has a right to die," by suicide if he chooses.

-3-

In 1962, a group of physicians in England called on Parliament to enact legislation that would make euthanasia legal under certain circumstances. A few weeks later a national U. S. medical magazine surveyed American doctors for their opinion on this subject. This disclosed that 31% held that euthanasia is justified when the patient is in great pain and there is no hope of relief or recovery, and that 32.8% believed that euthanasia is justified when an infant, born with serious abnormalities, has no chance of a normal life. Since then there has been a progressive campaign for public acceptance of euthanasia as a "right" and for its legalization.

This is illustrated by an article, "The Right To Die", in the April, 1968 issue of The Atlantic Monthly, in which the Rev. Joseph Fletcher, of the Episcopal Theological School, Cambridge, Massachusetts, argues for legalized euthanasia. He ended his plea for this by stating: "When life is not good, it deserves neither protection nor preservation. Our present laws about 'elective death' are not civilized. It is high time we had some constructive guidance, perhaps from a model code committee of the American Law Institute. Let the law favor living, not mere life."

Wherever liberalized abortion statutes are being considered in this country, the bill is based on the provisions suggested by the American Law Institute. These provisions clearly hold that a woman has a right to abortion when pregnancy is deemed a threat to her physical or mental health, when pregnancy results from rape or incest, or when there is a potentially grave threat to the physical or mental well-being of the unborn child. Thus, the American Law Institute's recommendations on grounds for a legal abortion unquestionably favor the "living, not mere life." Professor Fletcher recognizes this precedent and quite logically calls for a committee of the American Law Institute to draft a model code for legalization of euthanasia.

What can and does happen when people, religious and lay, decide that man is the owner of his life and body is clear from what has taken place in England. First the Church of England sanctioned birth control. Within a few years, there was a clamor for new laws on abortion, divorce, suicide, and euthanasia. In the summer of 1961, Parliament passed without any opposition the Suicide Bill so that in England it is no longer a criminal offense for any person to commit suicide, or to attempt to do so. In 1962, Parliament was urged to enact legislation that would make voluntary euthanasia legal under certain circumstances. That bill was defeated but then Parliament was asked to adopt new liberal abortion laws. This was done in 1967. Before the Abortion Act went into effect, Parliament was urged to pass new divorce legislation which would legalize divorce by mutual consent or by simple desertion by a spouse. Debate on divorce legislation is now going on. Meanwhile, encouraged by the British Government's policy on contraception and family planning, by the passage of the Suicide Bill, by the enactment of the liberal abortion statute, and by optimism about the prospects of new divorce legislation, The Euthanasia Society in England has been waging a very active campaign to win support for legalized voluntary euthanasia. This society has just prepared "A Draft Bill" to be presented to either the House of Lords or the House of Commons. This bill would "authorize physicians to give euthanasia to a patient who is thought on reasonable grounds to be suffering from an irremediable physical condition of a distressing character,

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and who has, not less than thirty days previously, made a declaration requesting the administration of euthanasia in certain specified circumstances one or more of which has eventuated."

Compare now what has been happening in the United States. In recent years our government has been spending millions of dollars annually for birth control programs at home and abroad. We have had an unprecedented adoption of a "contraceptive mentality." Several states have passed liberal abortion laws and many others are considering the enactment of new abortion legislation. So far, no bills to legalize suicide and euthanasia have been proposed, but they are to be expected.

In 1967, President Johnson appointed a Citizens' Advisory Council on the Status of Women with former Senator Maurine Neuberger as chairman. On June 21, 1968, this Council released its Task Force Recommendations. (1) Among these was the repeal of laws making abortion a crime. Stating its belief that "no woman should be forced to be the unwilling parent of an unwanted child," the Task Force on Family Law asserted that governmental agencies and the medical profession may offer service and counsel to the pregnant woman, but that those agencies and physicians, "should not exercise the power of decision over the woman's personal right to limit the number of children she will have and her right to decide whether to terminate a particular pregnancy she does not wish to carry to term."

The Council adopted the report of its Task Force which "recommends that laws making abortion a criminal offense be repealed and urges state commissions on the status of women to assume responsibility for educating the public on this issue."

The Task Force on Family Law also recommended that "nonfault bases for divorce, such as voluntary separation, should be included in grounds for divorce."

It must be stated forthrightly that abortion is not only an extension of birth control into the early months of pregnancy but an integral portion of a philosophy which stresses the quality of life and the betterment of the human race through contraception, abortion, sterilization, euthanasia, and the right to die by suicide. It also must be emphasized that many of those who are staunch advocates of abortion, also are the leaders of the campaigns for sterilization, euthanasia, and the right to suicide. They will not be content with the passage of liberal abortion statutes. They will, in fact they have begun to, press for unrestricted voluntary sterilization and for euthanasia.

We are being confronted with very active campaigns for more control of one human being over another because of the current trend to hold individual human life less sacred than in the past. Legislators must realize that if they are persuaded to liberalize abortion laws, they will soon thereafter be urged to legalize euthanasia. We already are on the road to human degradation and to totalitarianism. Liberalized abortion laws are a step in that direction. They are not needed for medical and psychiatric reasons. Present abortion statutes already permit this operation for what most physicians would designate a valid medical or psychiatric indication. Liberal abortion laws are desired by women who do not want a child and by those who wish to have the right to decide who shall live.

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Foremost among those urging liberal abortion laws are scientists who sincerely believe that abortion-on-demand is absolutely necessary to stop the population explosion. They contend that the human race is destroying itself by "an epidemic of unrestrained breeding." They warn that between 1970 and 1985 famines will kill hundreds of millions of people. They are so disturbed by their view of the future, they are ready to embrace any action program which may avert the disasters they forecast. Abortion, they claim, is the only way population can be reduced rapidly. It is delusional to think that any other method of fertility control could do the job.

Among abortion supporters are those who are concerned about the elimination of poverty. To them, nothing will cure our poverty problem unless we check the excessive birth rate in our ghetto and slum areas. Since conventional family planning programs are not accomplishing this, they claim that abortion is a necessary part of the war on poverty. It is an indispensable means of reducing the population of the lowest socioeconomic group which breeds the illiterate, the delinquent, the indigent, a high proportion of people with chronic physical and mental illnesses, and many others who are a burden to society and an obstacle to society's material advancement. To achieve the social improvement these abortion partisans envision, they argue that the number of "undesirables" in ghetto and slum areas must and can be reduced substantially and quickly by a very liberal abortion policy.

It is prudent and necessary to learn from the experience of others. Before deciding that liberalized abortion laws will achieve the objectives claimed by protagonists, we must examine carefully and critically what has happened where abortion has been and is permitted for social, economic and eugenic reasons. In those countries has there been - a substantial reduction in unwanted children? In the birth of children with congenital defects and/or mental deficiency or mental illnesses? In illegal abortions? In maternal mortality and morbidity? In morbidity and mortality due to abortion - legal and illegal? Have such laws had a substantial effect in eliminating poverty, slums, juvenile delinquency and crime, as it was claimed would happen if there would be liberal abortion statutes? Has there been a saving of marriages and a reduction in separations and divorces, which some abortion adherents assert would result from liberal abortion laws? The available evidence compels an emphatic negative reply to each of these questions.

In Colorado during the first nine months after the new abortion law was enacted, 224 abortions were performed by 21 hospitals, 95% of the cases in Denver, 151 or two-thirds for psychiatric indications, 33 for fetal reasons, 26 for rape and 14 for medical purposes. (2). It is estimated that there has been a nine-fold increase in therapeutic abortions over the equivalent previous period. This rise in the abortion rate is typical for wherever abortions are obtained easily there is an immediate increase in the number of requests for abortion because women become "abortion-minded." This is illustrated by recent reports from California and England. Approximately 5,000 legal abortions were performed in California in the first nine months of 1968, compared with some 600 performed in a similar period before the passage of the new abortion law. In England, in the first five months after The Abortion Act went into effect on April 27, 1968, the Minister of Health was notified that



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8,097 legal abortions had been performed. Any one experiences with women seeking abortion also knows that, when this operation can be obtained readily woman become careless about contraception, because they believe they can have another abortion if needed. Wherever abortion laws have been relaxed, it has been found that the return-rate for another abortion is high.

Forty of the 224 abortions in Colorado had post-operative complications, mainly physical, but a few psychiatric. The physical complications were hemorrhage, infection, uterine perforation, and ileus. This verifies what has been known for a long time, namely that abortions performed by expert gynecologists under ideal conditions are not innocuous operations. This is why the Council of England's Royal College of Obstetricians and Gynecologists stated: "Those without specialist knowledge, and these include members of the medical profession, are influenced in adopting what they regard as a humanitarian attitude to the induction of abortion by a failure to appreciate what is involved. They tend to regard induction of abortion as a trivial operation free from risk. In fact, even to the expert working in the best conditions, the removal of an early pregnancy after dilating the cervix can be difficult, and is not infrequently accompanied by serious complications. This is particularly true in the case of the woman pregnant for the first time. For woman who have a serious medical indication for termination of pregnancy, induction of abortion is extremely hazardous and its risks need to be weighed carefully against those involved in leaving the pregnancy undisturbed. Even for the relatively healthy woman, however, the dangers are considerable." (3).

In the first eleven months after the passage of the new law in Colorado, Denver General Hospital approved 109 abortions, over 90% for psychiatric reasons. Before the new law, the average per year was one. Over two-thirds of those aborted were single young women, and over one-half of them were unemancipated teenagers. Of the 109 aborted, 38 were between 12 and 17 years old, 27 between 18 and 21, and 18 between 22 and 25. Thus, 77% of the abortions were done on girls under age 25. This, I believe, is very significant for it means that young women are being conditioned to become "abortion-minded." Psychiatrists and psychologists who have studied learned-behavior patterns know that these are not eradicated easily, even when there are compelling reasons for doing so. It is proper, therefore, to ask if it is reasonable to expect a girl, who as a young teenager has an abortion, not to expect and demand another abortion when she wants it. Is not society bound to ask if providing socioeconomic abortions for teenagers and young adults will do more harm than good? Is it not possible that such a policy threatens marriage and the family and hence society and the nations which condone it?

It has been claimed repeatedly that new abortion laws are needed to prevent or curtail illegal or criminal abortions. The fact is that wherever liberal abortion laws prevail, there has been no decline in illegal operations. Consider what the Council of the Royal College of Obstetricians and Gynecologists have to say about this. "Those that plead for the widening of the indications for therapeutic abortion to include socioeconomic as well as strictly medical conditions contend that one of the effects will be to discourage criminal abortion. This is an argument which was used repeatedly in the past to justify legalization of abortion in certain countries in Scandinavia and the Continent

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of Europe. Yet there is evidence to show that, except in those countries where abortion on demand and without enquiry is permissible, the legalization of abortion often resulted in no reduction and sometimes in a considerable increase in the number of illegal abortions. This is because those women who aim to be rid of an unwanted pregnancy are so concerned to preserve secrecy or avoid delay that they continue to seek help from unorthodox sources. In the meantime, the legalization of abortion alters the climate of opinion among the public and even the Courts of Law. The result is that criminal abortion becomes less abhorrent, and those guilty of the offense receive punishments so light as not to discourage them and others in their activities." (3)

No discussion of the movement to liberalize abortions laws would be complete without mentioning that group of abortion partisans who desire the betterment of mankind by raising the quality of life and by limiting the quantity of people. They favor widespread fertility control -- compulsory, if necessary -- by abortion, by use of abortifacient pills and by sterilization. They also favor euthanasia. In addition, they urge positive steps to improve the quality of life by altering genetic makeup by artificial insemination using stored frozen sperm from men with specific extraordinary physical and mental qualities.

The current evolution of ideas on these vital subjects by humanists throughout the world raises issues which only can be resolved by moral judgments and these should and must be made by government officials, legislators, and all citizens. They cannot and should not be made by scientists alone for they are matters of public morality and to delegate to scientists social and moral judgments which are the right and duty of every citizen, as history testifies, can be very dangerous indeed.

Despite these truths, it must be realized that there are an increasing number of physicians and scientists who consider science supreme and themselves the arbiter of life and death and of morals and law. Today they ask for liberal abortion laws. Tomorrow, they will champion sterilization and euthanasia. They will not hesitate to advocate compulsory birth control and even compulsory euthanasia because to them the individual is less important than the state and if the state is threatened by sheer numbers of people, then individuals must be sacrificed.

No other proposed legislation has engendered more heated debate than the highly emotive subject of abortion. Although it is certain that some women have an abortion for essentially hedonistic reasons, it would be a grave injustice to others to deny that their abortion is not a desperate act resorted to because they feel unable to cope with a pregnancy and its consequences and because they cannot obtain vital support and assistance from family, friends, their church or society. This they proclaim by aborting their child. It is virtually impossible to destroy maternal instincts ignited by the spark of a new life in the womb. For a woman to prefer the death of her child, she must feel miserable indeed. Instead of condemning women who have an abortion, we should ask ourselves how and why we have failed them. What can we do to help them overcome their sense of futility, inadequacy and hopelessness? How can we prevent their destroying the life within them?



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A calm, detached evaluation of all the arguments favoring abortion compels the conclusion that one of the prime issues is whether abortion shall become an acceptable means of solving socioeconomic problems. I contend that individuals and society will suffer incalculable harm if abortion should become the accepted solution to any of our social problems. It would be preferable and more consonant with our human nature to enlarge and make more effective assistance programs for the socially and economically deprived and for the distressed parents and family of the physically and mentally disadvantaged child. Instead of urging abortion as a treatment of social ills, we should be working to uncover the causes and the true remedies for these ills.

I submit that legislators who are considering liberal abortion laws must be convinced that these laws are not needed for medical or psychiatric reasons. The truth is that it is safer to bear and deliver a child in the United States now than at any time in history. Legislators must be made to realize that by defending the fetus' right to life, they are reaffirming the sanctity of human life and are refusing to confer the right to decide who shall live to any individual. They also are preventing further human degradation. They should heed the warning of Dr. Irvine H. Page, one of the most honored men of modern medicine: "It is a lesson of history that when men become indifferent to death, they become brutalized. This was the premonitory sign of the Nazi scourge and the same was true of Stalinist Russia. Life has a way of taking revenge on those who destroy it."

FRANK J. AYD, JR., M.D.  
912 West Lake Avenue  
Baltimore, Maryland 21210

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- (2) Heller, A. and Whittington, H.G.: The Colorado Story - The Change in the Law on Therapeutic Abortion, Denver General Hospital Experience. Paper read at 124th annual meeting of the American Psychiatric Association, May 14, 1968.
- (3) Legalized Abortion: Report by the Council of the Royal College of Obstetricians and Gynaecologists, British Medical Journal. 1:850, 1966.

STATEMENT BY RABBI REEVE BRENNER, Princeton, N.J.

In Judaism each rabbi may interpret Jewish tradition as he understands it personally. Consequently there may be great diversity of opinion among Jews on many issues. And yet with regard to the matter of abortion, except for a few extremely orthodox rabbis, there is near unanimity on the question of therapeutic abortions when the mother's mental or physical health may be imperiled. This means that among the vast majority of orthodox rabbis, among the overwhelming preponderance of conservative rabbinical opinions and unanimously among the rabbis who are reform, there is agreement that abortion laws ought to be liberalized.

In Judaism an unborn foetus is actually not a nefesh, a "being", at all and has no independent life and may, if necessary, be destroyed. It is part of the mother, and just as a person may sacrifice a limb to be cured of a worse sickness, and may do so entirely on her own, with no permission of any authority necessary, so may the foetus be destroyed for the mother's sake--including her mental anguish now and in the future--since she may always sacrifice a part of herself.

In Judaism such an abortion is never considered murder. Joshua Falk's classic commentary says: "While the foetus is within the body of the mother it may be destroyed even though it is alive, for every foetus that does not come out or has not come out into the light of the world is not described as a nefesh, a being--it is therefore not murder."

Another major statement reads "that if it is within the first forty days of the pregnancy, there is no possible ~~danger~~ ~~to the mother's life and~~ objection to an abortion; but even if it is older, the danger to the mother's life and health "

determines if an abortion may be performed."

Most Jews feel that therepeutic abortions should be legalized and that the foetus has no rights, or if it does, the mother's rights cancel them out by far. Especially if the foetus isn't even formed yet it's certainly not to be considered a baby and may be aborted.

Most Jews recognize that many non-Jews, especially Catholics, feel abortion to be immoral and that all individuals are, of course, entitled to their beliefs. They insist, however, that they not be compelled to be governed by someone else's understanding of morality and someone else's belief.

If the law is changed Catholics are still free not to have abortion if their conscience so dictates. But if the law remains as is, most Jews would say "I'm not free to exercise my beliefs in the matter of abortions. I have to conform to your view of morality. On the other hand, if the law is liberalized we each may practice our beliefs. If it's not liberalized only you can practice your beliefs and that's not Democracy.

It may be true that for the Catholic the church decides questions of morality. All I ask is don't force me, a Jew, by employing Government sanctions, to accept Catholic standards of morality. The real issue, as I see it, is how to avoid having one religious group impose its will on everyone else. That seems to be at stake in this controversy. A liberalizing of the law would permit me to follow the dictates of my conscience and, at the same time, permit the Church to maintain its standard of morality. That's why I'm for it.

The resolution adopted by the General Assembly of the Union of American Hebrew Congregations, November, 1967, reads as follows:

Abortion Reform

Humane considerations motivate us to speak out in the name of our United States members in favor of needed revisions in the abortion laws of many states. In recent months the moral imperative to modernize abortion legislation has become an important issue in the legislatures of many states.

Each year a great number of American women, many of them married, seek abortions. Most existing state statutes penalize the poor who cannot afford recourse to those services which the more affluent in our society can and do find. But for the poor or affluent alike illegal abortions yearly take a tragic and needless toll.

We commend those states which have enacted humane legislation in this area and we appeal to other states to do likewise and permit abortions under such circumstances as threatened disease or deformity of the embryo or foetus, threats to the physical and mental health of the mother, rape and incest and the social, economic and psychological factors that might warrant therapeutic termination of pregnancy.

We urge our constituent congregations to join with other forward looking citizens in securing needed revisions and liberalization of abortion laws.

# JEWISH FEDERATION OF CAMDEN COUNTY

2395 W. MARLTON PIKE, CHERRY HILL, N. J. 08034 • NORMANDY 2-8800

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Mr. Samuel A. Alito, Secretary  
Abortion Law Study Commission  
State House - Room 30  
Trenton, N.J. 08625

Dear Mr. Alito:

I was slated to testify before the Abortion Law Study Commission session, held in Camden on November 26. However, the lateness of the hour made it impossible for me to give my testimony, and I herewith submit the attached statement for the official record.

This statement is made by me personally and is not authorized by my organization. I use organizational stationery only for proper identification.

Thank you for your cooperation.

Sincerely yours,



Ernest G. Budwig, A.C.S.W.  
Assistant Executive Director

EGB:bg  
enc.

MEMBER OF



UNITED FUND OF  
CAMDEN COUNTY

DEC 2 1968

Statement submitted to Abortion Law Study Commission, November 29, 1968, by Ernest G. Budwig  
Camden, N.J.

As a social worker executive, I have a special interest and a deep concern for human rights and for the dignity of the individual. For this reason, I favor generally permissive legislation that promotes individual freedom and, therefore, I am in favor of the repeal of criminal abortion laws. This is by way of establishing that a woman shall have full and complete legal jurisdiction over her own body and the functions of her body.

I believe that society's obligation is for the vitality of the family and for this reason alone, any new human being should be wanted. We cannot all be born equal, but we can come close to being equal by being born wanted. My support of legal abortions is based on this ethical and moral position. All of us are concerned with the problems and the results of poverty and it seems incumbent upon government to strengthen the family by insuring voluntary parenthood.

Statistics indicate that 60% of all illegal abortions are performed on married women. One half of these women are in the age category of 25 to 35 years who already have several children and who do not wish additional children for social and economic reasons.

I believe that it is not within the province of government to decide who may or may not bear a child. I wonder whether legislators really desire to have the power to force a woman to bear a child against her will. The freedom, as well as the responsibility, to decide whether or not to continue a given pregnancy belongs to the pregnant woman herself, in consultation with her physician. As with various methods of birth control, the decision regarding abortions should remain a private matter between the patient and her physician.

The repeal of abortion laws requires no one to act against her will or her principles. Therefore, those who oppose abortions, for whatever reasons, should not prevent the repeal of abortion laws. This should leave the request for an abortion and the performance of the operation to the conscience of the individual involved.

DEC 10 1968

December 9, 1968

Commission to Study State Abortion Laws  
c/o Samuel Alito  
State House  
Trenton, New Jersey 08625

Gentlemen:

We the undersigned, Mr. & Mrs. Douglas de Keyser of Cherry Hill, New Jersey, are residents of New Jersey for 17 years. We would like to tell the commission our recommendations concerning the state laws covering abortion. We represent and speak for ourselves only, although, to our knowledge, there are many other married couples in this state who have problems similar to or identical with ours.

Gentlemen, we would like you to give your thoughtful consideration to the problems of those couples who, if the wife conceives, must necessarily bear a deformed and/or retarded child. In our family there are two normal healthy children and a third child with chromosomal defects, since conception, and who from that time on was irreversibly doomed to mental retardation. Indications of the situation were apparent due to an extremely difficult pregnancy although, at the time, medical science could not tell us positively of the condition. Now, chromosomal disorders can be determined during the pregnancy by sampling the placental fluid for electron microscope determination of the chromosomes. In these cases the prospective parents

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can be told in advance whether or not their offspring is going to be mentally retarded, ambisexual, born with strong criminal tendencies or other highly undesirable results of a chromosomal accident. In many cases the situation is familial and the unfortunate couple can expect a repetition of the defective birth and so may some of their relatives. We are both active in various groups dedicated to the care of the retarded and know, beyond our own experience, the anguish of those parents who struggle to raise a child for whom there is no hope of speech, sensible thought, toilet training, or any approach to basic self sufficiency. To be forewarned is to be forearmed but, gentlemen, many times the difference between contraception and the need for abortion is only a split second.

During the hearings in Camden speakers talked about the sanctity of life and the legal rights of the fetus. We ask you, gentlemen, keeping in mind the fetus' welfare, does a couple have the right to give life to this fetus if it is known, without question, that he will endure a horrible life? We also ask you, gentlemen, to consider the rights of the mother who, in most cases, is already charged with the care of other children and will have this almost unbearable burden placed on her?

Under the present New Jersey law a couple with



Commission to Study State Abortion Laws

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information that their child will be born with chromosomal or genetic defects can do one of the following:

- (1) Seek out an illegal abortionist at the high risk to the mother's life and with the attendant guilt of violating established law.
- (2) Bear the child
- (3) Go abroad for a legal clinical abortion which only a few of us can afford, though this expense is far less than the eventual cost to the parents and state for the maintenance of the unfortunate child.

We ask the commission to recommend to the legislature revision of the existing laws concerning abortion to allow for the termination of pregnancy where there has been clinical determination that the offspring will be physically or mentally defective. Gentlemen, please give us a law which we can honor and to which we can be faithful.

Sincerely,

Marcela de Keyser

  
Douglas E. de Keyser

4 Laurel Hill Drive  
Cherry Hill, New Jersey 08034

December 2, 1968

Additional Testimony on Abortion, by Harry L. Downs, Pres., on behalf of the New Jersey Chapter of the Christian Action Foundation to The Commission to Study The New Jersey Statutes Relating to Abortion.

Mr. Chairman and Members of the Commission: I am Harry L. Downs, pastor of the West Broadway Christian Reformed Church of Paterson and president of the New Jersey Chapter of the Christian Action Foundation. The New Jersey Chapter of the Christian Action Foundation, with members throughout the State of New Jersey, is part of a national organization of Christians (both laymen and clergy) with many state chapters. This organization is dedicated to the task of restoring true godliness and morality to our society, stressing the precepts and concepts taught in the Holy Bible.

We as a Christian Action Foundation would remind the Commission that all discussion concerning the New Jersey Abortion Law and its possible revision must not be based upon human feeling and reasoning but must be carried on in the light of the eternal truths of God's Word, the Holy Bible.

Much of the discussion advocating the liberalization of the New Jersey Abortion Law has not been carried on in the light of these eternal Biblical truths, but rather, stems from the philosophy of Hedonism; which holds that the pleasurable is the highest good. And so abortion is praised as good, because it helps mothers avoid pain and discomfort. These pro-abortionists, from their Hedonistic philosophy, reason that a possible deformed child should not be allowed birth, because such a child will suffer and cause suffering, and therefore life cannot be worthwhile for him. They further argue that the mental well-being of the mother, especially one that has been raped, can be maintained or restored if only the child can be aborted.

Further, and hand-in-hand with the philosophy of Hedonism, the advocates of a more liberal abortion law unconsciously fall into the same error as Hitler perpetrated in Germany. Hitler held that abortion should be used to help attain some kind of a "pure" race. According to Hitler it was the task of the government to see to it that the blood is kept pure by preserving the best specimen of humanity with the goal of creating the nobler development of these beings. Therefore, according to Hitler, the State must see to it that only the healthy beget children. The State must set the "pure" race in the center of all of life and must take care to keep it pure. It must declare the child to be the most precious treasure of the

people. It must see to it that only the healthy beget children. According to Hitler, there is only one disgrace, namely, that the sick and deficient people bring children into the world, and that the highest honor is to keep them from doing so.

We of the Christian Action Foundation are also very concerned for the general well-being of the child, especially the child who may be born a deformed child, as well as the physical and mental well-being of the mother. However, we do not agree with those who advocate the liberalization of the Abortion Law when they hold that abortion is the ideal answer.

The eternal truths of God's Word, the Holy Bible, teach us that the present day mental distress is part of a deeper ill in society. The source of all man's misery, also that signalled in the debate around abortion legislation, lies in man's fall from God and subsequent estrangement from God, and therefore from his fellow-man. God, in His abundant mercy, gave His Son, the Lord Jesus Christ, to redeem fallen man. By faith in Christ as his Savior from sin a man may experience reconciliation to God and as a result reconciliation to his fellow-man in the entirety of his life. Thus serving God and his fellow-man will be his highest goal. He may go through trials and suffering, but he knows the secret of God's care and grace. A Christian approaches distress and brokenness with compassion and helpfulness.

Thus we are very concerned about the mental and physical anguish of the woman who is a victim of rape and incest. However, as a ~~result~~ result of man's fall and estrangement from God and his fellow-man, there is an absence of goals in life, the disappearance of norms of good and bad, the hankering for pleasure, and the rush of modern living all of which also contribute to mental distress.

We contend that abortion, instead of relieving mental pain, will itself become the source of more mental suffering. Easy abortion is not a once-in-a-lifetime thing. Once abortion is being granted freely in every hospital the same woman will seek abortions more than once. And repeated abortions are disastrous to the mother's mental and physical health.

We would certainly urge that this Commission bring to the legislature suggestions of ways in which the deformed child and the mentally anguished mother - the victim of rape, incest and even unwed mothers- be mercifully cared for and helped by society, but we

would urge you to consider the Biblical question: Is it murder to abort an unborn child? It is certainly true that to take away the life of a real child, even though he or she be yet unborn, is a violation of God's Commandment, "Thou Shalt not kill" (Exodus 20:13). With the words of the Abortion Testimony of our National Board we would remind you that "the Bible indicates that God counts life in the mother's womb as personal. Concerning the prophet Jeremiah God said, 'Before I formed thee in the belly; and before thou comest forth out of the womb I sanctified thee, and I ordained thee a prophet unto the nations' (Jeremiah 1:5)."

If one holds to the position that real life does not begin yet at conception, but later on, then he is cast upon the sea of varying personal opinion which varies from one medical doctor to the next, as to when life actually begins.

We submit that the only valid position, and the only position which will enable the Government to get at the root of the problem of illegitimate abortions, mental anguish due to rape and incest, and the problem of what to do about deformed children born into the world is the way of Law and Order - first the Law and Order of the Bible and then a Law and Order of Government based upon the Bible. To do less in this very crucial matter of Abortion would be the giving of license to murder by the high office of government. All of this when the Government is cautious when using even the Biblical injunction of Capital Punishment (Genesis 9:6) against the convicted murderer, because it realizes that once a life is taken it cannot be restored again. Should not the child still unborn, who has no opportunity to speak in his own defense, be given even more opportunity to live? A precedent has already been set here in the fact that the laws of the land already protect the rights of unborn children. Unborn individuals can even be named as beneficiaries of estates.

Finally, any liberalizing of the Abortion Law will put the true Christian Church and Christian in the awkward dilemma of either following the State and denying the Bible or following the Bible and rebelling against the State; all of this when the Christian is called upon by the Bible to respect both the Church and State as Divinely established institutions. Yet, the Christian must always obey the

Bible first of all and then men secondarily (Acts 5:29).

We urge the Commission not to recommend a more lax Law with respect to Abortion, but rather to recommend more rigid measures, by Law, to convict all who assist in, advise, or engage in the practice of illegal abortions.

HERBERT F. JOHNSON, M. D.  
FRANK J. HUGHES, M. D.  
JOHN L. GAINES, M. D.  
221 S. SIXTH STREET, CAMDEN, N. J. 08103  
WOODLAWN 4-4424

December 1, 1968

Comission to Study Abortion Laws  
State House  
Trenton, New Jersey

My Dear Members of the Comission,

Unfortunately when you were having the hearings I was convalescing from a surgical procedure and therefore unable to request personal appearance before your comission, however, I do wish to file with your comission a statement concerning the matter under study by the comission,

I do not make this statement as President of the New Jersey Obstetrical Society or as Chairman of the Board of Trustees of the Medical Society of New Jersey or as a Member of the House of Delegates of the American Medical Association or a Member of the State Board of Control of Institutions and Agencies but rather as a certificated Obstetrician and Gynecoligist licensed in the State of New Jersey and with thirty years of practice.

The true medical indications for abortion with our present knowledge are non-existent. No longer do we have the severe toxemias with secondary renal and vascular disease nor the severe nutritional anemia.

As to preventive medicine, in possible cases of involving pregnancy I am sure that the comisssion is well aware that a vaccine for Rubella is just about ready to be released by the Food and Drug Administration, therefore I would say to you that if the Comission wish to make a helpful recommendation, certainly premarital antibody titer for Rubella could be demanded as a public health routine just as the premarital Wasserman is demanded today and if the patient was negative, then she should have the vaccine prior to marriage. The matter of the Rh factor as you are well aware now is a treatable condition with the advent of Rhogam, and isoimmunization can be prevented by proper management of the Rh negative mother with the first positive baby, Even today it is impossible to ascertain which body will be affected by Rubella. A recent study in our own hospital reveals only 10% of pregnant women had no titer so it would be no chore to vaccinate those with Rubella vaccine.

We now come to the potential genetic aspects. The science of genetics has not reached the point where easy determination on the early pregnancy as to any possible genetic abnormalities is available for the study. In most instances the pregnancy mus advance to the the

16th to the 20th week before sufficient tissue fluid can be obtained for culturing the cells and thus determining the chromosomal abnormalities if they do exist. Such chromosomal abnormalities are yet to be definitely proven on an absolute basis. Most of the patients therefore go to the state of pregnancy where aborting the fetus at that state is repugnant even to those who would increase the indications for abortion. Certainly I am sure that the Commission if they should see fit to make recommendations in this area would safeguard the fetus to the degree that it would require intensive genetic studies before this condition would be allowable and that the studies done in university centers and not just citations from the literature.

Next we come into the field of psychiatric indications. I am a member of the staff of a non-catholic hospital and therefore therapeutic abortions have been done in this institution and I have had the opportunity of seeing some of the psychiatric consultations for therapeutic abortion. I shall not burden the Commission by repeating the various studies concerning the State of Colorado and other States that have relaxed their abortion laws and where psychiatric indications are now having a tremendous field day, nor shall I burden the Commission with a citation from the medical literature which show in essence that the incidences of suicide is no greater in pregnant than in non-pregnant women. The subject of psychiatry is one that the Commission is well aware is subjective in nature. There are very few exact tests, therefore I am sure that you can readily understand why consultations in this area are so variable and would lead to the most recent figures in the Colorado study. With this in mind, I would recommend to the Commission that if they act in this area that they protect the unborn fetus by requiring not just one or two but that a complete and thorough psychiatric investigation by at least three or four psychiatrists be carried out before approval be obtained.

As to the matter of rape and incest I would say that during the course of my years of clinical medicine, serving on the staff of a hospital that has a large obstetrical service, I have been exposed to at least seventy five thousand obstetrical cases either by direct participation or through staff conferences or general discussion of cases in the hospital and that to my recollection I can only recall one case of proven incest. As to the aspect of rape, this should be, and is, a police matter. True rape is known to many people. Too often we have had rape "with a smile" which have been applied for a therapeutic abortion. There again I recommend to the Commission that ample documented evidence of true rape be established before this would ever be an indication.

The Commission might be interested in two recent cases in our office. Both of these women had proven German measles with rises in titer, etc., one at the fifth and one at the sixth week of preg-

nancy and both have been delivered successfully of normal babies. Had the abortion laws been relaxed instead of having two nice babies, citizens of New Jersey we would have two murders on our hands. I recite this simply to bring to the Commission attention the fact that there is no way to ascertain which baby is not or is affected by German measles.

In conclusion I regret that I was unable to appear personally before your Commission so that you would have the right of cross examination, but I sincerely hope that I have brought to the attention of the Commission the facts that they must ponder and ponder well before any recommendations are made by the Commission.

With every best wish, I am

Sincerely yours,

Frank J. Hughes, MD. F.A.C.S.  
F.C.O.G.



Statement of Dr. Samuel A. Jeanes, of Merchantville, New Jersey, the Chairman of the Social Action Committee of the New Jersey Baptist Convention for the Commission to Study the New Jersey Statutes Relating to Abortion.

Mr. Chairman and members of the Commission: I am Dr. Samuel A. Jeanes of Merchantville, New Jersey, the Chairman of the Social Action Committee of the New Jersey Baptist Convention. I would like to present a resolution in behalf of the Committee and then make some personal observations regarding the important matter which is before you.

The New Jersey Baptist Convention in annual session this year approved in principle a resolution on Abortion adopted by the American Baptist Convention held in May of 1968. In order that you might understand the nature of such resolutions of the American Baptist Convention, which has no authority to speak for individual Baptists or even individual Baptist churches, the resolutions usually carry such printed expressions as "resolutions passed by the American Baptist Convention cannot be said to represent the conclusions of all American Baptists, or even all the American Baptists attending the Convention; they do represent the careful thinking of a large number of people." Registered delegates at such Conventions usually number 3,500 or less from 6,119 churches with a membership of about one and a half million people. Delegates as a rule do not go from their local autonomous churches with any authority to commit their churches on any issue and no scientific efforts are made to poll the membership of the Convention and churches on such vital questions as are often covered by resolutions. With this word of explanation in mind let me quote the resolution adopted and approved in principle:

"Because Christ calls us to affirm the freedom of persons and the sanctity of life, we recognize that abortion should be a matter of responsible personal decision. To this end we as American Baptists urge that legislation be enacted to provide:

1. That the termination of a pregnancy prior to the end of the 12th week (first trimester) be at the request of the individual (s) concerned and be regarded as an elective medical procedure governed by the laws regulating medical practice and licensure.

2. After that period the termination of a pregnancy shall be performed only by a duly licensed physician at the request of the individual(s) concerned, in a regularly licensed hospital, for one of the following reasons as suggested by the Model Penal Code of the American Law Institute:

- a) When documented evidence exists that this is a danger to the physical or mental health of the woman;
- b) When there is documented evidence that the conceptus has a physical or mental defect;
- c) When there is documented evidence that the pregnancy was the result of rape, incest or other felonious acts."

Let me again express the caution that the American Baptist Convention itself makes regarding its resolutions as it gives authority to use such resolutions publicly but adds, "Care should be taken, however, not to indicate that these resolutions speak for all American Baptists.

Serious caution should be exercised by the Commission before any changes are made in our New Jersey Statutes. The Commission is not dealing with matters of property and taxes but it is dealing with human life and human life is more than a complex chemical machine. Man is a soul and man has a soul. To obtain knowledge about the soul is the most difficult thing in the world. The inability of scientific investigation to produce a soul does not render its term meaningless. God fearing people go to the Holy Scriptures for guidance. They tell us that animals share the mystery of life but man has a life from God that is qualitatively different. He reflects the image and the likeness of his Creator.

Your concern, however, is with that life before birth. The ancient Hebrews associated life with both breath and blood. Thus. Genesis tells us that "God breathed into man's nostrils the breath of life" and Deuteronomy 12:23 tells us "that the blood is the living being", and whoever ~~sheds~~ man's blood was guilty of a capital offense. But these concepts of breath and blood are characteristics of both animals and men. So when the Bible says that man is created in the image of God, it seems to be referring to a quality of life, that though it depends on breath and blood, is not

equated with them. It is man's likeness to God that makes him different...and it is man's likeness to God which is the ground of reverence that we have for his life... and it is this same ground of reverence for man's life that should make you extremely cautious in this matter.

The Bible gives us some very clear statements which would certainly indicate that a life in the process of development before birth is not to be treated simply as a mere pathological specimen. For instance, Psalm 139:13-15 says, "For Thou didst form my inward parts. Thou didst cover me in my mother's womb...My frame was not hidden from Thee, when I was made in secret and curiously wrought in the lowest parts of the earth." The phrase "the lowest parts of the earth" is a Hebrew expression to describe the dark interior of the womb. The Psalmist in these words is saying that even before he knew God, God knew him; even before his eyes saw the light of day, he was being marvelously formed in the womb. God was there. Another reference is made in the first chapter of the prophecy of Jeremiah in which God says that even before the prophet was formed, God knew him, and before he came forth from the womb, God had set him apart for a special service. And in some sacred and intimate words in the Gospel of Luke we are told that John the Baptist, before he was born responded to the presence of the Lord Jesus Christ in the womb of the Virgin Mary. I do not want to labor this point but I do want to stress that both the Old and New Testament give clear indications that Almighty God counts life even before birth as something very personal.

Dr. Paul W. Jewett, an outstanding Baptist Theologian, a Professor at Fuller Theological Seminary in Pasadena, California, who lists among his academic attainments a Doctorate of Philosophy from Harvard, raises a word of caution as he says, "Man will always be better understood scientifically as body (object) than as soul or spirit (subject), which is the seat of his freedom as an individual. To the extent that he is a free, responsible self, his behavior can never be reduced to the pattern of a strict causality. This means that whenever the decision to sacrifice the life of the fetus to save the life of the mother rests on psychological and sociological considerations, there will always be a factor of uncertainty." Dr. Jewett continues

saying, "These are the difficulties that moral theology faces in justifying abortion. He then states that the Christian answer to the control of human reproduction must not be found in the prevention of birth for "abortion will always remain a last recourse, ventured in emergency and burdened with uncertainty."

I recognize that the appeal for change in the present law is based upon emotional reasons that cry out for the prevention of births that, in the opinion of some, might be very unfortunate. However, I trust that this Commission will seek to determine whether these appeals are motivated initially by the philosophy of Hedonism which is defined as that doctrine that considers pleasure as the sole and chief good and that moral duty is fulfilled in the gratification of pleasure seeking instincts and dispositions. The relaxation of our laws to permit the practice of abortion simply on request or on the basis of fuzzy, undefined reasons could open a Pandora's box of moral, emotional and sociological problems in this most densely populated State in the nation and could place us farther down the highway of irresponsibility.

The legal rights of an unborn child have been called to your attention. No person who is mentally incompetent can be so determined without the protection of our courts. The courts of our State are a bastion of protection for every citizen, no matter how great the charges against him may be. Certainly, this Commission would not want to recommend that the right of life for the unborn be given less protection than the life of the living.

This Commission should also give consideration to the goal of those who request changes in the present law. The sponsor of the new North Carolina law on liberalized abortion is reported to have predicted that the law will be further liberalized within 20 years. He is further reported to have said that within one hundred years society will require a permit before a woman may bear a child. This sounds like compulsory abortion. This sounds like an effort to rid society of some who might be considered unfit to live. This sounds like a dream or shall I call it a nightmare of some who would like to play God. It is hoped that this Commission will not only consider one or two steps but also the direction we may be taking. If step one is limited abortion, and step two is abortion by demand, with an ultimate goal of the

right of government to control the destiny of the unborn. Then the first step must be considered with great study and prayer for our most precious commodity is in the balance...the commodity of divine mystery...human lives made in the image and likeness of God who are yet to be born.

Let us all encourage those steps that will alleviate conditions out of which continue to grow some of our great problems of modern day America. Our lawmakers in the Nation's and the State's Capitols and our leaders in our crowded cities continue to wrestle with the problems of housing and poverty, welfare and unemployment and the development of constructive programs that will aid human beings for years to come by giving them not only hope but skills and abilities with which to make their way in life. Let us all set ourselves to the God given task of protecting life for life is a gift from God. Let us continue to make every effort to enforce the laws of our State that would protect human life from the practice of illegal abortions and by the restraint of those who go beyond their realm of competence in recommending the same.

SUBMITTED BY MRS. E. L. KRANSNOFF

Abortion Law Study Commission  
Mr. William Crane, Chairman

Mr. Chairman, members of the commission

I am Mrs. E. L. Krasnoff and as chairman of the Abortion Law Reform Committee of New Jersey, based at the Princeton YWCA, I will be presenting views supported by the YWCA.

Abortion is an important health problem of vital concern to women and as a New Jersey women's organization we are very concerned about the abortion laws of this state. We feel that we must share the responsibility to do all that we can to eliminate a law that leaves New Jersey women with very few choices other than to seek out an illegal abortionist to help them with their unwanted pregnancies, a law that compels women to face the needless risk of death under disgraceful, humiliating conditions and prevents doctors from exercising their best medical judgement.

Therefore, after having studied this problem, the Princeton YWCA has resolved to support the principles set forth in the British law. These principles are:

An abortion will be permitted if two licensed doctors are of the opinion, formed in good faith ---

that the continuance of the pregnancy would involve risk to the life of the pregnant woman, or of injury to the physical or mental health of the pregnant woman or any existing children of her family, greater than if the pregnancy were terminated; or

that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be serious handicapped

These principles are also supported by the Camden YWCA and the Summit YWCA and we expect more letters of support from other YWCA'S throughout the state in the near future. There are also many other groups in New Jersey supporting reform and representing thousands of women. (The 3 YW's represent 12,000 women plus we have a mailing list of 7,000 people throughout the State).

While women as a whole are victimized by the present law, poorer women are doubly discriminated against. A middle or upper income woman may be able to go abroad for a legal abortion or obtain an abortion in the United States for a high price. The poor woman cannot.

We feel the current British law recognizes that the lower-income woman should have as much right as anybody else to terminate an unwanted pregnancy, and that all women wanting abortions under the stated provisions have the right to an abortion under safe hygienic conditions.

We believe that the time is long overdue for New Jersey to guarantee these rights to women.



Report of the Task Force on FAMILY LAW AND POLICY to the

CITIZENS' ADVISORY COUNCIL ON THE STATUS OF WOMEN, April 1968  
U. S. Department of Labor, Room 2131  
Washington, D. C. 20210

Quoted below is part of the report of the Task Force on the subject of abortion law as adopted by the Council. The Council approved all of the recommendations except as otherwise noted in the body of the report.

"Even if all States enacted the provisions of the Model Penal Code, it is estimated that only about 15% of the illegal abortions would fall within the permitted classes of abortions and the remaining 85% of abortions would continue to be subject to criminal sanctions under State abortion laws.

"The Task Force on Administration of Justice of the President's Commission on Law Enforcement and Administration of Justice stated in its report (The Courts page 105):

"Abortion laws are another instance in which the criminal law, by its failure to define prohibited conduct carefully, has created high costs for society and has placed obstacles in the path of effective enforcement. The demand for abortions, both by married and unmarried women, is widespread. It is often produced by motives and inclinations that manifest no serious dangerousness of deviation from the normal on the part of the people who seek it. These factors produce the spectacle of pervasive violations but few prosecutions."

"That task force concluded that 'the time is overdue for realistic reexamination of the abortion laws.'

"From the experience of other countries it seems clear that what the law permits or does not permit in this area has little effect upon the incidence of abortion. When most abortions are illegal, women either resort to devious, exaggerated claims to obtain a legal abortion, or seek illegal abortions in secret and, for poor women especially, in medically unsafe conditions, or worst of all try to induce the abortion themselves. When abortions are legal, the incidence is about the same, the only difference being the greater health precautions followed in a hospital setting. Criminal abortion laws are generally not enforced and are indeed unenforceable, and when this is the case, it is wise 'for the law to withdraw rather than have the majesty of the law brought into disrespect by open disobedience and unpunished defiance.' (Robert Driman, Dean of Boston College Law School, Washington Conf. on Abortion, 1967).

"Revision of State laws along the lines of the American Law Institute proposal would continue criminal penalties for some abortions while sanctioning others. The repeal of laws penalizing abortion may be more acceptable than the A.L.I. proposal to those who believe that all abortions are doctrinally immoral. As Dean Drinan stated:

'A system of permitting abortion on request has the undeniable virtue of neutralizing the law, so that, while the law does not forbid abortion, it does not on the other hand sanction it, even on a presumably restricted basis.'

"It may be noted that there is very little difference between Catholics and Protestants on attitudes toward abortion law reform and there is increasing support for liberalizing abortion laws.

"Proposals which permit abortions under certain circumstances while penalizing all others deny the right of a woman to control her own reproductive life in light of her own circumstances, intelligence, and conscience. Although governmental agencies and the medical profession may offer service and counsel, they should not exercise the power of decision over the woman's personal right to limit the number of children she will have, and her right to decide whether to terminate a particular pregnancy she does not wish to carry to term.

"Convinced that the right of a woman to determine her own reproductive life is a basic human right, the task force recommends that laws penalizing abortion be repealed and urges the Council to encourage the State Commissions on the Status of Women to assume responsibility for educating the public on this issue and in getting State legislatures to repeal criminal abortion laws. 1/

"The repeal of criminal abortion laws would mean that abortion would be treated in the same way as other medical procedures. It would mean that abortions could be performed by physicians without penalty and it would virtually eliminate abortions by unauthorized practitioners."

1/ The Citizens' Advisory Council on the Status of Women adopted this recommendation in the following form:

The Council recommends that laws making abortion a criminal offense be repealed and urges State commissions on the status of women to assume responsibility for educating the public on this issue.



# NEW JERSEY STATE NURSES' ASSOCIATION



MRS. SARA M. ERRICKSON, R. N., EXECUTIVE DIRECTOR  
ROOM 201 • 60 SOUTH FULLERTON AVENUE • MONTCLAIR, N. J. 07042  
TELEPHONE 783-9292

November 19, 1968

Mrs. E. L. Kransnoff  
210 Hamilton Avenue  
Princeton, New Jersey

Dear Miss Kransnoff:

The members of the New Jersey State Nurses on November 1, 1968 during the 66th. Annual Convention supported the American Nurses Association Statement to study State Legislation on Abortion which statement was approved at the National Convention during May 1968.

Although the association is unable to send a representative to testify at the public hearing, Nov. 26, we wish to submit the following statement for the official record:

The New Jersey State Nurses' Association, the professional organization of registered nurses, concerned with the health and welfare of individuals and families, support the movement to examine and modify existing laws which may be inadequate to meet the needs of society in reducing the number of illegal abortions.

We hope that this statement will be of assistance.

Sincerely,

*Sara M. Erickson*  
(Mrs.) Sara M. Errickson, R. N.  
Executive Director

SME:CMH:lb

# THE AMERICAN PUBLIC HEALTH ASSOCIATION, INC.

1740 BROADWAY  
NEW YORK, N. Y. 10019

JOHN J. HANLON, M.D.  
President

MYRON E. WEGMAN, M.D.  
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Treasurer

BERWYN F. MATTISON, M.D.  
Executive Director

THOMAS R. HOOD, M.D.  
Deputy Executive Director

November 21, 1963

Mrs. E. L. Krasnoff  
210 Hamilton Avenue  
Princeton, N.J.

Dear Mrs. Krasnoff:

A copy of our recently adopted resolution on abortion is attached.

While we are unable to furnish an Association representative we suggest that you might wish to have an informed person appear as an individual and would suggest Leslie Corsa, Jr., M.D., University of Michigan Center for Population Planning, 1225 Douth University Avenue, Ann Arbor, Michigan 48104.

Sincerely,

*Thomas R. Hood*  
Thomas R. Hood, M.D.  
Deputy Executive Director

trh:sb  
encl

96th Annual Meeting of the American Public Health Association  
and meeting of Related Organizations, Detroit, Michigan, November 11-15, 1968

The American Journal of Public Health is the Official Publication of this Association

## ABORTION

It is generally accepted that individual women and couples should have the means to decide without compulsion the number and spacing of their children. This personal right has been supported and enhanced through governmental action at all levels. The APHA and many other groups have joined with public agencies to secure this right and to make widely available those services that will provide a range of choice of contraceptive methods consistent with personal beliefs and desires. However, contraceptive methods vary among users in effectiveness and suitability. Pregnancies sometimes occur due to rape, incest, and difficulties in obtaining contraceptives and sometimes because of contraceptive failures.

In order to assure the accepted right to determine freely the number and spacing of their children, safe legal abortion should be available to all women. Further, the provision of abortion within the usual channels of medical care will reduce the well known adverse health effects of illegal abortion.

The APHA urges that access to abortion be accepted as an important means of securing the right to spacing and choosing the number of children wanted. To this end, restrictive laws should be repealed so that pregnant women may have abortions performed by qualified practitioners of medicine and osteopathy.

Submitted By Rev. Keith C. Munson, Unitarian Church of  
Southern New Jersey

Assemblyman Crane

& gentlemen of the committee

I appreciate this opportunity to speak to you and the  
assembly this evening.,

and wish to register my serious plea for the liberaliz-  
ing of the Abortion Laws in this State.

In making this position known to you

I add my voice to that of the New Jersey Registered Nurses  
Association,

The Medical association of N. J. - AMA

And the Legal Profession.

Also, a great many clergy associations & groups  
are urging a liberalizing & a more humanitarian approach  
to this serious problem.

State Councils of Churches have passed strong Resolutions,  
urging legislatures to amend & reform & update these laws

The whole climate & feeling & opinion has changed.

We are becoming as a nation,

more concerned about people & wish to have our laws  
express this humanitarianism

rather than a strict adherence to the doctrines of a  
particular religious persuasion.

We would not force anyone into this abortion exper-  
ience

but we would not deny the opportunity for anyone  
to arrange for such help if she believes she needs  
it.

May I read to you a portion of a Resolution of The  
Unitarian Universalist Association  
passed at the General Assembly held in Cleveland  
of May of this year.

Be it Resolved ....that this association urges that  
efforts be made to abolish existing abortion laws  
except to prohibit performance of an abortion  
by a person who is not a duly licensed physician,  
leaving the decision as to an abortion to the doctor  
and his patient."

May I also call to your attention a series of lectures  
given by Granville Williams at Columbia Law School  
titled "The Sanctity of Life & the Criminal Law."

And with this two nationally recognized studies publishe<sup>d</sup>  
in book form

one by Lawrence Lader entitled Abortion

Another by Samuel Rosen under the title  
Abortion in America

There are probably a million illegal abortions performed in this country every year.

The majority are performed on married women with two or more children, who were conceived by their husbands and are performed by competent physicians.

The abortion laws make hypocrites of doctors, wives and husbands

Our legal code should not make it necessary to lie & be dishonest to fulfill our human needs.

They no longer serve as a deterrent for promiscuity and we should dismiss the old puriticanical concept that a woman must suffer, particularly the unmarried woman, for her sexual activities by giving birth.

But it is the woman in poverty who suffers most by strict abortion laws.

We should not force the desperate woman into "Back-alley operations" performed by unqualified practitioners and butchers.

Mr. Chairman there is so much that I wish to say but time dictates that I short cut this statement and so let me make one final statement.

I ask you to consider the child.

What about the unwanted child?

What about this child born out of incest, rape, mistake or ignorance?

What happens to the unwanted child?

How many of them are beaten & killed?

How many are psycically & physically crippled for life?

How many must bear the brunt of their parents' frustration or spend their childhood in orphanages or never know the love of father or mother?

Consider the child who must fight for survival.

It surely can not be God's will that they be treated in this way.

We have been in a long struggle to guarantee that every child comes into this world wanted, loved and cared for.

It is time we here in New Jersey, follow the lead now well established by a few other states, & move another step closer to making this the century of the wanted child.

# *Tenickerbocker Hospital*

70 CONVENT AVENUE NEW YORK 27



TELEPHONE AUDUBON 1-4100

*Founded 1862*

## STATEMENT BY WILLIAM B. OBER, M.D.

I am William B. Ober, M.D., of 44 Woodland Park Drive, Tenafly, New Jersey, a physician licensed to practice medicine in New Jersey, and I have limited my practice to obstetrical and gynecologic pathology for 20 years. Having seen the laws limiting performance of abortions in operation in New Jersey for the past 12 years as well as in other states, my opinion is that the statute now on our books should be repealed. The operative phrase prohibits the interruption of pregnancy by any person "without lawful justification." This wording is so vague that no physician can tell what it really means when applied to a given case. Like most badly written laws the statute is far from self-enunciatory, and the areas of doubtful interpretation in practice are so manifold that it actually prevents qualified physicians from practising medicine according to their best professional judgment.

There are other reasons why I think this statute should be taken off the books. First, it has failed to stop pregnant women from seeking an procuring illegal abortions by unqualified persons, often at great risk to their life and health, cetainly at the socially undesirable cost of turning otherwise decent, law-abiding women into becoming accessories to the commission of a felony - in which the victim is themselves. When a law is flouted to the extent the abortion statute is, it breeds disrespect for other laws which are much better.

Second, abundant evidence has been presented to this committee that the law now on the books discriminates against people of low income and limited education. Given the tenor of our times, this is most unwise in terms of legislative policy. But beyond this is the medical fact that death from criminal abortion is the leading cause of maternal mortality and that its victims are chiefly among Negroes and people whose native tongue is not English. Even a poorly written law should have an equitable impact on all classes of society; this one does not.

Third, legislation in the area of sexual behavior and its sequelae may very well fall into the area of personal privacy protected by such decisions as *Griswold v. Connecticut*. Many physicians, clergymen, and social scientists question whether a state is well advised to legislate in this field and suggest it might be better policy for the state to abdicate its right to legislate concerning a matter which it cannot enforce or a matter which may well be considered as lying between a pregnant woman and her physician.

Fourth, abortion law restrictions raise the question of woman's rights. Can we defend a public policy which supports compulsory pregnancy? Is it not unthinkable in this era of enlightenment that a woman should be compelled to bear a child against her will?

Lastly, resistance to abortion law repeal stems from individuals whose attitude is based on a religious idea that abortion is contrary to 'natural law.' Whatever natural law may be, and theologians differ regarding its definition, it is a metaphysical concept rather than a

demonstrable fact. Likewise, the idea that a new human life with a god-given soul is created at the instant of fertilization is a theologic concept, not a biologic one. While people are entitled to hold such religious, metaphysical, and theological ideas, they too are private items of belief. It is improper to enact statutes based on religious, metaphysical, or theological beliefs and such impropriety is compounded when we find that these beliefs are held by a minority of the population. To maintain statutes founded on such beliefs is to deny that our laws rest upon a rational basis.

Were the decision whether a given pregnancy should continue to term delivery left to the pregnant woman, abortions would no longer be done under dangerously unsanitary circumstances, but would be done in registered hospitals by licensed physicians. Women receiving the benefit of such liberal legislative policy would no longer run the significant risk of death or crippling disease from illegal abortion. They would also be relieved of economic penalties and of the psychological burden of guilt attendant upon the circumstances under which such abortions are now procured. Citizens of New Jersey, male and female alike, could pride themselves that their state has entered the 20th century.

Respectfully submitted,

22 November 1968  
WBO:cr

William B. Ober, M.D.  
William B. Ober, M.D.



C O P Y



# Congregation Shaarey Tefiloh

314 Madison Avenue · Perth Amboy, New Jersey 08862 · Phone 826-2977

כ"ה

שערי תפילה

December 5, 1968

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Spiritual Leader

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Cantor

REV. SAUL EDELMAN  
Reader  
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NATHAN WITKIN

Mr. Samuel Alito  
Abortion Study Commission  
State House  
Room 30  
Trenton, New Jersey

Dear Mr. Alito,


Rabbi Barry Dov Schwartz, a member of your Commission, asked me to prepare a statement that would express the Jewish Orthodox position on abortion to be included in the record of your Study Commission:

"The unborn child, particularly after the 40th day of conception, has a right to life which cannot be denied him. Even if the foetus is the product of incest or rape, or an abnormality of any kind is foreseen, the right to life is still his.

The only condition under which this right may be denied is when it threatens the life of another, namely the mother. Under the principle which permits taking the life of a human being in defense of another human being who is being attacked by the first, an abortion can be permitted if the mother's life is endangered.

It is for a competent religious authority, upon consultation with medical authorities, to determine whether the threat to a mother's well being is sufficient to warrant an abortion."

Sincerely,

  
Rabbi Albert B. Schwartz  
Vice President of the New  
Jersey Rabbinic Council

ABS/bk

DEC 6 1968

Statement submitted by Vincent T. McDermitt, Jr., M.D.  
1533 Haddon Ave., Camden, N. J.

My limited objective is to provide some documented facts and observations concerning mental retardation and its relationship to abortion.

Definitions as a point of departure are necessary. From the American Association of Mental Deficiency the subaverage general intellectual functioning which originates during the developmental period and is associated with impairment is adaptive behavior.

The medical approach to abortion and mental retardation might include the following points:

1. Over 90 percent of all mentally retarded persons can with education and training be integrated and perform useful functions within the community. Unfortunately, only about 20 percent have had the opportunity they need in education.

The American Association of Mental Deficiency Manual and the National Association for Mental Retardation have produced the statistic that 3 percent of the population is mentally retarded - this approximates five-and-a-half million in the United States.

Of this three percent about 2.5 percent (over 80 percent of all retarded) suffer from mild or educable retardation and, with education and training, are capable of working independently and many of these are capable of assuming the responsibility of marriage.

Among the remaining .5 percent, over half are trainable retarded and with a good occupational educational approach can

ultimately be gainfully employed in sheltered workshops or sheltered employment surroundings. Among the remainder of this .5 percent their levels of potentiality have yet to be adequately determined and utilized.

This brings forth a question. Does the remaining small fraction of the .5 percent indicate or justify possible abortion for the unborn retarded? Nay. Equally negative must be the response where there is not a 100 percent scientific certainty that the yet unborn child shall be retarded to this degree or any degree for that matter. Specific instances of retardation resulting from rubella, which is German measles, during pregnancy does not substantiate abortion as a general rule for similar cases. Rather it indicates a need for greater research to eliminate rubella. As a matter of fact within probably six months the vaccine will be made generally available.

2. Employers have found that well-trained retarded employees perform routine tasks much more diligently and conscientiously than the so-called normal person for whom such tasks may prove boring or monotonous. In this highly automated and technological society where the accent is on specialization, even though retarded persons have successfully operated computer machines there is a gap in many other areas including industry, agriculture, domestic and other sources where automation and technology cannot come and which can be adequately supplied through the ranks of well-trained retarded employees.

3. If it so happened that abortion was allowed or legalized in relation to the mere possibility of an unborn child being retarded, where would the dividing line occur? Would abortion be practiced in relation to other handicapped conditions, i.e. cerebral palsy, blindness, deafness or aphasia if such conditions could be diagnosed or misdiagnosed, if you so will, before birth? Would the Damoclean sword hover over the heads of those retarded who escaped abortion and result eventually in euthenasia? Shades of Nazi Germany reincarnated.

4. Contrary to what has been stated concerning the "unwanted" child or the horror of a defective child, the opposite is the truth. The presence of a retarded child in a family has more frequently been a means of uniting such a family rather than the opposite. It has also been an incentive to foster great humanitarian efforts and deeper studies and research by dedicated specialists and organizations within the community.

5. The answer, be it medical, psychological, theological or sociological, is not abortion for the retarded or possible retarded but rather greater medical and scientific research into the etiology and elimination of the more than 200 conditions that cause mental retardation and allying this to similar psychological and educational research into discovering new methods and techniques in educating and training the retarded so that their maximum potential may be developed and achieved in order to render their lives more fruitful as members of the community to which they belong.

The Assembly of the State of New Jersey

Sirs:

This past year, a young girl of fourteen who is related to me, became pregnant by her young beau. My advice was sought and I became instrumental in finding a safe and legal abortion. It was the general opinion of all concerned, that marriage and the attempt to raise the child was asking for possible trouble in the future. The two adolescents were not mature enough to be thrown into the world in that way. They were willing to accept the responsibility if they must. They were also willing to accept advice from their elders. We decided to search for a safe abortion. It took some doing to locate a place where it is legal and to conform to the requirements that would make it legal.

We were successful and all are now thankful for the kind and humanitarian Legislators and Doctors of that state and of that hospital, who have made the move to alleviate this burden upon the lives of unfortunate youngsters.

I ask you, for the sake of humanity and justice, do not deny them the legality of a second chance. Those against abortion need not accept it for themselves. Their action would be negative, barring all from freedom of choice. Let your action be positive, giving freedom of choice to all.

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