STATE OF NEW JERSEY

COMMISSION TO STUDY THE NEW JERSEY STATUTES RELATING TO ABORTION

Final Report

to the

Legislature

(pursuant to Assembly Concurrent Resolution No. 24 of the 1968 Legislature, and continued pursuant to Assembly Concurrent Resolution No. 18 (OCR) of the 1969 Legislature)

December 31, 1969

LETTER OF TRANSMITTAL

MEMBERS OF THE SENATE AND GENERAL ASSEMBLY

GENTLEMEN:

December 31, 1969

The Commission to Study the New Jersey Statutes Relating to Abortion, created pursuant to Assembly Concurrent Resolution No. 24 of 1968, and continued pursuant to Assembly Concurrent Resolution No. 18 (OCR) of 1969 "to study our statutes relating to abortion and the problem of illegal abortions", herewith respectfully submits its final report: including a majority statement, a minority statement submitted by the Reverend Thomas F. Dentici, a minority statement submitted by Senator Frank J. Guarini and concurred in by Assemblyman Christopher J. Jackman, and a minority statement submitted by Oscar W. Rittenhouse, Esquire.

(s)WILLIAM M. CRANE
WILLIAM M. CRANE,
Chairman

(s)FRANK J. GUARINI
FRANK J. GUARINI

(s)JAMES H. WALLWORK
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(s)CHRISTOPHER J. JACKMAN
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(s)THOMAS F. DENTICI
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(s)ALEXANDER SHAW
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(s)HANNAH E. SEITZICK-ROBBINS
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(s)BARRY DOV SCHWARTZ
BARRY DOV SCHWARTZ

(s)OSCAR W. RITTENHOUSE
OSCAR W. RITTENHOUSE

COMMISSION TO STUDY THE NEW JERSEY
STATUTES RELATING TO ABORTION

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I. Introduction and Background

On February 13, 1968, Assemblyman William M. Crane, together with Assemblymen Hollenbeck, Costa, DeKorte, Apy, Thomas, Kaltenbacker and Selecky introduced Assembly Concurrent Resolution Number 24 (exhibit 1), creating a commission to study the New Jersey Statutes relating to abortion. The resolution was passed by the Assembly on March 14, 1968 and by the Senate on April 1, 1968.

This resolution stated that: (a) the high rate of illegal abortions constitutes a serious law enforcement and public health and safety problem; (b) critics of current abortion laws contend that they are unduly restrictive and have a tendency to force women seeking abortions to fall prey to the unscrupulous and frequently unskilled abortionist, with possible tragic consequences; (c) it is imperative that New Jersey's statutes in this area operate to effectively prevent resort to illegal abortions, and; (d) it is a legislative responsibility to re-evaluate the existing statutes on abortion to determine whether they adequately protect the public health and welfare and promote effective law enforcement. The commission was required to report to the Legislature not later than January 31, 1969, however, Assembly Concurrent Resolution Number 18 of 1969 (as amended), extended the reporting date to December 31, 1969. (exhibit 2)

The Commission organized on September 30, 1968, and Assemblyman Crane was elected Chairman. Samuel A. Alito, Legislative Research Director, was designated Secretary to the Commission and Mr. Robert Poley

of Hackensack was named counsel.

Public hearings were held at the State House, Trenton, on October 28, 1968; at Newark City Hall on November 13, 1968; and at Camden City Hall on November 26, 1968. Testimony was transcribed and is published in three volumes totaling 782 pages of testimony and statements. These published documents probably represent the best collection of public and professional opinion on abortion in print today.

II. Statement of the Abortion Problem and Approaches to Solutions

A. The Basic Problem

Abortion to many is a dirty word, but it has been practiced in all societies and in all cultures. English Common Law forbade abortions, and specific legislation grew out of this common law prohibition as well as the humanitarian movements of the mid - 19th century. State abortion laws enacted during that period, and still in force in most jurisdictions today, were intended to protect women from the swarms of hack abortionists who endangered their lives. New Jersey's 1849 anti-abortion statute was enacted in response to a New Jersey Supreme Court case of that year wherein one Cooper was convicted by a lower court of performing a forcible abortion. Cooper appealed the lower court decision on the basis that there was no specific statute concerning abortion, but the Supreme Court held that the forcible abortion was a violation of the common law and upheld the conviction. History does not tell us what happened to Cooper, but a footnote at the bottom of the page on which the 1849 decision is recorded says that in response to this case the New Jersey abortion law was enacted.

The Supreme Court of New Jersey in 1858 held that, "the design of the statute was not to prevent the procuring of abortions so much as to guard the health and life of the mother against the consequence of such attempts." (27 N.J.L. 112)

It should be noted that in 1849 any surgical procedure was a dangerous one, because Lister did not devise antiseptic surgery until 1865.

The Commission has attempted at all of its public hearings to gather statistical information on the incidence of abortion in New Jersey and in the United States, however, there are no fully accurate statistics one may rely on in assessing the prevalence of abortion, legal or illegal, spontaneous or induced. Spontaneous abortion in the early stages of pregnancy may go unnoticed even by the pregnant woman, and, later in the pregnancy, it is not a matter of public record. Illegal abortion, if successful and if no untoward after effects occur requiring medical treatment or hospitalization, is by its very nature unreported, because the woman who sought out the abortionist is a "satisfied customer." Illegal abortion which results in hospitalization or death may also go undetected, for it is often very difficult for medical practitioners to determine whether an abortion was spontaneous or induced after the event, except where grossly unskilled abortionists have "butchered" their customer.

Keeping in mind the unreliability of the statistics available, we may still make some estimates of the incidence of abortion in the United States. About one out of every five pregnancies is terminated prior to full term. A substantial proportion of such terminations occur as a result of spontaneous abortion (miscarriage) in the early stages of pregnancy. The remaining terminations are induced abortions, legal or illegal. The number of illegal abortions performed annually is estimated variously at from 100,000 to 1,400,000, and the number of maternal deaths resulting from all types of abortions is estimated at 8,000 annually, based on an estimate of 700,000 abortions per year at a death rate of 1.2%. It is estimated that about 55% of the illegal abortions in the United States are performed by physicians, 20% by less skilled abortionists and 25% by the pregnant woman herself.

Present laws in effect in New Jersey, and in most other states, provide that abortion is legal only to save the life of the mother. Despite the increasing availability of improved contraceptive devices, a large number of unwanted pregnancies do occur and a substantial percentage of these unwanted pregnancies are terminated. The illegality of most induced abortions is apparently not an effective deterrent to the desperate woman who wants to terminate her pregnancy, and the woman facing the birth of an unwanted child will often seek an abortion, even if it is illegal. Illegal

abortions in most instances are performed in such a manner and under such circumstances as to greatly increase the danger of infection and even possible death.

New Jersey's 1849 abortion law has not stopped the practice of abortion in New Jersey. It has merely diverted those seeking abortions into illegal channels and into the hands of the unskilled practitioners often untrained and without the most rudimentary sanitary facilities.

Whatever the number of illegal abortions performed, the number of prosecutions and convictions is much smaller, varying between 800 and 1,000 a year in the United States. One may easily conclude that the abortion law is extremely difficult, if not impossible, to enforce and that abortion is the one felonious act that is almost completely free of punishment.

Illegal abortion ususally comes to light only if complications occur which require hospitalization. Once law enforcement officials know of an illegal abortion they face severe obstacles in prosecution. To begin with, the woman herself is immune from prosecution; the abortionist is the one criminally liable. Even where the woman is willing to disclose the identity of the abortionist, substantial corroborative evidence must be gathered, a process involving extensive and difficult investigation. And when a strong case is made it does not assure conviction, particularly when the accused is a licensed physician.

Thus, in general, the current New Jersey Abortion Law tends to illustrate the inherent unenforceability of a statute that attempts to prohibit a private practice, where all parties concerned desire to avoid the restriction.

B. Abortion and the Law

New Jersey Law

The New Jersey abortion statute, Chapter 87 of Title 2A of the New Jersey Statutes (exhibit 3), forbids the practice when performed "maliciously and without lawful justification", but lawful justification is not defined. The only justification thus far held lawful by the New Jersey courts is the preservation of the life of the mother, State v. Shapiro 89 N.J.L. 319 (E and A 1916); State v. Brandenberg 137 N.J.L. 124 (S. Ct. 1948). However, in a recent abortion case before the State Supreme Court, Gleitman v. Cosgrove 49 N.J. 22, a dictum of the majority opinion states: "It may well be that when a physician performs an abortion because of a good faith determination in accordance with accepted medical standards that an abortion is medically indicated, the physician has acted with lawful justification within the meaning of our statute and has not committed a crime." But, writing in concurrence with the majority opinion in the case, Justice Francis states: "Our duty in this highly charged public policy area is to say what the law is and not what we think it ought to be. What it ought to be is a matter for the legislative branch of state government, and we

must assume that branch will be conscientiously responsive to the requirements of public health and welfare, and the social and economic exigencies of the times. If it is not as the people believe contemporary life demands, the remedy rests with them and not with the courts." Most recently, Chief Justice Weintraub, in concurring with a majority opinion upholding a conspiracy conviction under the abortion statute, stated that "the [abortion] statute is an incomplete expression of legislative will, and the legislative branch should decide what constitutes lawful justification," (State v. Moretti and Schmidt 182 Supreme Court of New Jersey, 1968).

Other States

There is so little common law authority covering abortion that specific legislation dealing with the subject has been enacted in all state jurisdictions. These abortion statutes in the various states may be roughly classified as those which, in form, prohibit all abortions, and those which permit abortions under carefully limited circumstances.

The statutes in four states (Louisiana, Massachusetts, New Jersey and Pennsylvania) provide no specific exceptions to the general prohibition against abortion. In all other states, excluding those noted below, one exception, the preservation of the life of the mother, is permitted. In Alabama and the District of Columbia, circumstances permitting abortion are broadened to

include the preservation of the life and health of the mother. Several states, including California, Georgia, Maryland, Arkansas, Delaware, Kansas, Oregon, Colorado, New Mexico and North Carolina, have recently broadened their statutes to permit abortions for eugenic and circumstantial, as well as therapeutic, reasons, in line with the recommendations of the Model Penal Code drafted by the American Law Institute. *

There have been similar attempts at abortion reform in a number of other states as well. A liberalization bill was introduced in the New Hampshire Legislature as early as 1961, passed both houses, but was vetoed by the Governor and failed to pass over his veto. Three bills were introduced in the Minnesota Legislature in 1967, but all failed of passage. New York has been the scene of considerable reform activity. One bill was introduced in 1966, 3 in 1967, 3 in 1968 and a bill was narrowly defeated during the 1969 session of the Legislature.

Foreign Countries

Britain, after years of agitation for such reform, amended its abortion statute in 1967 to permit abortion to preserve the life and health of the woman (therapeutic), or on grounds of a substantial risk of serious physical or mental abnormalities in the child (exhibit 17). The other countries of Western Europe have no laws permitting therapeutic or any other type of abortion.

*It should also be noted that while this report was being prepared the Legislature of Hawaii approved legislation removing abortion from the criminal statutes and providing only that such procedures must be performed by a licensed physician in a hospital and are available only to residents of Hawaii.

In the Scandinavian countries, the laws and practices relating to abortion are more liberal. The most commonly recognized indication for abortion is therapeutic, but abortion for eugenic, circumstantial and birth-control purposes (usually described as the "worn-out housewife" indication) is permitted. However, despite this broadening of legally accepted reasons for abortion, it is by no means easy to procure a legal abortion in the Scandinavian countries. These countries have developed a tightly-controlled and highly systematized method of processing abortion applications, almost entirely centralized in government bureaus. Applications for abortions are submitted to special medical boards, consisting of physicians, psychiatrists, social workers, and lay people (preferably women). Such boards conduct extensive and intensive investigations of each potential case before rendering a decision on the application. The number of rejections is sizable. For example, in Sweden during 1964 over 1200 of some 4500 applications were rejected. Psychiatric and other counselling services are made available to rejected applicants to assist them in carrying their pregnancies to term.

The Soviet Union has followed fluctuating policies on legal abortions. In the 1920's, the Soviets legalized abortion on demand. In 1936, this position was reversed and all abortion was banned. Some commentators speculate that this was done because of the necessity for every potential birth to replenish the

Soviet army and labor force. In 1955, the Soviet government again reversed itself and legalized abortion once more.

The nations of Eastern Europe have generally followed the Soviet lead with regard to abortion. Bulgaria, Hungary, and Poland legalized abortion in 1956, Rumania in 1957. Czechoslovakia and Yugoslavia began with such legislation but in recent years (Yugoslavia in 1960, Czechoslovakia in 1962) have established a system of modified controls.

In Asia, Japan has legalized abortion on demand. It is felt by most commentators that the law was enacted in response to population pressures that arose after World War II. It is pointed out that this extreme liberalization of abortion laws in Japan encountered no religious or moral obstacles, because the value-systems of Asian cultures place less emphasis on the dignity of human life than do Western values. There is no information readily available as to abortion practices in other Asian nations.

With regard to Latin America, the opposition of the Roman Catholic Church has prevented any significant effort toward liberalization. Illegal abortion is reportedly prevalent in these nations, although specific information is scarce. There is no information available on the subject of abortion in Africa.

The effects of liberalization of abortion laws in these countries appear to be mixed. In the Scandinavian countries, the total number of legal abortions has declined since liberalization, while the number of illegal abortions has, as far as can be determined,

remained stable. In the Soviet Union, legalization of abortion on demand produced an increase in legal abortion and a corresponding decrease in criminal abortion. In the Eastern European countries, some statistical information is available. The number of legal abortions has increased greatly and the overall birth rate has declined, although not substantially. In response to this fall in birth rate, Czechoslovakia implemented moderate controls on abortion, and the decline in the birth rate was slowed down, although not reversed. In Japan, legalization of abortion on demand produced more dramatic results. Reported abortions rose from 246,000 in 1949 to a peak of 1,128,000 in 1958, then tapered off to about 955,000 in the following years. This has been accompanied by an equally spectacular decline in the birth rate, from 34.3 per 1000 in 1947 to 16.9 in 1961.

C. Proposals for Reform

The foremost specific proposal for the reform of abortion statutes has been advanced by the American Law Institute in its final draft of a Model Penal Code (exhibit 4). Under this proposal, abortion would be legal and justifiable under the following conditions:

1. it is performed by a licensed physician in a licensed hospital, except in cases of emergency when such hospital facilities are unavailable.

2. it is believed by such physician that

(a) there is a substantial risk that the continuance of the pregnancy would gravely impair the physical or mental health of the mother, or

(b) there is a substantial risk that the child would be born with grave physical or mental defect, or

(c) that the pregnancy resulted from rape, incest, or other felonious intercourse.

3. two physicians, one of whom may be the person performing the operation, shall have certified in writing to the hospital where the abortion is to be performed or, in the case of abortion following felonious intercourse, to the prosecuting attorney or the police as well as to the hospital, the circumstances which they believe to justify the abortion.

Thus, the provisions embodied in the Model Penal Code would legalize therapeutic, eugenic, and circumstantial abortions. In their comments on this proposal, those who drafted it offer 4 justifications for thus expanding the criteria for legal abortion:

1. Indiscriminate abortion must be adjudged a secular evil since the procedure involves some physical and psychic hazards.

2. Abortion, at least in early pregnancies, and with the consent of the persons affected, involves considerations so different from the killing of a living human being as to warrant consideration not only of the health of the mother but also of certain extremely adverse social consequences to her or the child, e.g. bastardy resulting from rape; prospective gross physical or mental defect

in the child.

3. The criminal law in this area cannot undertake or pretend to draw the line where religion or morals would draw it. Moral demands on human behavior can be higher than those of the criminal law precisely because violations of those higher standards do not carry the grave consequences of penal offenses. Moreover, moral standards in this area are in a state of flux, with wide disagreement among honest and responsible people. The range of opinion among reasonable men varies from deep religious conviction that any destruction of incipient human life, even to save the life of the mother, is murder, to the equally fervent belief that the failure to limit procreation is itself unconscionable and immoral if offspring are destined to be idiots, or bastards, or undernourished, maleducated rebels against society. To use the criminal law against a substantial body of decent opinion, even if it be minority opinion, is contrary to our basic traditions. Accordingly, here as elsewhere, criminal punishment must be reserved for behavior that falls below standards generally agreed to by substantially the entire community.

4. Criminal liabilities which experience shows to be unenforceable because of nullification by prosecutors or juries should be eliminated from the law. Such nullification usually points to a situation of divided community opinion. "Dead letter" laws, far from promoting a sense of security in the community, which is the main function of penal law, actually impair that security by holding the threat of prosecution over the heads of people whom we have no in-

tention to punish. With regard to the question of when life begins, and whether a fetus is from the moment of fertilization a human being endowed with the right to life, the drafters of the Model Penal Code conclude that "there seems to be an obvious difference between terminating the development of such an incohate being, whose chance of maturing is still somewhat problematical, and, on the other hand, destroying a fully formed viable fetus of eight months, when the offense might well become ordinary murder if the child should survive for a moment after it has been expelled from the body of its mother. This difference, it is urged, should be recognized at least to the extent of permitting a broader justification of abortion than of homocide."

As already noted, a number of states have liberalized their abortion statutes along the lines proposed by the Model Penal Code, but with certain modifications. Procedures relating to medical and law enforcement authorities' approval are generally strengthened in these state laws.

D. Previous Proposals in New Jersey

Prior to the creation of the present commission, the activities of the New Jersey Legislature concerning abortion were as follows:

1. On February 4, 1952, a bill (A-298, 1952) was introduced in the Assembly by Assemblyman Simill, which called for an amendment to the New Jersey statutes on abortion which would clearly state

that abortion was justified if necessary to preserve the life of the woman. This bill was referred to the Committee on Revision and Amendment of Laws, was reported by this committee, and received a second reading in the Assembly. No further action was taken.

2. On April 27, 1966, a concurrent resolution was introduced in the Assembly by Assemblymen Albanese, Woodson, Yesko, Perskie, A.E. Brown, and Wilentz (ACR 33, 1966) calling for a commission similar to the present commission. This resolution passed the Assembly, and was referred to the Senate Committee on Law and Public Safety. No further action was taken.

3. On January 23, 1967, a concurrent resolution was introduced in the Assembly by Assemblymen Albanese and Carlton (ACR 5, 1967) calling for a commission similar to the present commission. This resolution was referred to the Committee on Judiciary. No further action was taken.

4. On November 24, 1969, Assemblyman Digiammo introduced a bill (A-1111, 1969) which would provide for a legal abortion where "there is a substantial risk that the child, if born, would have a grave physical or mental defect by reason of the exposure of the woman to German measles (rubella) during her pregnancy..." This bill was referred to the Committee on Revision and Amendment of Laws. No further action was taken.

E. Rights of the Fetus

Critics of abortion law reform often call for protection of the rights of the fetus as one of the major reasons for their opposition. Therefore, it is important to understand such rights as they exist under the laws of New Jersey.

There are many areas of the law in which our legislature and courts have yet to specify and to determine such rights. Although other states and jurisdictions have spoken in these areas, there is no way to ascertain whether the New Jersey courts will adopt, modify or reject such determinations.

In the field of tort liability, the New Jersey Supreme Court, in Smith v. Brennan, 31 N.J. 353 (1960), established the right of a child, who was in the womb of his mother and was injured in an automobile collision caused by a third party's negligence with the result that he was born with physical deformities, to recover for the negligently inflicted personal injury. However, the Court avoided argument over the issue as to when a fetus becomes a person, and it established the condition of birth as a prerequisite for recovery of damages.

In Graf v. Taggert, 43 N.J. 303 (1964), the Court denied the right of a next of kin of a stillborn child to recover damages for injuries received by the child while, "en ventre sa mere", and the Court admitted that it was making an arbitrary but valid distinction between the rights of a born child, as in the Smith case.

A posthumus child qualifies as a dependent of his deceased father under the Workmen's Compensation Act, Morgan v. Susino Construction Co., 130 N.J.L. 418.

A unique circumstance was presented to the Court in Gleitman v. Cosgrove, 49 N.J. 22 (1967). Part of that suit involved a malpractice claim by a child against physicians for their allegedly negligent conduct in allowing him to be born with birth defects. The Supreme Court determined that the child had but two choices; to be born with defects, or not to be born at all, and refused to recognize the right to damages because it was, "...impossible to weigh the value of life with impairments against the nonexistence of life itself."

The right of the fetus to have a blood transfusion, contrary to the mother's religious convictions, was granted in Raleigh Fitkin-Paul Morgan Memorial Hospital v. Anderson, 42 N.J. 421 (1964).

Quickening of a child appears in the criminal law of this state as one of the elements which must be present for conviction. Our Court, in State v. Cooper, 22 N.J.L. 52, adopted Blackstone's definition of quickening as follows: "...life begins in contemplation of law as soon as an infant is able to stir in the mother's womb."

An unborn child is granted certain rights under the state's law of decedent's estate, such as having a guardian assigned to it and rights of inheritance in the estate of a deceased parent which mature when subsequently born. In re Haines, 98 N.J. Eq. 628, Van Wickle v. Van Wickle, 59 N.J. Eq. 317, Walker v. Hyland, 70 N.J.L. 69, N.J.S.A. 3A:3-10.

It becomes apparent that our law recognizes certain rights of the fetus, which are deemed to accrue and become enforceable upon the birth of the child. With the exception of the blood transfusion cases, there is no instance of a right absolutely vesting in the fetus prior to birth.

III. Abortion and Public Opinion

The opinion of the general public on the subject of liberalization of abortion laws has been solicited on three occasions.

1. The National Opinion Research Center asked the views of a representative sample of 1,484 adult Americans in December 1965. The results were as follows:

The question read, "Please tell me whether or not you think it should be possible for a pregnant woman to obtain a legal abortion...," followed by the conditions specified below.

		YES	NO	DON'T KNOW
1.	If the woman's own health is seriously endangered by pregnancy	71	26	3
2.	If she became pregnant as a result of rape	56	38	6
3.	If there is a strong chance of serious defect in the baby	55	41	4
4.	If the family has a very low income and cannot afford any more children	21	77	2
5.	If she is not married and does not want to marry the man	18	80	2
6.	If she is married and does not want any more children	15	83	2

A further breakdown of this poll showed that men are more liberal on the subject than women, and also that increased education correlates positively with more liberal views on abortion. In addition, it was determined that Catholics are only slightly less liberal on the issue than are Protestants, and that Jews are the most liberal of all.

2. The American Institute of Public Opinion (Gallup Poll) released results of an abortion poll on January 21, 1966. The results were as follows:

The question read, "Do you think abortion operations should or should not be legal in the following cases ..."

	Should	Should not	Don't Know
1. Where the health of the mother is in danger	77	16	7
2. Where the child may be born deformed	54	32	14
3. Where the family does not have enough money to support another child	18	72	10

A further breakdown of this poll showed that substantial majorities of both Catholics and Protestants favor legal abortions when the health of the mother is endangered. In the case of possible birth defects, only a plurality of Catholics (46%) approve, while a clear majority of Protestants are in favor

(56%). Catholics and Protestants agree that abortions should not be legal in cases where a family cannot afford additional children.

3. On September 19, 1962, the American Institute of Public Opinion released a poll dealing with the Finkbine case. The results were as follows:

The question read, "As you may have heard or read, an Arizona woman recently had a legal abortion in Sweden after having taken the drug thalidomide, which has been linked to birth defects. Do you think this woman did the right thing or the wrong thing in having this abortion operation?"

Opinion Nationwide

Right thing	Wrong thing	No opinion
52%	32%	16%

Catholics vs. Protestants

	Right thing	Wrong thing	No opinion
Cath.	33%	49%	18%
Prots.	56%	27%	17%

Men vs. Women

	Right thing	Wrong thing	No opinion
Men	54%	30%	16%
Women	50%	33%	17%

The results of these polls would seem to indicate that a substantial majority of the American public favors a liberalization of abortion laws that would permit therapeutic, eugenic, and circumstantial abortions, but are opposed to liberalization that would permit abortion for birth control reasons. Catholics seemingly favor liberalization for therapeutic reasons, but are less enthusiastic concerning eugenic and circumstantial reasons, and join with Protestants in substantially disapproving birth control reasons.

IV. Abortion and the Medical Profession

Current United States abortion laws place medical professionals on the horns of a dilemma. The doctor's concern for what he sincerely believes to be the best interests of his patient may be in sharp conflict with the dictates of the law. A doctor may feel that termination of an unwanted pregnancy, even though it does not endanger the life of his patient, is the most desirable treatment of the case, yet, in most states, he may not perform such an operation under penalty of law. If he performs such an operation he faces at least the possibility of criminal prosecution.

There is ample evidence that the medical profession is becoming increasingly aware of the dangers to its members under the present situation. In June 1967, the American Medical Association adopted as official policy its approval of induced abortion when performed by a licensed physician, with two other physicians concurring, in an accredited hospital on the grounds of a) danger to the life or health

of the mother, or b) the possibility of incapacitating physical deformity or mental deficiency in the child, or c) the fact that the pregnancy resulted from rape or incest and thus constitutes a threat to the physical or mental health of the patient (Exhibit 5). In May 1968, the Medical Society of New Jersey affirmed and adopted this policy as its own (Exhibit 6).

Given the present legal restrictions on abortion, the evidence reveals that in many instances reputable physicians and hospitals must violate either the law or their professional duty in the handling of an abortion case.

The reputable physician who wishes to abort his patient under safe, hospital conditions must in most jurisdictions be prepared to maintain that the operation is necessary to preserve the woman's life. Maintaining such a claim may be extremely difficult. As a result, a measure that seeks to protect both the physician recommending the operation and the hospital where it is to be performed is brought into play: outside consultation.

Such consultation takes one of two forms. In many instances, including many hospitals in New Jersey, the hospital itself has created an abortion board or committee whose approval must be secured before the operation can be performed. The physicians recommending the operation must submit the case to the board, which then reviews all the particulars before passing judgment. The boards are usually composed of members of the staff of the hospital, including specialists in obstetrics,

gynecology, and related fields. In cases where the mental health of the patient is involved, one or more psychiatrists will be called in. In many hospitals, the decision of such a board must be unanimous.

It has been observed that such boards invariably take a very stringent view toward abortion. Given their potential liability for prosecution, they must be careful to insure that, should it prove necessary, they can make a reasonable case that the operation was necessary to preserve the mother's life. Moreover, in order to protect the hospital's reputation, it is considered advisable not to report any sizable number of abortions as having been performed there. Thus, an informal quota system may arise, permitting so many abortions in a given time, and no more. If a case of substantial merit arises after this quota has been exhausted, the application will in all likelihood be denied.

The second form of consultation occurs in instances where the hospital does not require approval by such an abortion board or committee. In this situation, hospitals will require at the minimum that the recommending physician secure the approval of two other physicians before it will permit the operation to take place. Once again, the possibility of prosecution makes outside physicians wary of giving their approval and makes securing such approval a dubious proposition at best.

Mention should be made here of the special problems faced by psychiatrists in abortion situations. Given the substantial reduction in the incidence of purely physical indications for termination of

pregnancy that has resulted from advances in medical technology, a substantial number of those abortions which do secure hospital approval are performed on psychiatric grounds. However, in most states the only strictly legal grounds on which such an abortion can be performed is the risk of suicide in the patient. Pyschiatrists agree that accurate prognosis in the case of a potentially suicidal patient is extremely difficult. This problem is aggravated in the case of a psychiatrist called in as a consultant late in the development of a case. He may see his patient only once or twice, and acquire as a result only an unavoidably superficial knowledge of the patient's circumstances and problems. If the psychiatrist approves termination, he could face a difficult time convincing a court she would have destroyed herself had he not done so; if he disallows termination and the woman eventually does commit suicide he may feel he has lost a patient he could have saved had he approved the abortion. As the American Medical Association noted, "the psychiatrist who authorizes a therapeutic abortion is forced either to act contrary to the law and trust that no legal action will follow or to exaggerate the circumstances in order to provide devious justification for his action. In either case he is placed in an uncomfortable position which is in no way lessened by the fact that the courts have not as yet convicted a physician for such action." Faced with these unattractive alternatives, many psychiatrists are highly wary of even "getting involved" in an abortion situation.

Refusual by a hospital to permit an abortion to be performed in its facilities leaves the pregnant woman and her physician with options that involve a material increase in the dangers of the operation. The first of these is trying another hospital, a procedure that involves several obstacles. If the recommending physician has no affiliation or, failing that, no informal "connections" with the second hospital, chances of approval are lessened. The record of the first hospital's refusal also mitigates against approval. A final obstacle is the time element. The more advanced the pregnancy, the more risk involved in abortion. The time lapse between rejection by one hospital and attempts to secure approval from another may in some cases carry the term of the pregnancy beyond the period the second hospital considers safe.

Faced with the inability to secure hospital approval of the operation, the recommending physician will often wash his hands of the case. Knowing that performing the operation outside a hospital leaves him to face possible criminal prosecution alone, and also increases the dangers inherent in the operation, he may not wish to subject himself to this two-fold risk. His patient, intent on termination, is then forced to fall back on other methods such as unscrupulous physicians, various and sundry "midwives," or self-induced abortion.

V. Commission Approach

The Commission held 3 public hearings as noted in Section I and heard testimony from a broad spectrum of professional and lay persons. After careful review and study of their testimony the Commission narrowed its inquiry, and at the March 27, 1969, meeting it was decided that the Commission should direct its study toward the possibility of amending the present New Jersey law through the addition of certain specified conditions under which a non-criminal abortion would be allowable.

At the request of the Chairman background information was gathered relative to the areas enumerated. This information included general pro and con arguments and a discussion of how other states which had recently enacted or were currently considering enactment of amended abortion laws dealt with these areas.

The Following are the areas which were delineated by the Commission:

1. Rape (provable)
2. Incest (provable)
3. Life of the mother
4. Physical health of the mother (impairment of)
5. Mental health of the mother (impairment of)
6. Defective Fetus

7. Underage, unmarried female

8. Other social conditions (specified number of children, unmarried mother, financial considerations, tired mother, etc.)

The following were the states which were surveyed:

California	Maryland	Delaware
Georgia	New Mexico	Arkansas
North Carolina	Kansas	
Colorado	Oregon	

New York (Proposed Blumenthal bill and Governor's Commission recommended statute)

Briefly, the following are the conditions under which an abortion may be performed in each of the above:

California:

(1) There is substantial risk that continuance of the pregnancy would gravely impair the physical or mental health* of the mother.

(2) The pregnancy resulted from rape or incest. (includes both statutory and forcible rape)

* the term "mental health" is defined elsewhere in the act to mean mental illness to the extent that the woman is dangerous to herself or to the person or property of others or is in need of supervision or restraint.

Georgia:

(1) A continuation of the pregnancy would endanger the life of the pregnant woman or would seriously and permanently injure her

health. (health has been interpreted as including both physical and mental health)

(2) The fetus would very likely be born with a grave, permanent and irremediable mental or physical defect.

(3) The pregnancy resulted from forcible or statutory rape.

North Carolina:

(1) There is substantial risk that continuance of the pregnancy would threaten the life or gravely impair the health of the woman. (health has been interpreted as meaning both physical and mental health)

(2) There is substantial risk that the child would be born with grave physical or mental defect.

(3) The pregnancy resulted from rape or incest and the said alleged rape was reported to a law enforcement agency or court official within 7 days after the alleged rape.

Colorado:

(1) The death of the mother.

(2) The serious permanent impairment of the physical health of the woman.

(3) The serious permanent impairment of the mental health of the woman as confirmed in writing under the signature of a licensed doctor of medicine specializing in psychiatry.

(4) The birth of a child with grave and permanent physical deformity or mental retardation.

(5) Rape, both statutory and forcible.

Kansas:

(1) There is substantial risk that a continuance of the pregnancy would impair the physical or mental health of the mother.

(2) The child would be born with physical or mental defect.

(3) The pregnancy resulted from rape, incest, or other felonious intercourse. (Includes both statutory and forcible rape)

Oregon:

(1) There is substantial risk that continuance of the pregnancy will greatly impair the physical or mental health of the mother.*

(2) The child will be born with serious physical or mental defect.

(3) The pregnancy resulted from felonious intercourse. (Includes both statutory and forcible rape and incest)

Delaware:

(1) Continuation of the pregnancy is likely to result in the death of the mother.

(2) There is substantial risk of the birth of the child with grave and permanent physical deformity or mental retardation.

(3) The pregnancy resulted from incest.

(4) The pregnancy resulted from a rape committed as a result of force or bodily harm or threat of force or bodily harm.

(5) Continuation of the pregnancy would involve substantial risk of permanent injury to the physical or mental health of the mother.

*Account may be taken of the mother's total environment, actual or reasonably foreseeable.

Arkansas:

(1) There is substantial risk that continuance of the pregnancy would threaten the life or gravely impair the health of the said woman.

(2) There is substantial risk that the child would be born with grave physical or mental defect.

(3) The pregnancy resulted from rape or incest.

New York (Proposed Blumenthal bill):

(1) There is medical evidence of a substantial risk that continuance of the pregnancy would endanger the life of the pregnant woman.

(2) There is medical evidence of a substantial risk that a continuance of the pregnancy would cause a material impairment of the physical health of the pregnant woman or would cause her to become a mentally ill person as defined in the mental hygiene law.*

(3) There is medical evidence of a substantial risk that the fetus, if born, will be permanently and materially physically impaired or will be a mentally ill person or a mental defective as defined in the mental hygiene law.

(4) The pregnancy of the woman resulted from an act of rape in the first degree** or from an act of incest, as defined in the penal law, or the pregnancy occurred while the female was thirteen years of age or less.

*mentally ill person is defined as any person afflicted with mental disease to such an extent that for his own welfare or the welfare of others, or of the community, he requires care and treatment.

**Involves no element of consent.

(5) The pregnancy of the woman occurred while the woman was declared to be a mentally disabled or incompetent person as defined in the mental hygiene law.

(6) Incest

Maryland:

(1) Where the continuation of the pregnancy is likely to result in the death of the mother.

(2) There is a substantial risk that continuation of the pregnancy would gravely impair the physical or mental health of the mother.

(3) There is substantial risk of the birth of the child with grave and permanent physical deformity or mental retardation.

(4) The pregnancy resulted from a rape committed as a result of force or bodily harm or threat of force or bodily harm.

New Mexico:

(1) The continuation of the pregnancy is likely to result in the death of the woman or the grave impairment of the physical or mental health of the woman.

(2) The child probably will have a grave physical or mental defect.

(3) The pregnancy resulted from rape, as defined in Sections 40A-9-2 through 40A-9-4 NMSA. (Includes both statutory and forcible rape).

(4) The pregnancy resulted from incest.

New York (Governor's Commission proposed statute):

(1) Necessary to preserve the life of the female.

(2) Continuance of the pregnancy would gravely impair the physical or mental health of the female.

(3) The female has a permanent physical or mental condition which would render her incapable of caring for the child.

(4) There is substantial risk that the child, if born, would be so grossly malformed or would have such serious physical or mental abnormalities as to be permanently incapable of caring for himself.

(5) The pregnancy resulted from rape in the first degree.*

(6) The pregnancy resulted from an act of incest.

(7) The pregnancy commenced while the female was unmarried and under 16 years of age, and is still unmarried.

(8) Where the female already has 4 living children.

*Involves no element of consent.

The following is a general discussion of each of the conditions considered by the Commission:

Rape:

The report of the Governor's Commission in New York best summarized the thinking of those who support the inclusion of this condition in an abortion statute. ". . .(F)or humane, psychological and social reasons, she (the mother) should have an option to have her pregnancy terminated, and not be required to carry for months the constant reminder of her horrible experience, which the birth of the child would only reinforce. Repeatedly, the public press reports the forcible rape of a woman, sometimes by a convicted felon. If such an unfortunate woman becomes pregnant as a result, should she be compelled to suffer the throes of pregnancy, the anguish of childbirth, and to devote the major part of her adult life to the care of the offspring..." It should be noted that rape, as here defined, refers only to forcible rape. Statutory rape as a condition for abortion was rejected by the Governor's Commission, although in some instances this condition is covered by another proposed condition (i.e. the female was unmarried and under 16 years of age). Of the statutes surveyed California, Georgia, New Mexico, Kansas, Oregon and Colorado provide for abortion in both forcible and statutory rape cases. In addition to the Governor's Commission proposed statute, Delaware, Maryland and the proposed Blumenthal bill have provided for abortion only in the case of forcible rape. The reasoning discussed under the

condition of the unmarried, underage female would be applicable in statutory rape cases. The North Carolina and Arkansas statutes do not specify either statutory or forcible rape, however, since state law provides for punishment of both forcible and statutory rape, the abortion statute was probably meant to include both. The Blumenthal bill has added the condition of the female who is 13 years of age or less, which again will include some cases of statutory rape. It should also be noted that in 2 cases, where the age for statutory rape is set by state law at 18 years of age, the age for the purposes of the abortion statute has been lowered (to 15 in California and to 16 years of age in Colorado). This was done, at least in part, to meet objections that at age 17 or 18 a female can be held responsible for her acts if only to the extent that any pregnancy resulting from those acts should not be automatically terminated. It is felt that a female of lesser years cannot yet fully comprehend these possible consequences and would not be capable of caring adequately for the child.

To meet the objections of those who point to the difficulty in determining whether a rape has in fact occurred and the possibility for abuse of this condition, the statutes, with the exception of Kansas, include procedural requirements in conjunction with this condition designed to assure credibility in the claim of rape and at the same time to keep this condition a meaningful possibility in terms of not providing a cumbersome procedure that would consume the time

period in which an abortion may be safely performed.

The following are the procedural requirements which must be complied with in the various states:

(1) California - Upon request for such abortion the abortion review committee of the hospital shall immediately notify the district attorney of the county in which the alleged rape occurred of the application, and transmit to the district attorney the affidavit of the applicant attesting to the facts establishing the alleged rape. If the district attorney informs the committee that there is probable cause to believe that the pregnancy resulted from a violation of the relevant section of the Penal Code, the committee may approve the abortion. If within 5 days after the committee has notified the district attorney of the application the committee does not receive a reply from same, it may approve the abortion. If the district attorney informs the committee that there is no probable cause the committee shall not approve the abortion except as provided. (The person may petition the superior court of the county in which the alleged rape occurred, to determine whether the pregnancy resulted from a violation of the Penal Code. Hearing on the petition shall be set for a date no later than 1 week after the date of filing of petition. The district attorney shall file an affidavit with the court stating the reasons for his conclusion that the alleged violation did not occur, and this affidavit shall be received in evidence. The district attorney may appear at the hearing to offer further evidence

or to examine witnesses. If the court finds that it has been proved by a preponderance of the evidence that such violation did take place, it shall issue an order so declaring and the committee may approve the abortion.)

(2) Georgia - (a) the woman makes a written statement under oath, and subject to the penalties of false swearing, of date, time and place and name of rapist (if known) (b) attached to this statement is a certified copy of any report of the rape made to any law enforcement officer or agency and a statement of the solicitor general of the judicial circuit where the rape occurred or allegedly occurred, that according to his best information, there is probable cause to believe that the rape did occur.

(3) North Carolina - Provides only that the rape must have been reported to a law enforcement agency or court official within 7 days after the alleged rape. (Those who support the use of this procedural requirement argue that if the alleged rape was in fact a fraud, the fact of the rape would not be reported until after the pregnancy was discovered)

(4) Colorado - The district attorney of the judicial district in which the alleged rape has occurred has informed the hospital abortion review committee in writing under his signature that there is probable cause to believe that the alleged violation did occur.

(5) Maryland - The states' attorney of Baltimore City or the county in which the rape occurred has informed the hospital abortion

review authority in writing over his signature that there is probable cause to believe that the alleged rape did occur.

(6) New Mexico - The woman must present to the special hospital board an affidavit that she has been raped and that the rape has been or will be reported to an appropriate law enforcement official.

(7) Oregon - Where there is reason to believe that the pregnancy was the result of felonious intercourse, the administrator of the hospital shall send a copy of the certificate to the district attorney of the county where the hospital is located.

(8) Delaware - The Attorney General of the State has certified to the hospital abortion review authority in writing over his signature that there is probable cause to believe that the alleged rape did occur, except that during the first forty-eight hours after the alleged rape no certification is required.

(9) Arkansas - The rape was reported to the Prosecuting Attorney, or his deputy, within seven days after the alleged rape. The Prosecuting Attorney shall submit a written report of said complaint to the doctor and said report shall be made a permanent part of the patient's medical records.

(10) New York (Proposed Blumenthal bill) - The hospital abortion review committee shall not approve such abortion on grounds of rape unless a sworn written statement of the facts concerning such act is filed by the applicant with the district attorney of the county wherein the alleged act occurred and a copy thereof is filed with the application to the hospital abortion committee, and unless the statement shall

show that a report of the rape was made to the law enforcement authorities of the county wherein such alleged act occurred within 7 days of the occurrence of the act. The district attorney of a county who shall receive a report of an act of rape or incest pursuant to the act shall cause an investigation to be made of any such report and shall commence such prosecution as his findings may warrant. (This last statement was appended to the penal law by the abortion bill, however, the investigation by the district attorney is not considered in the determination of the abortion review board of the hospital.)

(11) New York (Governor's Commission proposed statute) - Certification shall not be made on the ground of rape unless there shall be filed with such certificate (a) an affidavit of the victim setting forth the facts concerning such act and (b) an affidavit by a relative or other confidant of the victim that prompt complaint was made to him concerning such act and (c) an affidavit by a duly licensed physician or law enforcement officer that a report of such act was made to him within 10 days of the occurrence of such act or of the victim's regaining her ability freely to report such act, and (d) a certification by an attorney in good standing, duly admitted to practice in the State of New York, that the facts set forth in the victim's affidavit, if true, would constitute the crime of rape in the first degree. This certification is filed by the aborting physician under the law. (The provision of (b) and (c) is made to overcome the objection that in many instances of forcible

rape the victim, for emotional or other reasons, may fail to report such act to a law enforcement authority immediately.)

In its report the Governor's Commission has noted the difficulty in establishing procedures for determination that a rape has occurred "(T)o avoid abuse, the claim of rape must be corroborated by independent evidence...requirements which are too onerous or which expose the... woman or girl to unnecessary publicity will in actual practice deny abortions to those who are otherwise entitled to them..."

Two other points with regard to these procedural requirements have been made by certain persons who have observed the application of the newly enacted California abortion statute. The California law requires that the district attorney of the county wherein the alleged rape occurred be advised of the application for the abortion and must in turn advise the hospital abortion review committee that there is probable cause that the rape did occur. There has apparently been some difficulty, where the victim is either of below normal intelligence or very young or where the rape occurred at night, in determining the exact location of the rape. In these cases the district attorney may be unwilling to certify that there is probable cause, if he feels the rape may have occurred outside of his jurisdiction. A somewhat similar problem is involved where a married woman is raped. Here there would be some difficulty in determining with precision whether the husband or the alleged rapist was the father of the child.

Arguments against this condition are summarized as follows:

(1) Abortion in these cases would not discourage statutory

rape but would only make abortions under these circumstances safer. In many cases it may even promote promiscuity. (Here, as in the case of the unmarried, underage female, some observers have suggested limitation of the number of allowable abortions.)

*(2) For the law to make a general exception in all cases involving rape is to extend justification beyond considerations of the life and health of the mother and, in effect, denies the fetus any title to life. If an abortion is performed, it is in fact done for the family and society, not for the unborn child.

*This consideration applies equally to all other conditions except life, and physical and mental health of the mother (if physical and mental health are strictly interpreted)

(3) Often it will occur that abortion can be recommended in such instances on a psychiatric basis where the woman experiences intensified depressive psychosis. For a pregnancy resulting from rape (or incest) a willingness to consult a physician within 5 days of the intercourse would permit the performance of a uterine dilatation and curettage before implantation has occurred. (The counter argument is that many women in both forcible and statutory rape cases are emotionally unable or for some other reason do not see a doctor. By the time pregnancy is discovered it is too late for this procedure).

In this regard it should be noted that although the statutes which require that a rape must have been reported within a certain number of days following its occurrence have the advantage of pro-

tecting against abuse, they may also have the effect of prohibiting abortion under this condition.

(4) The woman should be helped through the emotional trauma of the pregnancy and if necessary the child can be placed for adoption. In many cases the emotional problems brought on by the abortion can be more severe than those caused by the act of rape itself, and abortion is, of course, an irretractable act.

Incest:

Incest is generally defined as marriage or sexual intercourse with a person known to be related as an ancestor, descendant, brother or sister of either the whole or the half blood, uncle, aunt, nephew or niece. Although rape and incest are often considered together, the Governor's Commission in New York has noted a significant difference between the two. Abortion for rape is a form of self-defense. "The incest condition, however, is grounded in basic and long-standing eugenic considerations which forbid procreation among persons who are closely related, in order to prevent offspring who are likely to reveal the latent genetic defects of the family. To be consistent, the same public policy which categorically prohibits incestuous marriage should at least, on request, permit termination of the occasional pregnancy which may result from such an illicit union." Of the statutes surveyed only Georgia and Maryland do not provide for abortion under this condition. The procedural safeguards to assure that such an incestuous relationship has in fact caused the

pregnancy are in California, Arkansas and Colorado exactly the same as those noted above for rape. In North Carolina, Oregon, Kansas, Delaware and New Mexico no procedural requirements other than those applicable in all cases are specified. The procedures in the proposed Blumenthal bill are the same as with rape, except that there is no requirement that a report of the act shall have been made within 7 days of its occurrence. In the Governor's Commission proposed statute the requirement is that certification by the physician on the basis of incest must include (a) an affidavit by the victim of the facts concerning such act, including an identification of the other participant and his blood relationship to her, and (b) a certification by an attorney that the facts as set forth if true would constitute the crime of incest as defined in the penal law. Here the Commission noted that "(F)urther corroboration of incest, such as is required with rape, is unrealistic. We assume that incest would not be charged to a family member merely to obtain an abortion. Incest itself is comparatively rare; when it does occur, it often involves young girls or those of subnormal intelligence. Under these circumstances, and in view of the unusual nature of the crime, the Commission felt that the procedural restrictions included in this paragraph would constitute sufficient guaranty that the claimed incestuous act had occurred."

Arguments opposing or supporting incest as a condition for abortion generally coincide with those noted under the condition of rape or those noted under the condition of the defective fetus.

Life of the Mother:

To preserve the life of the mother is the most generally agreed upon condition for abortion among both opponents and proponents of abortion law reform. This condition is contained in all the surveyed statutes and is presently the only condition allowable under most jurisdictions. No opposition is evident to this condition except among certain groups who would contend that if the mother dies in child birth or during pregnancy it is considered a "natural death". On the other hand, to purposefully take the life of the unborn child is murder. This belief is not widely held, and most would agree that the life of the mother takes precedence over the life of the unborn child.

Impairment of Physical Health of the Mother:

To prevent the impairment of the physical health of the mother is generally agreed to by proponents of liberalized abortion laws. All states surveyed provided in some manner for this condition, and in all cases it is indicated that the impairment of health must be of a substantial nature. In North Carolina the Statute refers to a "substantial risk that the continuance of the pregnancy would...gravely impair the health of the said woman," as do the Arkansas and Maryland laws. The California and New Mexico statutes also refer to grave impairment. The Kansas statute refers to "substantial risk that the continuation of the pregnancy would impair the physical or mental health", while Oregon law specifies "substantial risk" that it would "greatly" impair both physical and mental health. In both Colorado and Georgia the statute refers to serious and permanent impairment or in-

jury to health. The Delaware law also refers to permanent injury to the physical or mental health of the mother. In New York the proposed Blumenthal Bill would provide that there is medical evidence of a substantial risk that a continuance of the pregnancy would "cause material impairment of the physical health", while the proposal of the Governor's Commission refers to grave impairment. In all of these cases the gravity of the impairment is emphasized to make clear the intention that the utilization of this condition is not for trivial or transient reasons. Probably this language was used to counter the allegations that a condition such as physical health could be abused, and what would in effect result is abortion on demand. The opponents further argue that such a condition will not be equally applied and that where discretion is left to the individual doctor the determination will rest as much on his personal moral convictions regarding the practice of abortion as on his medical judgment. They also point out that the advances in medical science are reducing the applicability of this condition and that in reality the largest number of abortions for purported medical indications are performed not because the presence of the child in the womb is physically detrimental to the woman, but because after the birth this child will tax the physical capacity of the mother. In effect this condition then becomes a sociological and economic one, and in this instance the life of the unborn child is more important than the health of the mother. They would add that the most important problem presented by such a situation is to bring the mother through the

pregnancy and then to help her to prevent other pregnancies through counselling and the provision of adequate birth control methods. The proponents of such a condition, feeling that the physical health of the woman, during and after birth, in addition to her life, are important considerations, have attempted through the wording of the condition and the provision of other procedural safeguards including certification by more than 1 physician and/or approval by a special hospital board, to insure that the impairment indicated is of a grave nature. The difficulty in this area is in definition, which if too restrictive would leave little discretion to the doctor (who would be the authority on these matters) and would allow little room for change in interpretation as medical science advances in the area of health. The opponents contend that even where the determination is not left to a single doctor, but must be approved by several doctors or a committee of doctors, the opportunities for abuse and collusion are still present. By providing for a "good faith" belief in the impairment and providing for medical documentation of this belief, the supporters of this condition feel that they have provided adequate safeguards to assure that the condition is not used in an arbitrary manner. Proponents feel that it is both ethically and medically sound to prefer the preservation of the woman's health over the life of the unborn child, since a distinction between one's life and one's health seems both tenuous and artificial. Not only is it frequently difficult to ascertain what constitutes a peril to life as opposed to impairment of health, but it is equally difficult to

rationalize why one should be morally acceptable and the other not. The opponents note the difficulty in determining the extent or seriousness of the impairment, if in fact they accept that impairment is sufficient cause to take the life of the unborn child.

Impairment of the Mental Health of the Mother:

Impairment of the mental health of the mother is dealt with in much the same way and subject to the same considerations as is the physical health of the mother. This is based on the assumption that it is difficult to separate mental from physical considerations. All of the statutes surveyed provide for this condition. In California, Kansas, Oregon, Delaware, Maryland and New Mexico mental and physical health are subsumed under the same condition, as they are in the statute proposed by the Governor's Commission in New York. In North Carolina, Arkansas and Georgia mental health is not referred to specifically in the statute, however, the term "health" may be interpreted as including both mental and physical health. Although Colorado separates the two, mental health must be confirmed in writing under the signature of a licensed doctor of medicine specializing in psychiatry. This specialized certification is also provided for in the procedural requirements specified in several of the other statutes. The gravity of the mental impairment is indicated in all of the statutes, however, two of these statutes have gone further than is the case with physical health in defining what is meant by the term "mental health." In

California the term means "mental illness to the extent that the woman is dangerous to herself or to the person or property of others or is in need of supervision or restraint."* In the proposed Blumenthal bill in New York the term mental health is used as defined in the mental hygiene law, i.e. "Any person afflicted with mental disease to such an extent that for his own welfare or the welfare of others, or of the community, he requires care and treatment." It is felt by many proponents of such a condition that such definitions are too restrictive and the judgment of what constitutes a grave mental impairment should be left to a physician's professional judgment. Moreover, as is also the case with physical impairment, interpretation will change as medical science advances in this area. The opponents of this condition argue that psychiatry is not an objective science and that in many cases this condition may be used where in fact the reasons are social and economic. They also point out that very often during pregnancy women can experience periods of emotional instability, however, with proper care these periods will pass. It is also noted that the suicide rate among pregnant women is lower than among women of comparable age who are not pregnant. In fact abortion may cause more emotional shock and anguish than the birth of the child. Many women following an abortion may feel remorse and guilt and this may often aggrevate

*Although these figures are not completely reliable, it has been estimated that 88 percent of the abortions performed under the amended California law are performed for reasons of mental health. The definition of mental illness used in the abortion law is essentially the same as the definition used for the purposes of commitment to an institution. As a consequence, although there has been a sharp increase in the number of women who are

diagnosed as mentally ill, very few of these women are in custody. This has been attributed to the fact that while the definition of mental illness is very restrictive, it is at the same time vague (i.e. dangerous to what degree, or in need of supervision by whom - family, doctors?)

psychotic tendencies. Proponents of this condition counter that it is the moral attitude of society which causes this anguish and not the abortion itself. They maintain that it is the emotional problems associated with the rearing of an unwanted child which are more severe and that unwanted children merely produce more unwanted children.

In conjunction with the above, both of the proposed New York statutes provide for a condition which is closely related to physical or mental health. The proposed Blumenthal bill would allow abortion where the pregnancy of the woman occurred while the woman was declared to be a mentally disabled or incompetent person as defined in the mental hygiene law, while the Governor's Commission has provided for abortion where the female has a permanent physical or mental condition which would render her incapable of caring for the child. In both of these cases, although the disability or impairment are not related to the pregnancy, they would make it impossible for the mother to care for the child after birth.

Defective Fetus:

This condition directs itself to those cases where it is possible that the baby, if born, will be mentally or physically disabled. The most notable cases are in rubella and drug induced disability such as thalidomide. Of the states surveyed Georgia, North Carolina, Colorado, Maryland, Kansas, Oregon, Arkansas, Delaware

New Mexico and both of the New York proposed statutes provide for this condition. California is the only state which does not, and it was omitted apparently at the request of the Governor. Two major criticisms have been made of this condition: (1) the difficulty or impossibility of a precise determination that the fetus is in fact defective, and that as a consequence a large number of normal babies will be aborted along with the deformed or retarded ones and (2) the difficulty in determining the seriousness of the expected abnormality. In essence the argument against is that until medical science has developed procedures whereby the defect can be predicted and measured with precision, it will be impossible to make such a determination except on the basis of statistical probability. Rather than to allow the abortion of the normal fetus along with the defective, it would be preferable to wait until medical science has perfected its ability to diagnose in this area and to prevent or correct such abnormalities. It is also argued that even if deformity or retardation can be predicted, there are many persons with congenital abnormalities who have been able to adapt to their conditions and lead useful lives. What is needed are added facilities and research in the areas of care and education of handicapped children. It is also felt that these abortions will be performed for the family and society and not for the benefit of the child. The most extreme criticism of this condition is the contention that it has overtones of the master race theory, and that no one has the right to determine who shall live or die.

The statutes surveyed have all, with the exception of Kansas which requires only that "the child would be born with physical or mental defect" and Oregon which requires that the "child would be born with serious physical or mental defect," provided that the risk of abnormality must be serious and that the abnormality itself must be of a grave nature. The Governor's Commission in New York has provided the most restrictive condition in this regard. That statute specifies that "There is a substantial risk that the child, if born, would be so grossly malformed or would have such serious physical or mental abnormalities as to be permanently incapable of caring for himself." North Carolina and Arkansas do not require that the defect be permanent, but require that there be substantial risk of a grave physical or mental defect. In New Mexico the law provides that the child probably will have a grave physical or mental defect. In Georgia it must be very likely that the child would have a grave, permanent and irremediable mental or physical defect. In Colorado the continuation of the pregnancy must be likely to result in the birth of a child with "grave and permanent physical deformity or mental retardation." Maryland and Delaware follow the Colorado example except there must be "substantial risk". The proposed Blumenthal bill provides that there must be "substantial risk" of a permanent and material physical impairment or of mental illness as defined in the mental hygiene law. In this regard, the Governor's Commission in New York has noted that, "Experience has shown that in most cases these situations arise when the women want children and would

probably have had a normal child except for an unfortunate exposure to disease or drug. In most cases if the pregnancy is terminated they will have another child." The Commission also points to the burdens (emotional, physical, financial and others) associated with the rearing of an abnormal child and argue that the welfare of the existing family as well as the community, which bears part of the burden, should in this case be a valid consideration.

Underage, Unmarried Female:

Only the Governor's Commission proposed statute specifically included this condition. The age in this instance is "under 16 years of age." Along similar lines, the proposed Blumenthal bill provided for abortion where the pregnancy occurred while the female was 13 years of age or less, however, no provision was made as to whether she need be married or unmarried.

In the states which have provided for abortion on the ground of statutory rape this case would be at least partially met by the rape condition. The major difference would be in cases where the rape occurred under conditions which would make it uncomfortable or undesirable for the girl to go through the necessary procedures to establish rape and may not for certain reasons wish the offender subjected to the penalties for rape under the law. The Governor's Commission has summarized the reasoning behind the inclusion of this condition.

> A majority of the Commission strongly felt that abortion should be permitted for the pregnant girl of tender years, who may not have fully realized the personal, moral, family

> or social implications of her sexual act. Requiring such a girl to bear the child and suffer the attendant stigma, guilt and emotional trauma provides no benefit to the community, except perhaps to punish her, indirectly and cruelly. Moreover, such a young girl would not likely make a suitable mother, nor would the child be born into a proper family environment. Where adoption is possible, the community has the burden of finding a suitable home for such an unwanted child; where not possible, he may become institutionalized and become a public charge.

The opponents contend that legalizing abortion in such cases could be regarded as encouraging or condoning illicit intercourse, however, it has also been noted that this factor can hardly be a significant influence on the rate of illicit sexuality in a society where contraceptives offer reasonable assurance against need for the unpleasant and expensive prospect of abortion. The opponents argue that the social and economic consequences of the birth on the mother are not sufficient to deny life to the innocent child where measures less drastic than abortion can help to alleviate the undesirable consequences of such a situation.

Other Social Reasons

In only two of the surveyed statutes are other social reasons provided as a condition for abortion. The proposed Blumenthal bill allows abortion where the pregnancy occurred while the female was 13 years of age or less. The Governor's Commission in New York has included in its proposed statute the condition where the female already has 4 living children. In opposition to these considerations it is

held that these are social and economic reasons which are based upon convenience to the mother and existing family. If these considerations are serious enough to merit abortion, they would probably be already included under one of the other conditions i.e. mental or physical health of the woman.

Since the Governor's Commission provided the example of such a condition, included here is its reasoning as well as the rebuttle by the minority on that Commission.

> Underlying this recommendation, which is new to American law, are several considerations. No reliable figures are available to show what proportion of illegal operations, and of the deaths resulting therefrom, take place with respect to women who have four or more children. It is obvious why this is so because of the secrecy surrounding such operations. We do have a statistic, which is merely an indication, supplied by Dr. L. P. Fox. He reports that a study of 223 abortion deaths in California reveals that 50% of the women had been pregnant at least four times.
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> It is of course common knowledge that the risks of childbirth and maternal mortality increase with age. Moreover, many women feel that in bringing into the world and rearing four living children they have sufficiently obeyed the Biblical injunction to "increase and multiply".
>
> It also goes without saying that when a family has four children, the cost of rearing each additional child can become a heavy burden. The very definition of poverty as established by the Social Security Administration recognizes that the birth of an additional child may force a family below the poverty line [Orshansky, "Counting the Poor: Another Look at the Poverty Profile," *Social Security Bulletin,* January 1965.]
>
> According to a nation-wide survey conducted in 1960 by Whelpton, Campbell and Patterson, *Fertility and Family Planning in the United States* (Princeton University Press 1966), only 17% of 2,684 married women sampled expressed the desire for 5 or more children. There was no significant difference between white and non-white respondents. (Op. cit., p. 38, Table 15.)
>
> Indeed there is a clear relationship between poverty and families which have five or more children. Tabulations by the Bureau of the

Census from the Current Population Survey for March 1967 show that only 11.1% of American families with four or fewer children were below the poverty line, as compared with 34.6% of those with five or more.

Mollie Orshansky of the Division of Program and Long Range Studies, Social Security Administration, in a paper prepared for the Citizens' Committee for Children (Oct. 22-24, 1967), speaking of differential changes in poverty between 1959 and 1966, noted:

> *"The perils of poverty for the child with several brothers and sisters remained high: The family with 5 or more children was still 3½ times as likely to be poor as the family raising only 1 or 2, and just as in earlier years almost half of the children poor [in poverty] were in families of 5 or more children."*

We recognize that permitting abortion to a family which already has 4 children would not solve all of the problems of poverty; such permission would, however, extend significant relief to those in our society who face difficult economic circumstances, and who sincerely desire to improve those circumstances and provide their existing children with better living conditions and additional economic opportunities.

Increasingly, self-regulation of family size is becoming a recognized and approved family objective. In many cases contraceptive techniques will accomplish this. Nevertheless, not only are all such techniques subject to failure or error, but there are substantial segments of our society who reject contraception for personal or psychological reasons. We do not recommend abortion as a substitute for contraception, but we do believe that a family which has 4 children, if it chooses, should be able to protect itself effectively from the demands and sacrifices that additional children may impose, and thereby be able to provide itself with a more meaningful and satisfactory existence.

Four members of the Commission urged that a separate condition should be included which would permit abortion to a mother of 2 children provided that she was economically unable to care for another child. This principle was opposed by the majority for several reasons, including the difficulty of phrasing the precise language for such a group, and more particularly the constitutional objection to a condition which would permit such an abortion to a certain economic level of society, but deny it to all others in violation of the equal protection clause of the Federal and State Constitutions.

One further condition authorizing abortion was urged on us during our deliberations. Five members believed that when a woman has reached 45 years of age (four members would have fixed the age at 40) she should be entitled, without regard to any other circumstance, to choose whether or not to continue her pregnancy. They urged that as a woman grows older, the risks to her own health and of fetal defects increase substantially, particularly when she passes 40 years of age. The majority of the Commission did not accept this suggestion, however. In addition to those who opposed all liberalization, the remainder felt that abortion should not be given blanket approval in this circumstance, but should be restricted to the specific cases which meet the requirements of the health and fetal deformity indications.

This proposal amounts to abortion-on-demand for a women with four living children.

We do not believe that the fundamental legal rights of the human child *in utero* can be rationed by counting the number of his brothers and sisters. Whatever intentions may lie behind this proposal a numbers game with lives cannot be countenanced.

We recognize that some on our Committee view this proposal as providing a means of family limitation for the socially disadvantaged. They note a resistance among these groups to the use of methods of conception control and offer abortion as an alternative. They point out, in addition, that the rich can always obtain a safe abortion while the poor are forced to resort to a backroom abortionist or else bear the child. The result is a higher death rate among the poor from illegal abortion. *Ergo* the law is discriminatory.

1. *With respect to the charge of discrimination,* Margot Hentoff has commented:[105]

> *It has been said that the present abortion law is discriminatory against the poor. Of course, it is. Everything is. That is what being poor is all about. It is intriguing, however, that the libera!s choose to speak so compellingly on beha!f of the poor in this area which has to do with control of their numbers.*

It is true, of course, that the therapeutic abortion rate is higher among private patients than among ward patients but not all of this is due to discrimination. As Dr. Andre Hellegers has pointed out,[106] private patients typically come under a doctor's care at an earlier stage in the pregnancy when most abortions are performed. Ward patients often do not consult a doctor until it is too late for an abortion to be performed safely. Moreover, the mental stress of pregnancy is more severe in the earlier stages and hence, the private patient is liable to be in a much worse state of mind when she sees a psychiatrist than the ward patient who may have passed the most difficult period. Finally, even in the cases wherein the rich evade the law, is it really fair to label the law as discriminatory or is the discrimination being practiced by those doctors who, for one reason or another, are more solicitous of the rich? If we were to repeal every statute which money can evade with facility, what would be left of our legal structure?

A truly discriminatory law, of course, would be one which rationed the human child's right to life in the womb in accordance with the socio-economic status of his parents or the number of his extrauterine brothers and sisters.

2. *With respect to maternal deaths,* it is true that maternal deaths from botched abortions are more prevalent among the poor than the rich. However, the figures must be viewed in proportion. From 1951 through 1962 in New York City, 259 "non-white" mothers died of abortions while 357,420 "non-white" mothers delivered live children; the comparable figures for "Puerto Rican" mothers were 109 deaths to 230,979 live births.[107]

The answer to maternal deaths due to illegal abortion is not, we submit, more abortions even if they be legal. The answer is an attack upon the root social causes which lead some women to choose abortion over childbirth. As Dr. Bernard Pisani told our Committee:

> ***Granted, a law liberalizing abortion may prevent some useless deaths, but it will not promote any better physical or mental health 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.***

3. With respect to abortion as a replacement for conception control, it is universally agreed that conception control is preferable to abortion as a means of family planning. Evidently, conception control is making an impact on the socially disadvantaged. For instance, at our Committee's public hearing, Dr. Hugh Butts submitted statistics for the Harlem Hospital Center which showed, the years 1961 through 1965, an average of three live births for every incomplete abortion admission (apparently illegal as well as spontaneous). In 1966, the average was 4 to 1 and in 1967 it was 5 to 1. In addition, the live birth-abortion admission total decreased from 5325 in 1962 to 3268 in 1967.

It would seem most probable that it was wider use of methods of conception control which depressed the pregnancy rate, and geometrically decreased the incomplete abortion admissions. One wonders whether the trend will continue if abortion is sanctioned as a means of family limitation.

In countries where abortion has become a legal means of family limitation, the use of method of conception control seems to have declined.[108] For instance, Dr. Franc Novak of Yugoslavia told a 1964 audience, "it seems that the greatest obstacle to the spread of contraception lies in liberal permission of artificial abortions. Through widespread abortions a state of mind is created with women that abortion represents the chief means for planned parenthood".[109] Czechoslovakia and Hungary now provide family allowances for third and later children and permissive abortion in Rumania has produced such a marked decrease in population that the law has been made more restrictive.[110]

The solution to the socio-economic problems of discrimination and poverty lies in a comprehensive attack upon the root causes of these problems—not in abortion for multiparity.

Procedural Requirements

Although they vary somewhat, all of the states which have recently enacted revised abortion laws have provided in these laws for certain procedural requirements which must be observed in obtaining an abortion under the terms of the law.*

For example, all of the states require that abortions must be performed by a licensed physician in a hospital which has been licensed or accredited in a specified manner by the State. In addition, certification of the condition necessitating the abortion is required by more than one doctor (generally two doctors in addition to the physician performing the abortion). A number of these laws require that a special hospital board or committee be established to approve applications for abortion, (for example, California, Maryland, Colorado, Georgia, Delaware and New Mexico). Several of these statutes also require that a specified consent or permission must be obtained prior to performance of the abortion. In this regard the Oregon law requires, in addition to the written consent of the pregnant woman, (a) the written consent of a parent who has custody or the guardian if the pregnant woman is an unmarried minor, (b) the written consent of the guardian if the pregnant woman has been judicially declared a mentally incompetent person, or (c) the written consent of

* This summary is necessarily brief, however, a full explication of the procedures required in the various states is contained in the laws, which are set forth in Exhibits 7 through 16.

the husband if the pregnant woman is married and the husband and wife have been living together. Somewhat similar consents are also required in North Carolina, Delaware, Arkansas and Colorado.

Five states, North Carolina, Oregon, Arkansas, Delaware and Georgia, specify that the woman must be a resident of the State to obtain an abortion. In addition, the laws of Maryland, Delaware, California and Colorado (in the case of abortion for reason of rape or incest) provide that an abortion shall not be performed after a specified number of weeks, generally the first trimester of the pregnancy.

The majority of the states have also included in these laws provisions allowing hospitals or individuals within hospitals to refuse to take part in such a procedure without incurring any liability for this refusal. For example, Section 4 of the Colorado Act provides that: "Nothing herein shall require a hospital to admit any patient under the provisions of this act for the purposes of performing an abortion, nor shall any hospital be required to appoint a special hospital board as defined in this act. A person who is a member of or associated with the staff of a hospital or any employee of a hospital in which a justified medical termination has been authorized and who shall state in writing an objection to such termination on moral or religious grounds shall not be required to participate in the medical procedures which will result in the termination of a pregnancy, and the refusal of any such person to participate shall not form the

basis for any disciplinary or other recriminatory action against such person." Other states which have similar provisions include Georgia, Oregon, New Mexico, Arkansas, Delaware and Maryland.

Several states, including Oregon, Arkansas and Delaware, have provided that the refusal of a woman to submit to an abortion shall not provide grounds for any loss of privileges or immunities otherwise available to said woman.

It should also be noted that most of these laws provide that certain procedures may be waived where the life of the woman is in imminent danger.

All of these procedural requirements are meant to assure that the intent of the law will not be subverted, while at the same time assuring that the process of acquiring an abortion will not be too cumbersome, so as in fact to force the pregnant woman to seek an abortion in an illegal manner when she has valid reason for acquiring an abortion under the terms of the law.

VI. Commission Conclusions

A. Majority Report

The questions to be decided by the Commission are:

1. Should New Jersey's law be kept as it was enacted in 1849;

2. Should New Jersey's law be amended to permit abortions for certain specified reasons and under controlled conditions;

3. Should New Jersey's law be amended to remove abortion entirely from the criminal statutes and leave it a matter for decision between patient and physician?

At the March 27, 1969, meeting of the Commission a majority of the following members answered the three basic questions above:

Reverend Thomas Dentici, Rabbi Barry Schwartz, Reverend Alexander Shaw, Dr. Hannah Seitzick-Robbins and Assemblyman William M. Crane.

The determinations with regard to the questions are:

1. The Commission unanimously rejects the idea of keeping New Jersey's 1849 Abortion Statute intact.

2. The majority of the Commission approved the submission of a bill to the Legislature to provide for legalization of abortion in New Jersey for the following reasons:

a. Rape- based upon a report to a law enforcement agency

b. Incest- based upon an affidavit setting forth the facts in the case and including identification of the other participant and his blood relationship under R.S. 37:1-1.

c. To Preserve the Life of the Mother- based upon a certification of two licensed physicians other than the attending physician (Unanimous)

d. Impairment of the Health of the Mother- Includes physical and mental health and requires the certification of two licensed physicians other than the attending physician.

e. Defective Fetus- providing that there is a certification of two other physicians, other than the attending physician, that the child, if born, would be permanently helpless throughout his life.

f. Underage Unmarried Female- unmarried female under the age of 16, provided that the pregnancy commenced when the female was under sixteen years of age and unmarried and is still unmarried.

3. The Commission rejected the complete repeal of the New Jersey Abortion Law and the consequent placing of the abortion question into the area of doctor-patient relationship without benefit of restrictive law.

4. In addition, the Commission strongly recommends that all abortions to be performed under its recommended changes be performed in licensed hospitals and only by a New Jersey licensed physician. The Commission also strongly recommends that any hospital, physician or other person not wanting to take part in the performance of an abortion for any reason whatever not be required to do so, and that such person or hospital shall suffer no penalty for refusing to take part in any abortion procedure. The Commission also recommends that no abortion

shall be performed after the first trimester of pregnancy, unless it is necessary to preserve the mother's life.

B. RECOMMENDED BILLS

AN ACT concerning abortion; creating conditions and procedures governing the justifiable termination of pregnancy; exempting and protecting certain persons and institutions from liability for failure to aid in or obtain abortions; defining crimes related to the act of abortion and providing penalties therefor; amending Section 2A:170-76 of the New Jersey Statutes; and repealing Chapter 87 of Title 2A of the New Jersey Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. As used in this act:

a. "Illegal intercourse" means acts constituting a crime under Section 2A:138-1 and 2A:114-1 of the New Jersey Statutes.

b. "Hospital" means an institution licensed under section 30:11-1 of the Revised Statutes or a similar institution operated by the State or any political subdivision thereof, but shall not include public or privately operated nursing homes, convalescent homes, clinics, or mental hospitals.

c. "Physician" means a person licensed to practice medicine and surgery in the State of New Jersey.

2. A physician is justified in terminating the pregnancy of a New Jersey resident if he has reasonable belief, formed in good faith and based on medical or other relevant evidence that:

a. Such is necessary to preserve the life of the female;

b. There is substantial risk that continuance of the pregnancy will greatly impair the physical or mental health of the female;

c. The child would be born with serious physical or mental defect, such that he would be permanently incapable of caring for himself;

d. The pregnancy resulted from illegal intercourse; or

e. The woman is unmarried, provided that the pregnancy commenced while she was under the age of 16 years and is still unmarried at the time the abortion is performed.

3. In determining whether or not there is substantial risk under section 2 or this act, account may be taken of the woman's total environment, actual or reasonably foreseeable.

4. Termination of a pregnancy shall be performed only by a physician in a hospital.

5. No pregnancy shall be terminated unless and until the following requirements have been complied with insofar as they are applicable and filed as part of the patient's hospital record:

a. Prior to the termination of the pregnancy, the physician proposing to perform such act shall have filed in the hospital where the pregnancy is to be terminated his written certification that he has examined the pregnant female, and that he believes in good faith, based on documented medical or other relevant evidence, that one or

more of the conditions specified in section 2 of this act exist, and setting forth the applicable facts and the circumstances which form the basis of his belief.

b. When the pregnancy is to be terminated for one of the reasons set forth in the foregoing subsections a, b or c of section 2 of this act, such certification shall not be filed unless accompanied by the written certification of two other duly licensed physicians, one of whom is a recognized specialist in the relevant medical discipline, and who are neither related to each other, or the physician proposing to terminate the pregnancy, by blood or marriage, that they believe in good faith, based on documented medical or other relevant evidence, that one or more of the conditions specified in subsections a, b or c of section 2 of this act exist and setting forth the applicable facts and circumstances which form the basis of their beliefs.

c. Copies of all documents required under the foregoing paragraphs shall become part of the hospital record.

6. No physician shall terminate a pregnancy unless the certifications required under section 5 are accompanied by:

a. The written consent of the pregnant female and, if she is an unmarried minor the written consent of both her parents, or if both parents are not living with her, then the parent actually living with her or entitled to her legal custody, or the written consent of the guardians of her person, or if there be none, then the

written consent of the person or persons standing in loco parentis; or

b. The written consent of the guardians of her person if the pregnant female has been judicially declared a mentally incompetent person; or

c. The written consent of the husband if the pregnant female is married and the husband and wife are living together; but

d. When the pregnancy shall be terminated for any reason set forth in this act, except for the reason set forth in subsection a of section 2, an affidavit shall be filed by the pregnant female, or another person with true knowledge of the fact, stating that the pregnant female has been and continues to be a bona fide resident of the State of New Jersey for the period of four months prior to the date of the affidavit, and indicating the address or addresses of her residence during that period of time.

e. In the case of incest, the consent of the other participant shall not be required.

7. No physician shall terminate a pregnancy resulting from rape unless his certification is accompanied by:

a. An affidavit of the victim setting forth the facts concerning such act, and

b. Written confirmation by a law enforcement agency or officer that a report of such act was made to it or him by the victim within seven days of the occurrence of such act or of the victim's regaining

her ability freely to report such act, and

c. A certification by a practicing attorney in good standing, duly admitted to practice in the State of New Jersey, or by the Prosecutor of the County in which the pregnancy is to be terminated, that the facts set forth in the victim's affidavit, if true, would constitute the crime of rape under section 2A:138-1 of the New Jersey Statutes.

8. No physician shall terminate a pregnancy on the ground of incest unless his certification is accompanied by:

a. An affidavit by the victim setting forth the facts concerning such act, including an identification of the other participant and his blood relationship to her, or if the victim is of such a young age or for any other reason is incapable of making an affidavit, the affidavit may be made by her parent, guardian or person standing in loco parentis; and

b. A certification by a practicing attorney in good standing, duly admitted to practice in the State of New Jersey, that the facts set forth in such affidavit, if true, would constitute the crime of incest under section 2A:114-1 of the New Jersey Statutes.

9. No pregnancy shall be terminated after the 90th day of pregnancy, except for the reason set forth in subsection a of section 2 of this act.

10. When there is reason to believe that the pregnancy was the result of rape in violation N.J.S. 2A:138-1, the administrator of

the hospital shall send a copy of the certificate and affidavit to the county prosecutor of the county wherein the hospital is located.

11. Failure to comply with any of the procedural requirements of this act shall give rise to a rebuttable presumption that termination of the pregnancy was unjustified.

12. Nothing in this act applies to the prescription, administration or distribution of drugs or other substances or devices for avoiding pregnancy, whether by preventing implantation of a fertilized ovum or by any other method that operates before, at or immediately after fertilization.

13. Nothing in this act shall prevent a physician from terminating a pregnancy without complying with the provisions of the act if said physician believes in good faith, based on medical or other relevant evidence, that the life of the pregnant woman is in imminent danger, provided that there is insufficient time within which to file the appropriate documents, and further provided that the physician who so terminates a pregnancy reports within 48 hours thereafter the termination to the administrator or appropriate committee of the hospital in which the termination occurred or to the Commissioner of the Department of Institutions and Agencies if the termination occurred other than in a hospital. The report shall include his certification as required by section 5, a of this act, and shall set

forth the reasons why he was unable to comply with the provisions of this act.

14. a. Except as provided in subsection c of this section, no hospital is required to admit any patient for the purpose of terminating a pregnancy pursuant to section 2 of this act. No hospital is liable for its failure or refusal to participate in such termination if the hospital has adopted a policy not to admit patients for the purposes of terminating pregnancies as provided in section 2 of this act, and has filed a statement setting forth such policy with the Commissioner of the Department of Institutions and Agencies. The hospital must notify the person seeking admission to the hospital of its policy.

b. All hospitals that have not adopted a policy refusing admittance to patients seeking termination of a pregnancy under section 2 of this act shall admit patients seeking such termination in the same manner and subject to the same conditions as imposed on any other patient seeking admission to the hospital.

c. Any hospital operated by this state or by a political subdivision of this state shall not exclude or deny admission to any person seeking termination of a pregnancy under section 2 of this act.

15. No hospital employee or member of the hospital medical staff shall incur civil liability as a result of his failure to participate in any termination of a pregnancy as provided in section

2 of this act if he has given prior notice to the hospital of his election not to participate in such terminations.

16. No physician shall incur civil liability as a result of his failure to give advice with respect to or participate in any termination of a pregnancy as provided in section 2 of this act, provided that he advises the prospective patient of the provisions of this act and of his election not to give such advice or to participate in such terminations.

17. The refusal of any person to consent to a termination of pregnancy or to submit thereto shall not be grounds for loss of any privilege or immunity to which said person is otherwise entitled nor shall consent to or submission to a termination of pregnancy be imposed as a condition to the receipt of any public benefits.

18. The Commissioner of the Department of Institutions and Agencies shall require reports from hospitals at such intervals and in such form as he may require to assist him in determining that the provisions of this act are complied with, and shall have the authority to promulgate rules and regulations to implement this requirement.

19. Any person who causes or attempts to cause the termination of a female's pregnancy, assists or contributes to the act, and the female herself shall be a competent witness, and may be compelled to testify, but the testimony of such witness shall not be used in any prosecution, civil or criminal, against the person so testifying.

20. A person who purposely terminates the pregnancy of another for purposes other than delivery of a viable birth, unless justified under this act, shall be punished upon conviction by imprisonment for not more than 15 years or by a fine not exceeding $10,000, or both.

21. Except as justified under the terms of this act, a person who induces or knowingly aids a woman to use instruments, drugs or violence upon herself for the purpose of terminating her pregnancy other than by viable birth shall be punished upon conviction by imprisonment for not more than five years or by a fine not exceeding $5,000, or both.

22. Section 2A:170-76 of the New Jersey Statutes is amended to read as follows:

2A:170-76. Any person who, without just cause, utters or exposes to the view of another, or possesses with intent to utter or expose to the view of another, or to sell the same, any instrument, medicine or other thing, designed or purporting to be designed for the prevention of conception [or the procuring of abortion], or who in any way advertises or aids in advertising the same, or in any manner, whether by recommendation for or against its use or otherwise, gives or causes to be given, or aids in giving any information how or where any such instrument, medicine or other thing may be had, seen, bought or sold, is a

disorderly person.

23. Chapter 87 of Title 2A of the New Jersey Statutes is hereby repealed.

24. This act shall take effect immediately.

AN ACT concerning midwifery and amending Section 45:10-9 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 45:10-9 of the Revised Statutes is amended to read as follows:

45:10-9. The board may refuse to grant, or may revoke or suspend, a license for any of the following reasons: Persistent inebriety; [the practice of criminal abortion;] the termination of human pregnancy; the conviction of [the crime of criminal abortion or] crimes involving moral turpitude; the presentation of an illegally obtained certificate or diploma for registration or license; application for examination under fraudulent representation; neglect or refusal to make proper returns to a health officer or health department of births, or of a puerperal, contagious or infectious disease, within the legal limit of time; failure to secure the attendance of a reputable physician in case of miscarriage, hemorrhage, abnormal presentation or position, retained placenta, convulsions, prolapse of the cord, fever during parturient stage, inflammation or discharge from the eyes of the newborn infant, or whenever any abnormal or unhealthy symptoms appear either in the mother or infant during labor or the

puerperium; or the conviction three times of any violation of any ordinance of any local board of health regulating the practice of midwifery, and for the purpose of this provision payment of a penalty for violation of any such provision of any such ordinance shall be deemed equivalent to a conviction. Before any license shall be revoked or suspended, except in the case of [convictions of criminal abortion,] the termination of human pregnancy, the accused shall be furnished with a copy of the complaint and given a hearing before the board, in person or by attorney, and any midwife refused admittance to the examination, or whose license has been revoked or suspended, who attempts or continues the practice of midwifery, shall be subject to the penalties hereinafter prescribed.

2. This act shall take effect immediately.

AN ACT concerning the practice of medicine and amending section 45:9-16 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 45:9-16 of the Revised Statutes is amended to read as follows:

45:9-16. The board may refuse to grant or may suspend or revoke a license or the registration of a certificate or diploma to practice medicine and surgery or chiropractic filed in the office of any county clerk in this State under any act of the Legislature, upon proof to the satisfaction of the board that the holder of such license (a) has been adjudicated insane, or (b) habitually uses intoxicants, or (c) [has practiced criminal abortion, or been convicted of the crime of criminal abortion,] <u>has failed to comply with the laws of this State governing the justifiable termination of pregnancy or been convicted of a crime under the laws of this State governing the justifiable termination of pregnancy,</u> or has been convicted of crime involving moral turpitude, or has pleaded nolo contendere, non vult contendere or non vult to an indictment, information or complaint alleging the commission of [the] <u>a</u> crime

[of criminal abortion] under the laws of this State governing the justifiable termination of pregnancy or of crime involving moral turpitude, or (d) has advertised fraudulently, (e) becomes employed by any physician, surgeon, homeopath, eclectic, osteopath, chiropractor, or doctor who advertises fraudulently, or (f) shall have presented to the board any diploma, license or certificate that shall have been illegally obtained or shall have been signed or issued unlawfully or under fraudulent representations, or obtains or shall have obtained a license to practice in this State through fraud of any kind, or (g) has been guilty of employing unlicensed persons to perform work which, under this chapter (45:9-1, et seq.) can legally be done only by persons licensed to practice medicine and surgery or chiropractic in this State, or (h) has been guilty of gross malpractice or gross neglect in the practice of medicine which has endangered the health or life of any person. The board shall refuse to grant or shall suspend or revoke any such license or the registration of any such certificate or diploma upon proof to the satisfaction of the board that the applicant for, or holder of, such license habitually uses drugs or has been convicted of a violation of or has pleaded nolo contendere, non vult contendere or non vult to an indictment, information or complaint alleging a violation of any Federal or

State law relating to narcotic drugs. Before any license, or registration of a certificate or diploma to practice medicine or surgery or chiropractic filed in the office of any county clerk of this State under any act of the Legislature, shall be suspended or revoked, except in the case of convictions [of criminal abortions] under the laws of this State governing the justifiable termination of pregnancy or convictions of crime involving moral turpitude or plea of nolo contendere, non vult contendere or non vult to indictment, information, or complaint alleging commission of [the] a crime [of criminal abortion] under the laws of this State governing the justifiable termination of pregnancy or crime involving moral turpitude, or convictions of violations of or pleas of nolo contendere, non vult contendere or non vult to an indictment, information or complaint alleging violations of any Federal or State law relating to narcotic drugs, the accused person shall be furnished with a copy of the complaint and be given a hearing before said board in person or by attorney, and any person whose license shall be suspended or revoked in accordance with this section shall be deemed an unlicensed person during the period of such suspension or revocation, and as such shall be subject to the penalties hereinafter prescribed for persons who practice medicine and surgery or chiropractic, without first having

obtained a license so to do. Any person whose license, or registration of a certificate or diploma to practice medicine and surgery or chiropractic filed in the office of any county clerk of this State under any act of the Legislature, shall be suspended or revoked under the authority of this chapter (45:9-1, et seq.) may, in the discretion of the board be relicensed at any time to practice without an examination, or have his registration of a certificate or diploma, as aforesaid, reinstated, on application being made to the board.

The record of conviction or the record of entry of a plea of nolo contendere, non vult contendere or non vult in any of the courts of this State, or any other State of the United States, or any of the courts of the United States, or the court of any foreign nation, shall be sufficient warrant for the board to refuse to grant or to suspend or revoke the license or the registration of a certificate or diploma to practice medicine and surgery or chiropractic filed in the office of any county clerk in this State under any act of the Legislature.

2. This act shall take effect immediately.

C. MINORITY REPORTS

COMMISSION TO STUDY THE NEW JERSEY STATUTES RELATING TO ABORTION

A MINORITY REPORT

by

Reverend Thomas F. Dentici

LET THE CHILDREN LIVE !

Prologue

> On this first Christmas---the first Christmas after the landing on the moon---my thoughts are centered on one consideration: the human situation in which we find ourselves. Nowhere in the world today do I see a well-balanced or integrated development of Man. Our moral and spiritual development has not kept pace with our material and technological development. We are witnessing a rapid growth in the intellectual and scientific realms, but the spiritual and moral aspects of life are increasingly decaying.
>
> There is a general retreat from religion today---and that is a tragedy. We are losing the qualities of love, compassion, the philosophy of "live and let live," the desire to understand other men. And we are feeling the pain of this loss. We see this pain in the young, who are groping today for spiritual and moral values, groping for something that is not exclusively the preoccupation of the intellect.
>
> With our concentration on external, concrete things, we have drifted away from the spiritual realm. We are able to travel to the moon---but we are still ignorant of the truth about our inner selves. It places us in grave danger. [1]

This quotation of U Thant, Secretary-General of the United Nations, is chosen as the opening statement of this report because it reflects the tone of our dissent. This report will not only be placed in the hands of our legislators but it will also come under the scrutiny of our fellow citizens. Therefore, it must be clearly understood that when we decide such questions as the liberalization of abortion we are facing grave danger in the present and the future ---for the born and the unborn.

It is obvious that our opposition to the liberalization of abortion is deeply rooted in the Judaeo-Christian belief that all human life is sacred. However, it is not necessary to rest the support for dissent to the liberalization of abortion solely upon this hallowed tradition. More than sufficient evidence from the fields of ethics, science and law is available. Much of this evidence has come to light at the three hearings in Trenton, Newark and Camden held by the New Jersey Study Commission on Abortion.

This statement may be called a "minority report" because it is a statement in opposition to the liberalization of New Jersey abortion laws by a minority of the Commission members. However, it is a fact, that this "minority report" is in the "majority position" since it is not only corroborated by current New Jersey legislation but also the prevailing abortion laws of 40 sister states in the United States.

It should also be noted that those witnesses who testified at the hearings in favor of changing our laws offered no consensus on specific changes. The only testimony in which there was a constant consensus was received from those witnesses calling for maintaining the status quo.

THE PURPOSE of the N. J. STUDY COMMISSION ON ABORTION

In the Spring of 1968, when the commission to study the New Jersey statutes relating to abortion was established the following were noted as reasons for the creation of this commission:

(1) the high rate of illegal abortions constitutes a serious law enforcement and public health and safety problem.

(2) present abortion laws are unduly restrictive and have a tendency to force persons seeking abortions into the hands of unskilled abortionists, with possible tragic consequences.

(3) resort to illegal abortions must be prevented.

It is our contention that the New Jersey Study Commission has not been able to substantiate these reasons:

(1) The high rate of illegal abortions (usually numbered as 1,000,000 or more) is quoted by those favoring liberalization as if it were an axiom enshrined in medical statistics. Yet, witness after witness was questioned concerning this at our hearings. Not one could either verify this statistic or inform us as to the true count.

Perhaps our most prominent witness in this regard was Doctor Christopher Tietze, the statistician for the Population Council who is personally pro-abortion. Dr. Tietze was questioned at our hearing in Camden on November 26, 1968 concerning the number of illegal abortions. Dr. Tietze testified that there is no way in which we can arrive at any accurate statistics nor any way we can verify the incidence of abortion in the United States.

Pro-abortionists claim that the New Jersey statutes are too vague in a matter that causes so much anguish. Nevertheless, they constantly recite a statistic that has been proven to be truly vague as a reason for liberalizing our abortion laws.

* see Appendix I concerning additional statistical information.

We are not experts in the field of legal philosophy but we do know that it would be a dangerous principle in any philosophy to liberalize a law simply because many transgress that law or because there may be difficulty in its enforcement. What citizen of our state would be willing to defend such a principle in the light of the rising statistics on traffic violations, theft, bodily assault and murder?

During the commission hearings, testimony was given concerning the difficulty of enforcing the abortion statute. At the same time, we have no study at our disposal researching the reasons for this difficulty or the means to improve the enforcement. Considering the suffering this causes our citizens, it certainly behooves the legislators to look further than the findings of the Abortion Commission for a remedy to this problem.

(2) In pro-abortion propaganda, the public is told that these illegal abortions are being performed in "back-alleys" by "heartless and mercenary butchers". Who are these faceless perpetrators of crime upon women in distress? Granted that a portion of these crimes are committed by bona fide quacks, yet these crimes are also committed by bona fide doctors. We have no less an authority for this than Dr. Alan Guttmacher, The President of Planned Parenthood and a leading exponent of abortion liberalization:

> It is estimated that 70 per cent of our million or so annual illegal abortions are done by physicians---some full-time operators, others part-time workers who want to pick up quick cash, for abortion fees must always be paid in cash. A full-time medical abortionist in a medium-size city showed me a little black book in which he listed the names of 300 referring physicians. It reads like a medical Who's Who of the area. [2]

In this same matter of illegal abortions, statistics as high as

10,000 women dying each year are quoted. Again, with Doctor Christopher Tietze as witness, and with the agreement of the medical section of the First International Symposium on Abortion convened in Washington, D.C. in the Fall of 1967, a realistic figure for maternal death due to all abortions in the United States would be about 500. The doctors at the International Symposium could only verify 235 abortions in 1965 although they were willing to double that number to include all those that may not have been reported to the Bureau of Vital Statistics. [3]

In fact, Doctor Tietze informs us that in the course of a year approximately 45,000 women of child-bearing age die. "It is inconceivable," says Dr. Tietze, "that of 45,000 deaths so large a number as 5,000 are from any one source." Indeed, even 500 women dying as a result of illegal abortions is cause for zealous attack upon this crime. However, we believe that it would be misplaced zeal for any one to use an inflated statistic as a prop for solving this serious crime of illegal abortion.

(3) Is there a way for our legislature to substantially eradicate resort to illegal abortion? Yes, unfortunately, only one way---permit any and every woman to obtain an abortion-on-request, free of charge with no questions asked ! Our legislators may as well realize that this is the true goal of the movement to liberalize the New Jersey abortion statutes rather than an adoption of the Model Penal Code of the American Law Institute.

Anyone who takes note of abortion reforms in other states is fully aware of this: despite reform, illegal abortions are still rampant. One of the chief reasons for this was made clear by many

of the witnesses at the commission hearings: if the law is liberalized only to that degree suggested by the Model Penal Code of the American Law Institute, this would only cover a small percentage of those seeking abortion.

Mr. Rittenhouse, the county prosecutor on the Study Commission, asked the following question of Doctor Tietze: "Doctor, what percentage of the number of abortions that are performed, would be covered by this type of permissive abortion?" Doctor Tietze: "Well, most people have estimated that it might be somewhere in the vicinity of 5%." Dr. Tietze went on to explain that such legislation does not cover the pre-marital or extra-marital pregnancy and the married woman who doesn't want any more children.

With this in mind, there are some statistics that bear remembering:

(a) In December 1965, The National Opinion Research Center received these responses to their question: "Please tell me whether or not you think it should be possible for a pregnant woman to obtain a legal abortion:

	Yes	No	Don't know
---if the family has a very low income and cannot afford any more children	21	77	2
---if she is not married and does not want to marry the man	18	80	2
---if she is married and does not want any more children	15	83	2

(b) The latest U. S. Gallup Poll (November 1969) shows that 60% of U. S. adults are opposed to abortion on demand.

ABORTION and the UNBORN CHILD

During the hearings held by the New Jersey Abortion Study Commission, we heard the unborn child referred to as a "blob of tissue"; "a parasite"; "just like a tonsil or an appendix"; "a

human being"; "a unique individual";....

Now this is the very heart of the abortion issue: are we destroying expendable tissue or human life; gnawing parasite or developing person?

No matter which side of this debate you embrace, can you imagine a mother holding her newborn infant with these thoughts in her heart: Now that I see you, I know you are human but before you were born I really thought you were a shapeless blob. Now that I hold you in my arms, I will love you as my most cherished possession but before you were born I repelled you for living off of me.

In 1960, the highest court of New Jersey summarized the state of scientific knowledge concerning the unborn child when it decided the case, Smith vs. Brennan:

> Medical authorities have long recognized that a child is in existence from the moment of conception.

In 1963, Planned Parenthood, before it recently campaigned for abortion as a form of birth control, admitted this scientific fact in a pamphlet:

> An abortion requires an operation. It kills the life of a baby after it has begun. It is dangerous to your life and health. It may make you sterile so that when you want a child you cannot have it. Birth control merely postpones the beginning of life. [4]

On April 30, 1965, Life Magazine published a startling photographic essay entitled, "Drama of Life Before Birth." The article featured actual photographs of the child in gestation, including one picture of a child, eighteen weeks after his conception, clearly sucking his thumb. Other pictures showed the child in various stages of development along the road to birth. The text of the article

affirmed, as a simple fact, that "The birth of a human life really occurs at the moment the mother's egg cell is fertilized by one of the father's sperm cells."

In 1967, two outstanding Australian fetologists, Doctor H.M.I. Liley and her husband, Doctor A. William Liley, made the following statement in their book MODERN MOTHERHOOD(pp. 26-27):

> Because the fetus is benignly protected, warmed and nourished within the womb, it was long thought that the unborn must have the nature of a plant, static in habit and growing only in size. Recently through modern techniques of diagnosing and treating the unborn baby, we have discovered that little could be further from the truth.
>
> The fluid that surrounds the human fetus at 3, 4, 5, and 6 months is essential to both its growth and its grace. The unborn's structure at this early stage is highly liquid, and although his organs have developed, he does not have the same relative bodily proportions that a newborn baby has. The head, housing the miraculous brain, is quite large in proportion to the remainder of the body and the limbs are still relatively small. Within his watery world, however (where we have been able to observe him in his natural state by closed circuit x-ray television set), he is quite beautiful and perfect in his fashion, active and graceful. He is neither an acquiescent vegetable nor a witless tadpole as some have conceived him to be in the past, but rather a tiny human being as independent as though he were lying in a crib with a blanket wrapped around him instead of his mother.

At the 1967 International Conference on Abortion, held in Washington, D. C., Doctor Herbert Richardson of the Harvard Divinity School reported this conclusion by the ethicians in attendance: "From the present available data, we can only conclude that human life begins at conception, or no later than blastocyst." (Blastocyst is that stage of development which exists when the fertilized egg has almost finished its descent through the tube, and when it is in the early stages of nestling into the lining of the mother's womb).

In the light of this scientific evidence, are our legislators willing to admit to their constituents that in New Jersey "progress" is such that during the 1970's we will permit our citizens to exterminate "shapeless blobs" which in the 1960's we already knew were human beings?

For too long the public, including some of our legislators, have been lulled by abortion reformers with the tune that our present laws are "archaic", "medieval", "cruel" and "should be brought up to date." I ask, however, by what "modern standards"? Certainly not by modern science and ethics.

Therefore, abortion reform represents a strange view of progress because it would permit the destruction of innocent human life for reasons less than human life itself.

The 20th century condemns Ancient Rome for the law of paterfamilias by which the state granted the power of life and death over his offspring to the Roman father. Today, the New Jersey legislature is being urged to pass a law of materfamilias, thereby granting the power of life and death over her offspring to the American mother. This is progress !

WHAT HAPPENS WHEN AN ABORTION IS PERFORMED ?

All of us speak of abortion too glibly. Abortion is a neat legal or medical term supposedly separating born from unborn. Abortion is "that safe operation when performed by a competent doctor in an accredited hospital.... just like an appendectomy or a tonsillectomy."

It might cause us to ponder this issue more deeply if we realize what happens when this operation is performed: Professor Ian Donald

of the Royal College of Gynecologists testifying before the British Parliament describes an abortion this way:

> I must resist the temptation to tell you the nasty details of the operation employed to terminate (pregnancies). In a few minutes, I would have you vomiting in the aisles. Professor Norman Norris described it as a hemorrhagic exercise in destruction---a masterly understatement. Can you wonder then at the built-in resistance of most gynaecologists to performing it....
>
> Make no mistake about it. An unborn baby, even a very small one, can put up a determined fight for life. An abortion can be born alive and can kick and go on kicking for quite a long time. It is not difficult to see this as a sort of slow murder. On the other hand, the baby can be killed while still inside. Is there so much difference? The intention is the same. [5]

In the article entitled, "Techniques of Therapeutic Abortion", (Clinical Obstetrics and Gynecology, March, 1964) Doctor Alan Guttmacher takes the reader on a tour of the abortion technique:

> A sharp curette is then inserted to the top of the fundus with very little force, for it is during this phase that the uterus is most likely to be perforated. Moderate force can be safely exerted on the down stroke. The whole uterine cavity is curetted with short strokes, by visualizing a clock and making a stroke at each hour. The curette is then withdrawn several times bringing out pieces of placenta and sac. A small ovum forceps is then inserted and the cavity tonged for tissue, much like an oysterman tonging for oysters..... In pregnancies beyond the seventh week, fetal parts are recognizable as they are removed piecemeal.

We must understand that when Doctor Guttmacher refers clinically to "fetal parts" he means arms, legs, a head and the various other "parts" that, moments before, formed a living human body. Are we really convinced that when a doctor removes an appendix or tonsils he is scraping out material the significance of fetal parts?

ABORTION - IS IT SO SAFE FOR THE WOMAN?

Other than the unborn child who is killed, is abortion so "safe" for the woman? In 1967, The Council of England's Royal College of Obstetricians and Gynecologists reported in the British Medical Journal:

> 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 women 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. [6]

For too long now, our government has become preoccupied with death, with the business of killing and being killed. The only point of a government is to safeguard and foster life. At the present time, should our New Jersey legislature be so "liberal" with life that they would enact laws permitting death-dealing operations?

ABORTION - IS IT GOOD FOR THE DOCTOR ?

Furthermore, our interest should extend not only to the unborn child and the mother but also to the doctor. If the abortion laws are made easier, what happens to a medical profession that has been raised in the spirit of the Oath of Hippocrates? "I will give no deadly medicine to anyone if asked, nor suggest any such counsel, and in like manner I will not give to a woman a pessary to produce abortion".

Medical education, emphasizing the physician's role in aiding life

and health and postponing death, may give rise to serious conflicts within the physician who is confronted with a woman's request to be aborted. That an obstetrician, having chosen to specialize in helping babies be born, should be the very one expected to destroy the unborn child is a situation in which serious conflict is unavoidable.

Abortion reformers claim that our present laws make hypocrites of our doctors. Is a doctor judged to be hypocritical if he chooses to help the needs of his patients according to sound medical practice rather than pacify patients according to their wishes?

It is true that proposed abortion reform would give some doctors an out if they objected, in conscience, to performing this procedure. However, we would suggest that the unborn child deserves more protection from these doctors than merely a negative exemption.

On Sunday, December 14th, 1969 the New York Times reported that on the previous afternoon the United Jewish appeal awarded Menorahs to four people who had saved Jews from the Nazis. On each Menorah was inscribed this Biblical quotation: "He who saves a single life, it is as if he has saved the entire world." One of the recipients, Doctor Adelaide Hautval, a non-Jewish French psychiatrist, in explaining why she had risked her life to save Jewish men, women and children from Nazi terror, simply remarked: "They were human beings---what more is there to say?"

ABORTION LAWS - WHY SHOULD THEY BE LIBERALIZED ?

Prior to 1967, the general pattern of the law throughout the country was complete prohibition of abortion except to preserve the life of the mother. Since then 10 states have eased their abortion

statutes in varying and limited degree. During this time 40 state legislatures have either successfully defeated or refused to consider similar legislative proposals.

The usual arguments in favor of abortion fall into one or more of the following categories:

(1) There is substantial risk that continuation of pregnancy would seriously impair the mother's physical (medical indications) or mental health (psychiatric indications).

(2) The child might be born with a grave physical or mental defect (fetal indications)

(3) The pregnancy resulted from rape or incest. Also included in this category is the "unwanted child".

(4) The mother alone should have the right to decide if her unborn child has the right to life.

Medical Indications

Of all the states in the Union, New Jersey should be the last to consider liberalizing its abortion statutes for medical indications.

In 1931 the Margaret Hague Maternity Hospital opened in Jersey City as one of America's great hospitals. Dr. S. A. Cosgrove, head of obstetrics at Columbia University, was medical director from its opening until a few years ago. He had one therapeutic abortion among the first 4,000 deliveries. When he reported this, other hospitals were doing from one in 600 to one in 100. His report jolted the medical profession into serious inquiry and resulted in abandonment of many of the indications accepted up to that time.

Meanwhile, the Hague Memorial Hospital was delivering over

100,000 babies, with only eight therapeutic abortions, and had abandoned the use of therapeutic abortion entirely in 1939. Its influence was being felt. In 1951, Doctor R. J. Heffernan, of Tufts, had declared to the Congress of the American College of Surgeons, "anyone who performs a therapeutic abortion is either ignorant of modern medical methods, of treating the complications of pregnancy or is unwilling to take the time to use them". [7]

The citizens of New Jersey should be proud of our medical record and its contribution to advance in the care of the unborn. Indeed, it is worth wondering what happens to any society that turns its back on such blessings.

Psychiatric Indications

If the term "vague" is to be used in the abortion issue, it most certainly should be applied to this category. During our hearings, psychiatric indications covered everything from the threat of suicide to emotional stress. We received no clear definition of what "serious impairment" meant in terms of time or confinement. There was plainly contradictory testimony given as to whether this was even a bona fide indication for abortion.

In fact, at the last meeting our Study Commission held to discuss the indications for abortion (Rutgers, April, 1969), it was this matter of serious impairment to the mother's physical or mental health which brought us to a standstill. On that occasion, Mr. Rittenhouse, the Prosecutor of Hunterdon County, argued for a clearer definition of this indication in the face of the legal rights of the unborn child.

In an article entitled, The Unwanted Pregnancy, Doctor R. Bruce Sloane states in the third paragraph:

> With advances in medical treatment there are fewer physical disabilities in the mother demanding termination of pregnancy. Psychiatric or "pseudo-psychiatric" reasons have come to dominate the indications. [8]

Before the article begins, there is an abstract the first paragraph of which states:

> There are no clear-cut psychiatric indications for therapeutic abortion. The risk of precipitation or exaerbation of an existing psychosis is small and unpredictable and suicide is rare. "Humanitarian" reasons frequently determine the decision although they may masquerade under psychiatric labels.

Doctor Arthur Peck, assistant attending psychiatrist, Mt. Sinai Hospital Institute of Psychiatry writes of a study of patients aborted at Mt. Sinai Hospital:

> In a study of patients aborted at Mt. Sinai Hospital, it was clear that although every patient aborted for psychiatric reasons was described as being suicidal, many were not even being treated by a psychiatrist at the time abortion was sought. Even fewer were still being treated three to six months after the abortion. This is evidence for the thesis that psychiatric illness is being exaggerated to win approval by the hospital committee. However, it is also strong evidence that neither the women who see psychiatrists in order to obtain an abortion nor the psychiatrists who see them are truly interested in further investigation of their psychiatric response to the abortion. [9]

Truly, the mental health of the mother is a matter for social and legal concern, but it is not a valid reason for abortion. In cases of serious mental distress, abortion does not solve the problem, in fact, it may complicate the case. Even a claim of distress or a threat of suicide may be used as a kind of bluff, if not as a cry for help. If we are really concerned about the woman's mental health, then it should be mandatory that psychiatric treatment be given.

We respectfully suggest that our New Jersey legislature and

Medical Society take a long, hard look at this indication for abortion. In the 10 states where the laws have been eased, this psychiatric indication accounts for over 80% of the abortions performed. This means that either this indication is a cover-up or that suddenly we have a lot of mentally afflicted mothers. Neither alternative is good ! And, what does the acceptance of abortion for this indication say about the mental health of our whole society--- how will it affect us in the future?

Fetal Indications

Competent witnesses appearing before our Study Commission brought forth the various phases of fetal indications: minor defects vs. gross defects; the next measles epidemic vs. the discovery of a vaccine; mental defects vs. diet control; faulty developments vs. intrauterine correction; uncertainty of prediction vs. improving the odds of prediction....

Anyone with an ounce of charity has sympathy for their fellowman afflicted with a physical or mental defect. But this is not the main issue ! Though it may seem unfeeling to some to invoke principle, nevertheless there is a principle involved that we neglect to our own peril.

Stripped of rhetoric and emotion, the main issue would seem to be whether the <u>quality</u> of life is as important as the <u>presence</u> of life or whether, as our Declaration of Independence affirms, a passive, innocent human life is inalienable regardless of its own "quality" or the supposed threat it makes upon the "quality" of the lives of others.

Since the legislators have been entrusted with enacting laws for our well-being, we pose the following questions for their consideration:

---Who will decide what are just the right qualities or the wrong defects for another human being to continue living?

---With advances in genetics and fetology, we will be able to detect defects in the fetus. By your legislation, who will you appoint to put thumbs down on the rejects ?

---With the same advances we will be capable of selective breeding. By your legislation, which designer will you appoint to draw up the blueprints for this "new breed" ?

---Why should the unborn defective be given the benefit of a "merciful death" but the born who becomes defective be expected "to grin and bear it" ?

---Once we become used to wielding "the sword of quality" in the darkness of the womb, can you assure us that our citizens will not take up the same sword in the daylight against poor cripples, human vegetables, perennial welfare clients and even aging legislators ?

---Where is the evidence that our fellow citizens with defects are less adjusted to reality, more unhappy, less useful to society and more anxious for death than we their "normal brethren" ?

Once again, our New Jersey Supreme Court showed great insight with the decision they rendered in the 1967 Gleitman vs. Cosgrove case:

> If Jeffrey 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....The sanctity of the simple human life is the decisive factor in this suit.

Thus, if it comes to the decision of aborting an unborn child for fetal indications, we agree with the policy statement on abortion

that was sent to the New Jersey Study Commission by the New Jersey Orthordox Rabbinic Council when it declares: "Even if the fetus is the product of incest or rape, or an abnormality of any kind is foreseen, the right to life is still his."

Rape and Incest

It is very interesting to contrast the shouts of rape and incest as reason for liberalizing abortion statutes with the amount of abortions that are performed for rape and incest after the laws are eased. In the 10 states where the laws have been changed, abortions for these reasons rank lowest in number.

There is no mystery here. Much of the testimony given at our hearings assured us that there are few conceptions resulting from rape or incest. Indeed, when we are dealing with rape by force our laws already permit certain medical procedures to be performed for the prevention of conception.

We all look with horror upon the thought of our women being victims of rape or incest. However, anyone who believes that abortion can wipe out this destructive experience, does not understand the complexities of female sexuality. The doctors sterile instrument cannot remove the infection of fear, shame, hostility and guilt that results from these crimes.

When these tragic crimes actually happen and when a pregnancy results, there are two innocent victims: the assaulted and the newly conceived. If the woman were properly supported, she could rightfully be required to give nine months of her life to save the life of another innocent person. The child can always be given to an adoption agency; there are many couples waiting to adopt a child.

The ultimate crime is not sexual abuse; it is extermination. How can the law sanction a response to one form of abuse by condoning a still greater violence on innocent victims ?

In cases of incest, what good does it do to kill the infant and then return the girl to the same family situation ? Will any liberalization or repeal of abortion laws prevent rape or incest ?

If we are really concerned with the plight of these women, psychiatric counselling should be provided free of charge. We should keep their names off police blotters and give them signs of respect rather than aborting them at will.

Furthermore, our legislature might become more concerned about the climate of sexual permissiveness and stimulation offered in our state to those who are sexually disturbed.

"The Unwanted Child"

The movement to wipe out the "unwanted child" from our society seems to imply that only those children should be born who are automatically "wanted" from start to finish. And, do we, the living, mature, well-adjusted individuals actually believe that our parents greeted the news of our arrival with great desire and jubilation?

Any obstetrician will testify that many pregnant women pass from the stages of "unwanting" to "longing expectation". Any woman who has borne a child is aware of this traumatic experience during the early months of pregnancy. Yet a liberalized abortion bill would allow a woman to decide whether a child is wanted or not at a period when she is least equipped for such a decision. And, the present abortion laws are called cruel ?

Contained under the term "unwanted child" is the demand of those who insist that they should have the ultimate sexual freedom to make love and terminate any unwanted life that results. It appears that we have progressed from sex-with-affection to abortion-with-love !

If this is the sexual freedom our legislators want to offer the women of this state, there is something dreadfully wrong with our sexuality in New Jersey.

This is also a strange understanding of freedom. Any legislator realizes that a citizen can freely choose to act outside the realm of accepted laws or values. However, the legislator does not grant a citizen the freedom to choose the consequences, let alone dispense with them. In the light of the present mutual accusation of irresponsibility between the generations, what would this contribute to closing the gap ?

There is more than abundant evidence from those places where abortion reform has been enacted that if abortion is made easier, the minimal efforts to prevent conception become less desirable. On October 29, 1969, the New York Times published the report on the rise of unwanted births in the United States by Doctor Charles F. Westoff of Princeton University's Office of Population Research to the Planned Parenthood-World Population Organization. The report defined unwanted births not only as those unwanted at anytime either by the father, mother or by both parents but also as those births that occurred while contraception was used or was intended to be used but was inadvertently omitted. This being the case, we must ask the legislators if they are willing to legislate for "wanted children" by promoting voluntary, responsible family planning or permissive birth control by the sword ?

It is true that many babies are unwanted not because their parents are selfish or hedonistic but because they are realistic. These parents know with frustrated certainty the kind of life that awaits this baby as well as the effects on the rest of the family. Mrs. Dorothy Height of the National Council of Negro Women puts the situation in blunt perspective: "It isn't just the woman who decides whether her child is unwanted. Society has put a label on who is unwanted. But it has not taken the responsibility for developing equal conditions of life, in which that child can be wanted."

It is no surprise that some children are "unwanted" and that they grow up---if they ever do---with twisted and unloving personalities. But we do not have to maintain these conditions. They are made by us, the product of our choice or our neglect. Our state has made some efforts in alleviating such conditions, but much more is needed. At this time, is our legislature willing to admit "social defeat" by offering a sterile instrument rather than a helping hand to our families in need ?

Finally, the question is very worth pondering how this discussion of wanted and unwanted children is affecting our present children. Often, parents are amazed at what their children know about them. Children absorb much more from the attitudes in their environment than adults realize. Aren't they going to wonder about the value of life in general as well as their own life as they begin to realize that mother has the right to do away with unwanted children ? If we are worried about the mental health of the mother, we had better be concerned with the mental health of her children raised in a society where unwanted children are being phased outside the class of humanity. Indeed, all

the money and organization recently suggested by the President's National Commission on the Causes and Prevention of Violence would be of little avail in such a society.

The Legal Rights of the Unborn Child

It is a basic, fundamental axiom of legislative conduct that statutes, to enjoy the force of law, be consistent.

> N. J. S. A. 2 A:4-2 provides: "It is hereby declared to be a principle governing the law of this State that children are the wards of this State, entitled to the protection of the State, which may intervene to safeguard them from neglect or injury."
>
> N. J. S. A. 9:2-9 permits the Court to supercede the parent's natural right of custody over their children when necessary for the "welfare" of such child.

The parens patriae jurisdiction, thus legislatively declared, reflects both the right of sovereignty in the State and the duty on the sovereignty to protect children who by reason of their infancy are unable to protect themselves.

As stated by our Supreme Court:

> "There is a law of our universal humanity, as extensive as our race, which impels parents....to protect and support their helpless children." 10

Under existing New Jersey law (as elsewhere), an unborn child from the moment of conception is accorded every legal right available to his terrestrial brothers. He may inherit by will, or by descent; he may be beneficiary of a trust or a party to litigation; he qualifies as a beneficiary under the wrongful death statute as well as under Workmen's Compensation; he constitutes a life in being for the purpose of dating the rule against perpetuities; he can demand and obtain legal representation to enforce a right to necessary medical and economic assistance prior to birth. Finally, he can recover damages for injury negligently inflicted upon him in utero.

Against this broad background of recognizing and enforcing these constitutionally endowed rights, the proposal to legislatively deny the ultimate right, the right of life itself, constitutes a backward step in the evolution of human values.

Our cultural heritage of law and tradition, representing our civilized heirarchy of values has elevated innocent human life to the highest degree of priority. The State, which as parens patriae will not allow a parent to abandon a child, cannot and must not now allow this most ultimate of abandonment.

ABORTION and the FATHER'S RIGHTS

In the abortion debate, much is made of the rights of the mother and the doctor but very little is said about the father's rights. What can the law do to protect the father's right to have his unborn child brought to term?

We suggest that our legislators turn their attention to this aspect of legal rights relative to unborn children. It appears that we speak to fathers out of both sides of the mouth: "Fathers should provide for the well-being and support of their family, they are responsible for the conduct and the debts of their family, they must offer example, guidance and protection to their family, they should be present in body and spirit in the home...." However, when it comes to his unborn child, the father is treated like a stranger who must wait on the sideline to see what other people will do to his child.

ALTERNATIVES TO ABORTION

Abortion as a "final solution" is a lethal, irrevocable, expedient which has no effect upon the root causes which give rise to the problems

to be thus resolved. The alternatives are more humane not only because they stop short of the destruction of innocent human life, but also because they address themselves to the sources of the problems seeking relief.

Thus these "viable solutions" improve the human condition of the unborn, as well as that of the entire society:

---Increased educational programs for voluntary birth control and family planning should be researched. This coupled with economic helps such as birth insurance and family allowance is a more sensible response to poverty and deprivation.

---More adequate facilities and procedures are needed to care for unwed mothers. The placing of children for adoption together with a more sympathetic approach to both the parent and the illegitimate child will reduce the demand for abortion, and hopefully, eliminate the social stigma attached to illegitimacy.

---The implementation of community sponsored programs of sound sexual education and the reduction of pornography will improve the moral climate and achieve a healthier understanding of human sexuality.

---Increased aid to handicapped and impaired children will allow them to attain a dignified place in society.

---Improved psychiatric and psychological techniques can be developed so that pregnant women in distress can be supported both during and after the pregnancy.

EPILOGUE

For each reason advanced in support of abortion, many civilized alternatives suggest themselves. The long range consequences of our choice reach far beyond the immediate problem, and will, in the end,

determine the value judgment of our human community as to all life from the moment of conception to the moment of death. In the words of Richard John Neuhaus: "In our valuation of life, to be civilized is to be conservative."

Indeed, we who are strong in our opposition to abortion reform must be all the stronger and more liberal in supporting the dignity of other human beings. Once we have committed ourselves to this work and joined hands with our fellow citizens, let us be done with debating as to whether the unborn child's right to life is in the hands of the parent, the doctor or the lawyer. There is a safer alternative---leave them in the hands of God and let the children live !

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1) Redbook Magazine, December 1969, p. 148.

2) Mc Call's Magazine, April 1968, p.61

3) The Terrible Choice:The Abortion Dilemma: A Bantam Book published April 1968, p. 47.

4) See Ratner, "Is It a Person or a Thing?" Report, April 1966, pp. 20-22.

5) See Mietus, The Therapeutic Abortion Act: A Statement in Opposition 1967, p.16.

6) See Medical-Moral Newsletter, March 1967.

7) Twin Circle, February 11, 1968, p. 8, col. 1.

8) New England Journal of Medicine, May 29, 1969, p. 1206

9) American Journal of Psychiatry, 125:6, December 1968, p. 797

10) Greenspan vs. Slate, 12 N. J. 440

Appendix I

* Additional Statistical Information Concerning Maternal Deaths Resulting from Abortion in New Jersey.

Although the statistical information is far from satisfactory, the following sources can shed some light as to the number of women dying from abortions in New Jersey:

(1) The New Jersey Bureau of Vital Statistics reports that between the years 1949-1969 there were 182 deaths due to all abortions.

(2) The New Jersey State Police report 3 deaths due to criminal abortions between January, 1967 - December 16, 1969.

(3) New Jersey County Coroners
We contacted Doctor Edward Murray, the coroner for Essex County. Dr. Murray informed us that in 23 years he only recalls going to court once concerning death due to a criminal abortion.

The National Center for Health Statistics gathers the reports made by hospitals throughout the country. This center reports that there were 160 maternal deaths due to all abortions in 1967. Of these, 4 were listed under medical and legal reasons, 69 for other than medical and legal reasons (such as self-induced and criminal) the remainder were spontaneous abortions.

It is necessary to note that hospitals keep statistics in this matter only on those fetuses which have a gestation period of 20 weeks or more. There are no figures available for under 20 weeks.

Obviously, there is an urgent need for extensive studies to obtain a reliable statistical background on abortion. Without such information, it is difficult and risky, if not impossible, to reach sound decisions on legal or other public-policy issues.

Appendix II

Recommended Legislation Concerning New Jersey Abortion Laws

AN ACT concerning abortion and amending Section 2A:87-1 of the New Jersey Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 2A:87-1 of the New Jersey Statutes is amended to read as follows:

2A:87-1. Any person who [, maliciously or without lawful justification, with intent to cause or procure] attempts to cause, or causes the miscarriage of a pregnant woman, [administers or prescribes or advises or directs her to take or swallow any poison, drug, medicine, or noxious thing, or uses any instrument or means whatever] by any means whatsoever except when required for the preservation of the mother's life, is guilty of a high misdemeanor.

If as a consequence the woman or child shall die, the offender shall be punished by a fine of not more than $5,000, or by imprisonment for not more than 15 years, or both.

2. This act shall take effect immediately.

A SUPPLEMENT to "An act to prevent congenital syphilis," approved March 30, 1938 (P.L. 1938, c. 41).

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Every physician attending pregnant women in the State for conditions relating to their pregnancy shall, prior to delivery cause to be taken a blood sample of such women for the purpose of blood grouping and RH factor testing.

2. Every child born of an RH positive mother, or of a mother whose RH factor is for any reason unknown shall have a sample of cord blood taken for the purpose of blood grouping and RH factor testing.

3. Every child born in this State, shall at delivery have a sample of cord blood taken for the purpose of analysis for bilerubin factor testing.

4. Every child born in this State shall, prior to hospital discharge and in any event no later than 5 days following delivery, have a blood sample taken for the purpose of phenylketonoria testing.

5. This act shall take effect immediately.

AN ACT concerning the State Department of Health, permitting the purchase and distribution of rubella vaccine and amending Section 26:4-99 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 26:4-99 of the Revised Statutes is amended to read as follows:

26:4-99. The State Department may purchase and distribute free, in accordance with rules of the department, diptheria toxoid or toxin-antitoxin, [or both, and] smallpox vaccine and rubella vaccine.

For the purchase and distribution of such materials and for expenses incident to such distribution and the keeping of records of the use of such materials, the department may expend such sum as shall be appropriated in any annual or supplemental appropriation act.

2. This act shall take effect immediately.

AN ACT concerning the disposal of dead bodies and vital statistics and amending Section 26:6-11 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 26:6-11 of the Revised Statutes is amended to read as follows:

26:6-11. A certificate of fetal death containing such items as shall be listed on fetal death certificate forms provided or approved by the department under authority of section 26:8-24(c) of the Revised Statutes [and a burial or removal permit] shall be required for every fetal death [; provided, 20 or more weeks of gestation elapsed before the delivery].

No midwife shall sign a certificate for a fetal death; but any fetal death occurring without attendance of a physician shall be treated as a death without medical attendance, as provided in section 26:6-9 of this Title.

2. This act shall take effect immediately.

COMMISSION TO STUDY THE NEW JERSEY STATUTES RELATING TO ABORTION

A Minority Report

by

State Senator Frank J. Guarini

and

Concurred in by Assemblyman Christopher J. Jackman

In the spring of 1968, the New Jersey Legislature adopted a resolution creating the Abortion Law Study Commission. This resolution established guidelines for the study commission by stating that: (a) the high rate of illegal abortions constitutes a serious law enforcement and public health and safety problem; (b) critics of current abortion laws contend that they are unduly restrictive and have a tendency to force women seeking abortions to fall prey to the unscrupulous abortionist, with possible tragic consequences; (c) it is imperative that New Jersey's statutes in this area operate to effectively prevent resort to illegal abortions; (d) it is a legislative responsibility to re-evaluate the existing statutes on abortion to determine whether they adequately protect the public health and welfare and promote effective law enforcement.

While this may seem to answer the question as to the problems to which the proposed changes in the law should address themselves, there are a number of other questions which must be answered if we are to effectively legislate a solution to the stated problems. Furthermore, it also must be determined if, in legislating these alleged solutions, we are creating new problems.

Therefore, the questions we seek to answer are: (1) what is the size of the problem?; (2) will the proposals solve the problem?; (3) is the proposed law reasonably enforceable or will it result in a transfer of judgment on matters of abortion from the community to the medical profession?; and (4) will the proposed law serve the common good?

What is the size of the problem? The resolution creating the study commission clearly gives no indication, as it refers to the "high rate" of illegal abortions, an unsubstantiated generalization. The commission itself found no authentic figures, referring instead to various estimates ranging from the thousands to 1,400,000 illegal abortions annually in the United States. More specifically, no figures are given for New Jersey, so we do not know the extent of the problem we are seeking to correct.

Will the proposals solve the problem? Japan and the countries of Eastern Europe and Scandinavia have had such abortion laws for years. Yet, the massive increase in legal abortions has not ended

the practice of illegal abortions, as innumerable physicians in these countries have long pointed out. To the contrary, in some cases the incidence of illegal abortions has increased. Here in our country, several states have "liberalized" their abortion laws, in much the same fashion as proposed in the majority report. Yet, nowhere in these states is there any evidence of a sharp decline in illegal abortions. Furthermore, in Colorado, for example, procedural requirements or "red tape" have been deemed so inhibiting as to actually encourage illegal abortions where legal abortions could be had. These procedural requirements have often provoked charges of "invasion of privacy" by those faced with the problem of trying to rid themselves of an unwanted fetus.

Is the proposed law reasonably enforceable or will it result in a transfer of judgment on matters of abortion from the community to the medical profession? In the language of the proposed bill it is stated: 2. (a) "A physician is justified in terminating the pregnancy of a New Jersey resident if he has reasonable grounds for believing that..." It must be noted that the physician's <u>belief</u> that justifying circumstances exist, even when "formed in good faith," is not necessarily a correct determination. Furthermore, terms such as "substantial risk", "mental health", and "serious physical or mental defect" are extremely relative and could be interpreted as applying to almost anything one might choose. Therefore, it would seem that the effect of the proposed

law would be to transfer the responsibility for the practice of abortion from the community to the medical profession, and to create an unenforceable act wherein one doctor's negative opinion might be another physician's belief. Where the expertise of a specialist is required, it remains important that the legislative intent be spelled out fully and the physicians be mandated to implement the provisions within the limits of legislative definition. The principal failing here is language which is vague and devoid of legal guidelines, as well as a lack of administrative safeguards, thus encouraging abuses and denying uniformity of standards.

Will the proposed law serve the common good? Here we must take individually the justifications outlined in the proposed legislation.

2. (1) "...such is necessary to preserve the life of the female." This condition has been accepted by the New Jersey courts and I would not disagree with this justification. However, to include it in this report serves only to compound the verbal confusion, since it is followed by the justification "...greatly impair the physical or mental health of the mother." This latter provision most certainly would take in the former condition (to preserve the life of the female). Therefore, we have further beclouded the intent of the law and opened the way for court interpretation of what should be most specific. This falls short of good legislative

drafting.

(2) "...there is substantial risk that continuance of the pregnancy will greatly impair the physical or mental health of the mother." If we disregard the relative term "substantial risk" and the fact that the decision to abort would be based on a physician's "belief", a case can be made for therapeutic abortion if the mother will lose her life if the fetus is permitted to come to term - a philosophy somewhat analagous to killing in self-defense. However, we cannot disregard the language, since it is, as stated earlier, so vague as to be tantamount to total repeal.

(3) "...the child would be born with serious physical or mental defect such that he would be permanently incapable of caring for himself." There are several inherent problems here. First, it is a certainty that many normal fetuses would be destroyed along with the abnormal ones, for sheer lack of the medical certainty to determine the physical condition of every fetus without doubt. Second, since the mother's life and/or health is not necessarily endangered, we do not have the "self-defense" justification. Third, we have no evidence that the child does not want life and we have no evidence that those born with congenital defects would rather not have been born. Fourth, what constitutes grounds for the determination that the child will be abnormal -- one chance in twenty? One chance in five? How do we decide when the odds

justify abortion? Furthermore, there are many known cases of abnormal children who have lived normal lives and made outstanding contributions to science, literature, government and the arts.

We also must realize that to accept this justification for aborting the fetus is to accept this same argument in behalf of euthanasia -- mercy killing. If we can justify aborting a several months old fetus who <u>may</u> be abnormal, could not the next step then be to justify the killing of a child or adult, who without doubt <u>is</u> abnormal? There is some basis for this supposition. For example, in Britain legislation was introduced early this year in the House of Lords to permit doctors to administer euthanasia in certain circumstances. While the bill was defeated, for the time being, by a vote of 61-40, the very fact that it had as much support as it did has prompted observers to fear that the British abortion law of 1967, which amounts to virtual abortion on demand, has paved the way for conditioning the people there to the philosophy of euthanasia.

(4) "...the pregnancy resulted from illegal intercourse." It is most important that this proposal contain sufficient procedural guidelines. It might, for example, also be required that a rape victim consult a physician within forty-eight (48) hours of the act, as a means of curbing abuses. This provision also would have another advantage. It may permit the performance of a dilatation and

curettage before implantation occurred, or, in other words, before a fetal life was begun, or, at least give validity to the fact that illegal intercourse did occur. Not only is it less dangerous to curette a non-pregnant uterus, it is also psychologically better for the victim to be uncertain as to whether or not she had been impregnated by a rapist. While I agree that illegal intercourse is justification for abortion, the language of this provision must be such that it prevents abuses, without at the same time engendering unnecessary red tape and costs that would serve to prevent a victim from availing herself of this justification.

(5) "...the woman is unmarried, provided that the pregnancy commenced while she was under the age of 16 and is still unmarried at the time the abortion is performed." Here the justification apparently is based on two considerations: the desire to spare the young girl the social ostracism that may occur as a consequence of bearing a child out of wedlock, and the desire to save the family or state the financial obligation of caring for what will become a public charge. Neither of these consequences seems sufficient to deny life to the fetus.

CONCLUSION

The Abortion Law Study Commission worked long and hard on this most difficult problem and is to be congratulated for its

diligent and objective efforts. I concur that our present abortion law is inadequate and that a restructuring is long overdue.

However, I cannot in good conscience concur with the majority report as submitted. I must agree that the fetus is human life, and as such deserves protection under the law. Therefore, to enact these provisions would create a far more serious situation by encouraging an open abortion state here in New Jersey, than the one which we are trying to correct. For, if we subjugate our moral, human principles in the matter of taking life for reasons of finance or convenience, we have destroyed the dignity of the human being and have denigrated man to the level of the lesser animals, whom we kill for convenience and profit.

There being these significant differences between the report submitted by the majority of the Abortion Law Study Commission and my own views, it follows that I cannot support the proposed remedial legislation and must argue against its enactment.

COMMISSION TO STUDY THE NEW JERSEY STATUTES RELATING TO ABORTION

A Minority Report

By

OSCAR W. RITTENHOUSE, ESQ.

The New Jersey criminal law governing abortion reads as follows: "Any person who, maliciously or without lawful justification, with intent to cause or procure the miscarriage of a pregnant woman, administers or prescribes or advises or directs her to take or swallow any poison, drug, medicine or noxious thing, or uses any instrument or means whatever, is guilty of a high misdemeanor. If as a consequence the woman or child shall die, the offender shall be punished by a fine of not more than $5,000, or by imprisonment for not more than 15 years, or both." This law has been in effect in the State of New Jersey in substantially the same form since 1849.

The New Jersey Legislature in Assembly Concurrent Resolution No. 24 of the 1968 Legislature and Assembly Concurrent Resolution No. 18 (OCR) of the 1969 Legislature established a Commission for the study of the New Jersey statutes relating to abortion stating that: "(a) the high rate of illegal abortions constitutes a serious law enforcement and public health and safety problem; (b) critics of current abortion laws contend that they are unduly restrictive and have a tendency to force women seek-

ing abortions to fall prey to the unscrupulous abortionist, with possible tragic consequences; (c) it is imperative that New Jersey's statutes in this area operate to effectively prevent resort to illegal abortions; (d) it is a legislative responsibility to re-evaluate the existing statutes on abortion to determine whether they adequately protect the public health and welfare and promote effective law enforcement."

The Commission established pursuant to these Resolutions held its public hearings, received and reviewed vast amounts of material dealing with the subject, deliberated in private sessions and finally, after careful and thoughtful consideration, arrived at the decision reported by the majority of its members. This recommendation purports to "reform" or "liberalize" the New Jersey abortion law by establishing certain criteria under which abortions may be performed within the first 90 days of pregnancy under medical procedural safeguards, and thereafter during pregnancy where the life of the mother is threatened by the pregnancy.

With all due respect to the very sincere and learned consideration given to this problem by the majority of the Commission, I must note my dissent with the majority's recommendation.

The recommendation of the majority generally follows the proposal of the American Law Institute, a group of 1,500 lawyers, representing practitioners, judges and professors, whose role it is to promote

clarification of the laws for their better adaption to social needs and to secure administration of justice and scholarly legal work. This proposal, completed in 1962 after a ten-year study, was endorsed by the American Medical Association in 1967. Since that time, ten states have adopted statutes which generally parallel its proposals.

The American Law Institute proposal is generally recognized as a compromise between strongly held divergent views. As such, it is considered too liberal by those who espouse the rights of the fetus, and who argue that the proposal goes too far in outlining social reasons for permitting abortion; and too strict by those who claim the subject of abortion to be a matter solely between the woman and her physician, and who would prefer to see the subject of abortion removed entirely from criminal law statutes.

The question is: What will be the effect in New Jersey of this proposed change in the criminal law?

The answer to this must take into account the effect of the present law. The New Jersey statute is similar to that of Louisiana, Massachusetts, and Pennsylvania, in that it provides no specific exceptions to the general prohibition against abortion. The statute, at least to date, has been upheld as constitutional, and the courts have indicated that its term "lawful justification" includes, at the least, a preservation of the mother's life. It may in fact do more, for as said by Justice Proctor in Gleitman

v. Cosgrove, 49 N. J. 22 (Sup. Ct. 1967), "It may well be that when a physician performs an abortion because of a good faith determination in accordance with accepted medical standards that an abortion is medically indicated, the physician has acted with lawful justification within the meaning of our statutes and has not committed a crime." Justice Jacobs, in the minority opinion in the same case, took the position that when the legislature used the words "without lawful justification" its broad and flexible terminology would appropriately be made from time to time in light of prevailing conditions. In essence, this means that in New Jersey today, the decision of whether or not an abortion is necessary--and legal--is made by medical personnel, subject, of course, to the interpretation of the Grand Jury in the event anyone should fear that the medical practitioner or hospital overstep their bounds in exercising this authority.

No one contends that "back room" or "kitchen table" abortions are permissible under this statute. Prosecution follows where the offense is detected and proof can be adduced. However, the hearings before the Commission did make it clear that therapeutic abortions are being performed under certain circumstances in New Jersey hospitals, and there has been no reported instance in which a doctor has been prosecuted under the terms of this statute for the performance of an abortion when performed in an accredited hospital.

Critics of the present law have differing views. Some argue that it is too liberal, opening the door for abortions because of its lack of either absolute prohibition or more clearly defined legislative guidelines. Others contend it is too strict, either because it imposes regulation where they say none should exist, or because the wording "lawful justification" is too likely to be strictly construed to mean "to save the life of the mother," thereby denying the right to abortion where valid social or medical factors justify it. Still others, without commenting on the law's liberal or strict nature, attack the statute as unclear, lacking sufficient guidelines to appraise physicians and those seeking abortions of whether they are acting within or without the area of criminal conduct.

The actual effect of the present law is difficult to assess. The Commission found no meaningful statistical data to measure its effect upon the incidence of abortions, "legal" or "illegal", under the statutory terms. An accurate estimate of the number of abortions performed could not even be made. (On a national scale, estimates of the number of "illegal" abortions varied between 100,000 and 1,200,000 per year.)

Regardless of one's position on the "legality" of abortion as defined or to be defined by statute, everyone agrees that the abortion of women by medically untrained and unskilled persons poses a serious threat to the health of the prospective mother and is a social evil to be regulated. The Commission was specifically charged with this respon-

sibility in the legislative resolution by which it was created. The difficulty which the Commission experienced in assessing the magnitude of the problem did not alter this responsibility.

The difficulty, as I see it, is that there is no indication that the legislation proposed by the majority of the Commission will materially effect the incidence of such illegal abortion.

First, it is generally conceded that legislation patterned after the American Law Institute proposal, such as this Commission's majority recommendation, will not permit abortion for the largest groups seeking them--married women who, solely by reason of age or number of existing children, wish no more children, or unmarried single women. It was estimated before the Commission that this proposal would make abortions available to only 5% of those desiring them.

Second, to the extent that such an assessment is valid at this early date, evidence before the Commission indicated that those states which have recently enacted similar legislation have experienced no decrease in the incidence of illegal abortion. This was attributed to the large group seeking abortions which the law does not reach, and to the financial burden and administrative frustrations which the proposed safeguards impose upon those who are able to seek relief under its provisions.

If the majority's proposal will not eliminate or reduce illegal abortions, what does it do? It would seem to adopt what Father Robert F.

Drinan, S. J., Dean of the Boston College School of Law, has defined as "a hierarchy of values" on which to base the law--one in which a mother's health ranks higher than the right of the fetus to be born; one in which the convenience of parents or of society is deemed superior to the existence of a deformed or retarded infant; and one in which the desire of the woman made pregnant through rape, incest, or intercourse while unmarried and under sixteen, not to have her life ruined, takes precedence over the rights of the fetus. That some rights of the fetus do exist seems to be recognized by the majority by the very fact that the proposed legislation limits the right to destroy the fetus to those instances set forth during the first trimester of pregnancy. This, of course, brings us to the central issue with which we must deal--when does human life begin?

Much testimony was received on this point from persons with strongly held,and widely divergent, views. While biological data may not provide an answer, it does offer some insight when we consider that at twelve weeks the fetus is about 3 1/2 inches in length, that bone and cartilage can be seen clearly, that fetal heart functions can be detected by an electrocardigraph, that muscles and nerves have developed sufficiently so that the fetus moves its arms and legs vigorously (in fact, it has been doing these things for two weeks) and that mothers with experience from previous pregnancies may now be able to recognize the fetus kicking.

It is submitted by opponents to liberalization of the abortion laws that such life is a human being--some say it has been so since conception--and that the taking of such a life is tantamount to murder and cannot be justified for social reasons. If one does not subscribe to that theory, he is left with one of two alternatives: either to disavow that human life does in fact exist at that point, in which case it would seem that the performance of an abortion is little different than the performance of a tonsillectomy and should be permitted whenever the mother desires it, with her physician's approval; or to take the position that there are social reasons today which justify the taking of human life, at least in this early form.

The latter position would seem to be that which is taken in the majority's report, and I cannot agree with it. It may be that the Legislature will eventually have to act in this area by recognizing the awful responsibility of defining those social considerations which warrant the taking of an innocent human life. I submit this is not yet the time or the place. The stakes are too high to move without the benefit of carefully compiled supportive facts and without most careful deliberation. The following factors indicate that we are not yet at that point:

1. While statistical data is now conflicting and incomplete, new facts are being compiled, and liberalization of abortion laws in other states and foreign countries may provide us with measurable effects

which are not yet clear. An example of the benefit of this may be gleaned from an assessment of the Colorado abortion law as reported by Richard D. Lyons in the December 8, 1969, issue of the New York Times. Mr. Lyons, in commenting on a law which closely parallels that recommended by the majority of the Commission for enactment in New Jersey, wrote:

> "Colorado's abortion reform law, the first of 10 in the nation, is being attacked by some of the very persons who supported liberalization two years ago.
>
> "Many doctors, nurses, hospital administrators and legislators here complain that the law is legally cumbersom, causes unnecessary medical red tape, and pushes the price of the operation beyond the reach of the poor.
>
> "Legislators who led the drive for passage now feel that the reforms did not go far enough and plan a constitutional challenge on the ground that any law regulating abortion is an infringement on personal freedom.
>
> "Other original backers of the reforms fear that they may have gone too far and are having second thoughts about the "preciousness of life" and "legalized infanticide."
>
> "And still others say that in two years the number of criminal abortions in Colorado has not declined, as backers of the reform had hoped, but has remained at 8,000 a year.
>
> "Thus for different reasons almost everyone seems dissatisfied with the Colorado reforms as they stand, an impression that was reinforced by interviews and discussions at the American Medical Association's clinical convention here during the week.
>
> "We made a bad law better but it's still a bad law," said Richard D. Lamm, the State Representative from Denver who helped push the reform bill through to passage by a 2-to-1 margin."

2. The law is in a state of flux. New constitutional attacks are being mounted on all abortion laws based upon the right of marital privacy established in the Griswold case, and penumbral rights emanating from values embodied in the express provisions of the Bill of Rights themselves. Such court attacks will, in all likelihood, reach the Supreme Court for decision. (Both the present and proposed law would seem to be vulnerable, if such attack has merit.)

3. There have been recent significant developments in medicine, particularly in the field of fetology.

4. What has been presented as the imminent marketing of the retroactive oral abortifacient ("morning-after pill") will drastically alter many of the medical, social and perhaps ethical factors under consideration.

5. Education in the use of contraceptives is having significant social impact, and may be interfered with by the enactment of a law which makes abortion a significant secondary means of birth control.

6. Statistics do establish that the law in this area imposes an unequal burden on the poor, with a much higher incidence of death to Black and Puerto Rican mothers as a result of abortions than is the case for White pregnant women. There is no indication that any relief to the economically or culturally disadvantaged will flow from the enactment of the proposed statute--in fact, utilization of the safeguards of that act

has lead to Colorado's similar statute being labled as a "rich lady's" law. Quoting from Mr. Lyons' New York Times article:

> "An obstetrician who performs about 10 per cent of the legal abortions in Colorado, Dr. Harvey Cohen of Denver, considers the reform of 1967 'a noble experiment in social justice that failed.'
>
> "'This is a rich lady's law,' Dr. Cohen said.
>
> "He estimated that the minimum price for a legal abortion in Colorado was $500. Surveys have found that a majority of the women seeking abortions here are from the lower and lower-middle income groups that can afford them least.
>
> * * *
>
> "'Obviously we haven't made a dent in the problem,' Dr. Cohen said. 'It's a wonder anyone gets through. Perhaps there should be no law at all.'"

Dr. Cohen's last quoted comment warrants careful thought. It is certainly the view of those who believe that there is no right to life in the fetus until birth, or at least until it may live without the mother, and, hence, any decision with respect to abortion should rest solely with the pregnant woman and her physician. It is also the view of those who take no stand on the question of humanization of the fetus, but object to the continuation on the books of a criminal law which is constantly violated and not enforced. To either of these groups, the proposed new statute provides no satisfactory solution. Most interesting, and perhaps significant, however, is the position of those who share the views of Father Robert F. Drinan, S. J., Dean of the Boston College Law School,

who would prefer to see the legislature withdraw entirely from the area rather than enact a statute specifically approving certain kins of abortion. "Such a repeal," he has written, "would not mean that the state approves of abortion but only that it declines to regulate it. If one assumes that the law teaches minds as well as regulates conduct, the potential teaching impact of a law which exalts the superiority of a mother's health over her child's right to be born and of a legal system which specifically permits the annihilation of predictably deformed or retarded children can hardly be exaggerated. Such a system creates anew and revolutionary hierarchy of rights in which the rights of the living to happiness transcend the rights of the unborn to existence. A law which is silent about the abortion of nonviable fetuses syas no such things."

Such a view would look upon legislative action along the lines of the majority recommendation as something far worse than the necessarily half-bad, half-good, legislative compromise which some people argue it to be.

CONCLUSION

The present law governing the performance of abortion in the State of New Jersey does not establish when human life begins, does not attempt to specify when the fetus may be aborted and has not been shown to increase the incidence of abortions which would endanger the life of the mother. It has permitted therapeutic abortions through a period of

changing social conditions and it has reflected a continuing legislative belief in, and concern for, the dignity, if not the sanctity, of human life. Widely divergent views as to the need for, or type of, legislative action which should be taken in this area are held among lawyers, social scientists, physicians and ethicists. All of these views are interrelated and hinge upon medical, legal, and social factors presently being subjected to rapid change and development. Our present experience with, and knowledge of, the whole range of issues connected with legislative control of abortion is inadequate and gives us no assurance that we can legislate appropriately at this point.

Under these circumstances, I submit that the risk of harm in the enactment of legislation along the lines proposed by the majority far outweigh the limited benefits that these recommendations can achieve, and that the statute should remain in its present form unless or until the legislature should decide that the criminal law should withdraw entirely from the field of abortion control.

Respectfully submitted,

OSCAR W. RITTENHOUSE
Prosecutor, Hunterdon County

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VIII. Exhibits

1. Assembly Concurrent Resolution Number 24 (1968)
2. Assembly Concurrent Resolution Number 18, OCR (1969)
3. Chapter 87 of Title 2A of the New Jersey Statutes
4. Model Penal Code, provisions on abortion, final draft, 1962
5. American Medical Association Policy Statement on Abortion, from the Journal of the American Medical Association, August 14, 1967
6. Medical Society of New Jersey Policy Statement on Abortion, from the Journal of the Medical Society of New Jersey, Vol. 65, No. 7, July, 1968
7. Chapter 327, Laws of 1967, California "Therapeutic Abortion Act"
8. House Bill Number 1426, State of Colorado, enacted 1967
9. Oregon Laws 1969, Chapter 684, Oregon Act relating to abortion
10. Chapter 67, Laws of 1969, New Mexico Act relating to abortion
11. Sections 14-44 to 14-45.1, General Statutes of North Carolina
12. Chapter 26-12 ("Abortion"), Criminal Code of Georgia
13. Sections 149E to 149G of Article 43 ("Abortion"), Annotated Code of Maryland
14. Chapter 180, Laws of 1969, Section 21-3407 ("Criminal Abortion"), State of Kansas
15. House Bill 189 (Act 61 of 1969), State of Arkansas
16. Chapter 145, Volume 57, Laws of Delaware, enacted 1969
17. Abortion Act of 1967 (1967, Chapter 87), Great Britain

EXHIBIT 1

ASSEMBLY CONCURRENT RESOLUTION No. 24

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 13, 1968

By Assemblymen CRANE, HOLLENBECK, COSTA, DE KORTE, APY, THOMAS, KALTENBACHER and SELECKY

Referred to Committee on Revision and Amendment of Laws

A CONCURRENT RESOLUTION creating a commission to study the New Jersey Statutes relating to abortion and prescribing its powers and duties.

WHEREAS, The high rate of illegal abortions constitutes a serious law enforcement and public health and safety problem;

WHEREAS, Critics of our abortion laws contend that they are unduly restrictive and have a tendency to force persons seeking to have such operations performed to fall prey to the unscrupulous and frequently unskilled abortionist, with possible tragic consequences;

WHEREAS, It is imperative that our statutes in this area operate to effectively prevent resort to illegal abortions; and

WHEREAS, It is a legislative responsibility to re-evaluate the existing statutes on abortion to determine whether they adequately protect the public health and welfare and promote effective law enforcement; now, therefore,

BE IT RESOLVED *by the General Assembly of the State of New Jersey (the Senate concurring):*

1. There is hereby created a commission to consist of 9 members, 2 to be appointed from the membership of the Senate by the President thereof, no more than one of whom shall be of the same political party, and 2 to be appointed from the membership of the General Assembly by the Speaker thereof, no more than one of whom shall be of the same political party, and 5 to be appointed by the Speaker of the General Assembly and President of the Senate acting jointly and in the following manner: one representative of the County Prosecutor's Association of New Jersey, one representative of the Medical Society of New Jersey, and three clergymen of [different] faiths. The members of the commission shall serve without compensation. Vacancies in the membership of the

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

commission shall be filled in the same manner as the original appointments were made.

2. The commission shall organize as soon as may be after the appointment of its members and shall select a chairman from among its members and a secretary who need not be a member of the commission.

3. It shall be the duty of said commission to study our statutes relating to abortion and the problem of illegal abortions.

4. The commission shall be entitled to call to its assistance and avail itself of the services of such employees of any State, county or municipal department, board, bureau, commission or agency as it may require and as may be available to it for said purpose, and to employ such stenographic and clerical assistants and incur such traveling and other miscellaneous expenses as it may deem necessary, in order to perform its duties, and as may be within the limits of funds appropriated or otherwise made available to it for said purposes.

5. The commission shall have all the powers provided by the provisions of chapter 13 of Title 52 of the Revised Statutes.

6. The commission may meet and hold hearings at such place or places as it shall designate during the sessions or recesses of the Legislature and no later than January 31, 1969, shall report its findings and recommendations to the Legislature, accompanying the same with any legislative bills which it may desire to recommend for adoption by the Legislature.

[OFFICIAL COPY REPRINT]

ASSEMBLY CONCURRENT RESOLUTION No. 18

STATE OF NEW JERSEY

INTRODUCED JANUARY 23, 1969

By Assemblymen CRANE, DE KORTE, HOLLENBECK, COSTA and COBB

Referred to Committee on Revision and Amendment of Laws

A CONCURRENT RESOLUTION reconstituting the commission to study the New Jersey Statutes relating to abortion created by Assembly Concurrent Resolution No. 24 of the 1968 Legislature.

BE IT RESOLVED *by the General Assembly of the State of New Jersey (the Senate concurring):*

1. The commission created pursuant to Assembly Concurrent Resolution No. 24 of the 1968 Legislature is hereby reconstituted and continued with the same membership. Vacancies in the membership of the commission shall be filled in the same manner as the original appointments were made. The commission shall select a chairman and vice-chairman from among its members and a secretary who need not be a member of the commission.

2. The commission, as reconstituted, shall have all the powers and duties vested in and imposed upon it by Assembly Concurrent Resolution No. 24 of the 1968 Legislature.

3. The commission may engage such counsel and expert advisers as it deems necessary or advisable within the limits of such funds appropriated or otherwise made available to it.

4. The commission shall have all the powers of a joint committee of the Legislature under the provisions of chapter 13 of Title 52 of the Revised Statutes.

5. The commission shall report its findings and recommendations to the Legislature not later than *[March]* *December* 31, 1969, accompanying the same with any legislative bills which it may desire to recommend for adoption by the Legislature.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

EXHIBIT 3

Chapter 87 of Title 2A of the New Jersey Statutes

2A:87-1. Causing miscarriage; increased penalty if death results. Any person who, maliciously or without lawful justification, with intent to cause or procure the miscarriage of a pregnant woman, administers or prescribes or advises or directs her to take or swallow any poison, drug, medicine or noxious thing, or uses any instrument or means whatever, is guilty of a high misdemeanor.

If as a consequence the woman or child shall die, the offender shall be punished by a fine of not more than $5,000, or by imprisonment for not more than 15 years, or both.

Source. R. S. 2:105-1.

2A:87-2. Persons committing abortion compelled to testify; testimony not used against them. Any person who causes or attempts to cause the miscarriage of a pregnant woman and the woman herself shall be a competent witness, and may be compelled to testify, but the testimony of such witness shall not be used in any prosecution, civil or criminal, against the person so testifying.

Source. R. S. 2:105-2.

EXHIBIT 4

Model Penal Code, provisions on abortion, final draft, 1962

Section 230.3. Abortion.

(1) Unjustified Abortion. A person who purposely and unjustifiably terminates the pregnancy of another otherwise than by a live birth commits a felony of the third degree or, where the pregnancy has continued beyond the twenty-sixth week, a felony of the second degree.

(2) Justifiable Abortion. A licensed physician is justified in terminating a pregnancy if he believes there is substantial risk that continuance of the pregnancy would gravely impair the physical or mental health of the mother or that the child would be born with grave physical or mental defect, or that the pregnancy resulted from rape, incest, or other felonious intercourse. All illicit intercourse with a girl below the age of 16 shall be deemed felonious for purposes of this subsection. Justifiable abortions shall be performed only in a licensed hospital except in case of emergency when hospital facilities are unavailable. [Additional exceptions from the requirement of hospitalization may be incorporated here to take account of situations in sparsely settled areas where hospitals are not generally accessible.]

(3) Physicians' Certificates; Presumption from Non-Compliance. No abortion shall be performed unless two physicians, one of whom may be the person performing the abortion, shall have certified in writing the circumstances which they believe to justify the abortion. Such certificate shall be submitted before the abortion to the hospital where it is to be performed and, in the case of abortion following felonious intercourse, to the prosecuting attorney or the police. Failure to comply with any of the requirements of this Subsection gives rise to a presumption that the abortion was unjustified.

(4) Self-Abortion. A woman whose pregnancy has continued beyond the twenty-sixth week commits a felony of the third degree if she purposely terminates her own pregnancy otherwise than by a live birth, or if she uses instruments, drugs or violence upon herself for that purpose. Except as justified under Subsection (2), a person who induces or knowingly aids a woman to use instruments, drugs

or violence upon herself for the purpose of terminating her pregnancy otherwise than by a live birth commits a felony of the third degree whether or not the pregnancy has continued beyond the twenty-sixth week.

(5) Pretended Abortion. A person commits a felony of the third degree if, representing that it is his purpose to perform an abortion, he does an act adapted to cause abortion in a pregnant woman although the woman is in fact not pregnant, or the actor does not believe she is. A person charged with unjustified abortion under Subsection (1) or an attempt to commit that offense may be convicted thereof upon proof of conduct prohibited by this Subsection.

(6) Distribution of Abortifacients. A person who sells, offers to sell, possesses with intent to sell, advertises, or displays for sale anything specially designed to terminate a pregnancy, or held out by the actor as useful for that purpose, commits a misdemeanor, unless:

(a) the sale, offer or display is to a physician or druggist or to an intermediary in a chain of distribution to physicians or druggists; or

(b) the sale is made upon prescription or order of a physician; or

(c) the possession is with intent to sell as authorized in paragraphs (a) and (b); or

(d) the advertising is addressed to persons named in paragraph (a) and confined to trade or professional channels not likely to reach the general public.

(7) Section Inapplicable to Prevention of Pregnancy. Nothing in this Section shall be deemed applicable to the prescription, administration or distribution of drugs or other substances for avoiding pregnancy, whether by preventing implantation of a fertilized ovum or by any other method that operates before, at or immediately after fertilization.

EXHIBIT 7

Chapter 327, Laws of 1967, State of California, "Therapeutic Abortion Act"

CHAPTER 327

An act to add Chapter 11 (commencing with Section 25950) to Division 20 of the Health and Safety Code, to amend Section 2377 of the Business and Professions Code, and to amend Sections 274, 275, and 276 of the Penal Code, relating to abortion.

[Approved by Governor June 15, 1967. Filed with Secretary of State June 15, 1967.]

The people of the State of California do enact as follows:

SECTION 1. Chapter 11 (commencing with Section 25950) is added to Division 20 of the Health and Safety Code, to read:

CHAPTER 11. ABORTION

25950. This chapter shall be known and may be cited as the Therapeutic Abortion Act.

25951. A holder of the physician's and surgeon's certificate, as defined in the Business and Professions Code, is authorized to perform an abortion or aid or assist or attempt an abortion, only if each of the following requirements is met:

(a) The abortion takes place in a hospital which is accredited by the Joint Commission on Accreditation of Hospitals.

(b) The abortion is approved in advance by a committee of the medical staff of the hospital, which committee is established and maintained in accordance with standards promulgated by the Joint Commission on Accreditation of Hospitals. In any case in which the committee of the medical staff consists of no more than three licensed physicians and surgeons, the unanimous consent of all committee members shall be required in order to approve the abortion.

(c) The Committee of the Medical Staff finds that one or more of the following conditions exist:

(1) There is substantial risk that continuance of the pregnancy would gravely impair the physical or mental health of the mother;

(2) The pregnancy resulted from rape or incest.

25952. The Committee of the Medical Staff shall not approve the performance of an abortion on the ground that the pregnancy resulted from rape or incest except in accordance with the following procedure:

(a) Upon receipt of an application for an abortion on the grounds that the pregnancy resulted from rape or incest, the committee shall immediately notify the district attorney of the county in which the alleged rape or incest occurred of the application, and transmit to the district attorney the affidavit of the applicant attesting to the facts establishing the alleged rape or incest. If the district attorney informs the committee that there is probable cause to believe that the pregnancy resulted from a violation of Section 261 or Section 285

of the Penal Code, the committee may approve the abortion. If, within five days after the committee has notified the district attorney of the application, the committee does not receive a reply from the district attorney, it may approve the abortion. If the district attorney informs the committee that there is no probable cause to believe the alleged violation did occur, the committee shall not approve the abortion, except as provided in subdivision (b) of this section;

(b) If the district attorney informs the committee that there is no probable cause to believe the alleged violation did occur, the person who applied for the abortion may petition the superior court of the county in which the alleged rape or incest occurred, to determine whether the pregnancy resulted from a violation of Section 261 or Section 285 of the Penal Code. Hearing on the petition shall be set for a date no later than one week after the date of filing of the petition.

The district attorney shall file an affidavit with the court stating the reasons for his conclusion that the alleged violation did not occur, and this affidavit shall be received in evidence. The district attorney may appear at the hearing to offer further evidence or to examine witnesses.

If the court finds that it has been proved, by a preponderance of the evidence, that the pregnancy did result from a violation of Section 261 or Section 285 of the Penal Code, it shall issue an order so declaring, and the committee may approve the abortion. Any hearing granted under this section may, at the court's discretion, be held in camera. The testimony, findings, conclusions or determinations of the court in a proceeding under this section shall be inadmissible as evidence in any other action or proceeding, although nothing herein shall be construed to prevent the appearance of any witness who testified at a proceeding under this section, or to prevent the introduction of any evidence that may have been introduced at a proceeding under this section, in any other action or proceeding.

(c) Notwithstanding any other provision of this section, an abortion shall be approved on the ground of a violation of subdivision 1 of Section 261 of the Penal Code only when the woman at the time of the alleged violation, was below the age of 15 years.

(d) Notwithstanding any other provision of this section, the testimony of any witness in a proceeding under this section shall be admissible as evidence in any prosecution of that witness for perjury.

25953. The committee of the medical staff referred to in Section 25951 must, in all instances, consist of not less than two licensed physicians and surgeons, and if the proposed termination of pregnancy will occur after the 13th week of pregnancy, the committee must consist of at least three such licensed physicians and surgeons. In no event shall the termination be approved after the 20th week of pregnancy.

25954. The term "mental health" as used in Section 25951 means mental illness to the extent that the woman is dangerous to herself or to the person or property of others or is in need of supervision or restraint.

SEC. 2. Section 2377 of the Business and Professions Code is amended to read:

2377. The procuring or aiding or abetting or attempting or agreeing or offering to procure an abortion constitutes unprofessional conduct within the meaning of this chapter, unless such an act be done in compliance with the provisions of the Therapeutic Abortion Act, Chapter 11 (commencing with Section 25950) of Division 20 of the Health and Safety Code.

SEC. 3. Section 274 of the Penal Code is amended to read:

274. Every person who provides, supplies, or administers to any woman, or procures any woman to take any medicine, drug, or substance, or uses or employs any instrument or other means whatever, with intent thereby to procure the miscarriage of such woman, except as provided in the Therapeutic Abortion Act, Chapter 11 (commencing with Section 25950) of Division 20 of the Health and Safety Code, is punishable by imprisonment in the state prison not less than two nor more than five years.

SEC. 4. Section 275 of the Penal Code is amended to read:

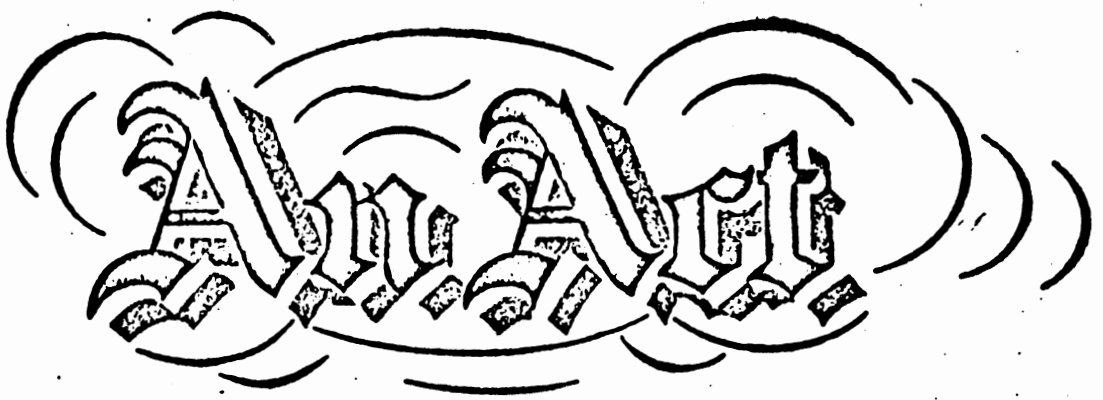
275. Every woman who solicits of any person any medicine, drug, or substance whatever, and takes the same, or who submits to any operation, or to the use of any means whatever, with intent thereby to procure a miscarriage, except as provided in the Therapeutic Abortion Act, Chapter 11 (commencing with Section 25950) of Division 20 of the Health and Safety Code, is punishable by imprisonment in the state prison not less than one nor more than five years.

SEC. 5. Section 276 of the Penal Code is amended to read:

276. Every person who solicits any woman to submit to any operation, or to the use of any means whatever, to procure a miscarriage, except as provided in the Therapeutic Abortion Act, Chapter 11 (commencing with Section 25950) of Division 20 of the Health and Safety Code, is punishable by imprisonment in the county jail not longer than one year or in the state prison not longer than five years, or by fine of not more than five thousand dollars ($5,000). Such offense must be proved by the testimony of two witnesses, or of one witness and corroborating circumstances.

EXHIBIT 8

House Bill Number 1426, State of Colorado, enacted 1967



(House Bill No. 1426. By Representatives Lamm, Gustafson, Bain, Black, Braden, Bryant, Burch, Burns, Coffee, Cresswell, Edmonds, Fowler, Frank, Friedman, Fuhr, Gebhardt, Gollob, Grimshaw, Grove, Haskell, Johnson, Koster, Lowery, McNeil, Monfort, Morris, Norgren, Porter, Safran, Schafer, Schubert, Sonnenberg, Strahle, Wilder, and Woodfin; also Senators Bermingham, Anderson, Brown, Cisneros, DeBernard, Decker, Garnsey, Hahn, Hewett, Hodges, Jackson, Kemp, Oliver, Stockton, and Thomas.)

RELATING TO ABORTION.

Be it enacted by the General Assembly of the State of Colorado:

Section 1. Article 2 of chapter 40, Colorado Revised Statutes 1963, as amended, is amended BY THE ADDITION OF A NEW SECTION 40-2-50 to read:

40-2-50. Definitions.—(1) As used in this act:

(2) "Pregnancy" means the implantation of an embryo in the uterus.

(3) "Accredited hospital" means one licensed by the Colorado State Department of Public Health and accredited by the Joint Commission on Accreditation of Hospitals.

(4) (a) "Justified medical termination" means the intentional ending of the pregnancy of a woman at the request of said woman or if said woman is under the age of 18 years, then at the request of said woman and her then living parent or guardian, or if the woman is married and living with her husband at the request of said woman and her husband, by a licensed physician using accepted medical procedures in a fully accredited hospital upon written certification by all of the members of a special hospital board that:

(i) Continuation of the pregnancy, in their opinion, is likely to result in: the death of the woman; or the serious permanent impairment of the physical health of the woman; or the serious permanent impairment of the mental health of the woman as confirmed in writing under the signature of a licensed doctor of medicine specializing in psychiatry; or the birth of a child with grave and permanent physical deformity or mental retardation; or

(ii) Less than sixteen weeks of gestation have passed and that the pregnancy resulted from rape, as defined in section 40-2-25 (1) (a), (c), (d) and (e), or rape as defined in 40-2-25 (1) (a), (b), or (j) if the female person has not reached her sixteenth birthday at the time of said rape; or incest,

as defined in section 40-9-4, and that the district attorney of the judicial district in which the alleged rape or incest has occurred has informed the committee in writing under his signature, that there is probable cause to believe that the alleged violation did occur.

(5) "Special hospital board" means a committee of three licensed physicians who are members of the staff of the hospital where the proposed termination would be performed if certified in accordance with this act and who meet regularly or on call for the purpose of determining the question of medical justification in each individual case, and which maintains a written record, signed by each member, of the proceedings and deliberations of such board.

Section 2. Article 2 of chapter 40, Colorado Revised Statutes 1963, as amended, is amended BY THE ADDITION OF A NEW SECTION 40-2-51 to read:

40-2-51. Criminal abortion.—(1) Any person who intentionally ends or causes to be ended the pregnancy of a woman by any means other than by justified medical termination of the pregnancy or live birth is guilty of a felony, punishable by imprisonment in the state penitentiary for not less than three years nor more than ten years and by a fine in a sum not exceeding two thousand dollars.

(2) If any woman shall die as the result of the intentional ending of her pregnancy by any means other than by justified medical termination of the pregnancy or live birth, the person responsible is guilty of murder and shall be punished accordingly.

Section 3. Article 2 of chapter 40, Colorado Revised Statutes 1963, as amended, is amended BY THE ADDITION OF A NEW SECTION 40-2-52 to read:

40-2-52. Pretended criminal abortion.—(1) Any person who intentionally pretends to end the real or apparent pregnancy of a woman by any means other than by justified medical termination of the pregnancy or live birth is guilty of a felony, punishable by imprisonment in the state penitentiary for not less than one year nor more than three years and by a fine in a sum not exceeding one thousand dollars.

(2) If any woman shall die as the result of the intentional pretended ending of her real or apparent pregnancy by any means other than by justified medical termination of the pregnancy or live birth, the person so pretending to end the real or apparent pregnancy is guilty of murder and shall be punished accordingly.

Section 4. Failure to comply.—Nothing herein shall require a hospital to admit any patient under the provisions of this act for the purposes of performing an abortion, nor shall any hospital be required to appoint a special hospital board as defined in this act. A person who is a member of or associated with the staff of a hospital or any employee of a hospital in which a justified medical termination has been authorized and who shall state in writing an objection to such termination on moral or religious grounds shall not be required to participate in the medical procedures which will result in the termination of a pregnancy and the refusal of any such person to participate shall not form the basis for any disciplinary or other recriminatory action against such person.

Section 5. Repeal.—40-2-23, Colorado Revised Statutes 1963, is repealed.

Section 6. Safety clause.—The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

EXHIBIT 9

Oregon Laws 1969, Chapter 684, Oregon Act relating to abortion

CHAPTER 684

AN ACT

Relating to abortion; creating new provisions; amending ORS 465.110, 677.188 and 677.190; repealing ORS 163.060; and providing penalties.

Be It Enacted by the People of the State of Oregon:

Section 1. As used in sections 2 to 6 of this Act, unless the context requires otherwise:

(1) "Felonious intercourse" means acts constituting a crime under ORS 163.210, 163.220 or 167.035.

(2) "Hospital" means a hospital licensed under ORS chapter 441 but not including nursing homes or convalescent homes.

(3) "Physician" means a person licensed to practice medicine by the Board of Medical Examiners for the State of Oregon.

Section 2. A person who purposely terminates the pregnancy of another for purposes other than delivery of a viable birth, unless justified under section 3 of this Act, shall be punished upon conviction by imprisonment in the penitentiary for not more than 15 years or by a fine not exceeding $5,000, or both.

Section 3. (1) A physician is justified in terminating the pregnancy of an Oregon resident if he has reasonable grounds for believing that:

(a) There is substantial risk that continuance of the pregnancy will greatly impair the physical or mental health of the mother;

(b) The child would be born with serious physical or mental defect; or

(c) The pregnancy resulted from felonious intercourse.

(2) In determining whether or not there is substantial risk under paragraph (a) of subsection (1) of this section, account may be taken of the mother's total environment, actual or reasonably foreseeable.

(3) A justifiable termination of a pregnancy shall be performed only by a physician in a hospital.

Section 4. (1) No pregnancy shall be terminated unless two physicians who are neither related to each other by blood or marriage nor associated with each other in the practice of medicine have certified in writing the circumstances which they believe justify the termination. A signed copy of the certificate shall become part of the hospital record. However, no pregnancy shall be terminated after the 150th day of pregnancy except in accordance with section 8 of this Act.

(2) When there is reason to believe that the pregnancy was the result of felonious intercourse, the administrator of the hospital shall send a copy of the certificate to the district attorney of the county where the hospital is located.

(3) Failure to comply with any of the requirements of this section gives rise to a rebuttable presumption that termination of the pregnancy was unjustified.

Section 5. Except as justified under section 3 of this Act, a person who induces or knowingly aids a woman to use instruments, drugs or violence upon herself for the purpose of terminating her pregnancy other than by viable birth shall be punished upon conviction by imprisonment in the penitentiary for not more than five years.

Section 6. Nothing in sections 1 to 6 of this Act applies to the prescription, administration or distribution of drugs or other substances for avoiding pregnancy, whether by preventing implantation of a fertilized ovum or by any other method that operates before, at or immediately after fertilization.

Section 7. (1) No pregnancy shall be terminated without the written consent of the pregnant woman and:

(a) The written consent of a parent who has custody or the guardian if the pregnant woman is an unmarried minor.

(b) The written consent of the guardian if the pregnant woman has been judicially declared a mentally incompetent person.

(c) The written consent of the husband if the pregnant woman is married and the husband and wife have been living together.

(2) Copies of the consents required under this section shall become part of the hospital record.

Section 8. (1) Nothing in this Act prevents a physician from terminating a pregnancy without complying with this Act if the physician believes in good faith that:

(a) The life of the pregnant woman is in imminent danger; and

(b) There is insufficient time to comply with the requirements of this Act.

(2) A physician who terminates a pregnancy under subsection (1) of this section must report within 48 hours thereafter the termination to the appropriate committee of the hospital in which the termination occurred or to the State Board of Health if the termination occurred other than in a hospital. The report shall include his certification of the circumstances, conditions and reasons for which the pregnancy was terminated and the reasons why he was unable to comply with this Act.

Section 9. (1) Except as provided in subsection (3) of this section, no hospital is required to admit any patient for the purpose of terminating a pregnancy pursuant to section 3 of this Act. No hospital is liable for its failure or refusal to participate in such termination if the hospital has adopted a policy not to admit patients for the purposes of terminating pregnancies as provided in section 3 of this Act. However, the hospital must notify the person seeking admission to the hospital of its policy.

(2) All hospitals that have not adopted a policy not to admit patients seeking termination of a pregnancy under section 3 of this Act shall admit patients seeking such termination in the same manner and subject to the same conditions as imposed on any other patient seeking admission to the hospital.

(3) No hospital operated by this state or by a political subdivision in this state is authorized to adopt a policy of excluding or denying admission to any person seeking termination of a pregnancy under section 3 of this Act.

Section 10. No hospital employe or member of the hospital medical staff is required to participate in any termination of a pregnancy as provided in section 3 of this Act if he notifies the hospital of his election not to participate in such terminations.

Section 11. No physician is required to give advice with respect to or participate in any termination of a pregnancy as provided in section 3 of this Act if his refusal to do so is based on an election not to give such advice or to participate in such terminations and he so advises the patient.

Section 12. The refusal of any person to consent to a termination of pregnancy or to submit thereto shall not be grounds for loss of any privilege or immunity to which the person is otherwise entitled nor shall consent to or submission to a termination of pregnancy be imposed as a condition to the receipt of any public benefits.

Section 13. (1) The State Board of Health shall require reports from hospitals at such intervals and in such form as the board may require to assist the board in determining the operation of this Act.

(2) Reports submitted under this section shall not disclose the names or identities of hospital patients.

Section 14. ORS 677.188 is amended to read:

677.188. As used in ORS 677.190, unless the context requires otherwise:

~~[(1) "Abortion" means the expulsion of the fetus from the uterus at a period of uterogestation so early that it has not acquired the power of sustaining an independent life. It is conclusively presumed for the purposes of ORS 677.190 that the fetus has not acquired such power earlier than the 150th day after conception or if the fetus weighs less than 400 grams and is less than 28 centimeters in length. A disputable presumption of lack of such power arises if the expulsion takes place earlier than the 182nd day after conception.]~~

~~[(2)]~~ *(1)* "Fraud or misrepresentation" means the intentional misrepresentation or misstatement of a material fact, concealment of or failure to make known any material fact, or any other means by which misinformation or a false impression knowingly is given.

~~[(3)]~~ *(2)* "Fraudulent claim" means a claim submitted to any patient, insurance or indemnity association, company or individual for the purpose of gaining compensation, which the person making the claim knows to be false.

~~[(4)]~~ *(3)* "Manifestly incurable condition, sickness, disease or injury" means one that is declared to be incurable by competent physicians and surgeons or by other recognized authority.

~~[(5)]~~ *(4)* "Unprofessional or dishonorable conduct" means conduct unbecoming a person licensed to practice medicine, or detrimental to the best interests of the public.

Section 15. ORS 677.190 is amended to read:

677.190. The board may suspend or revoke a license to practice medicine in this state for any of the following reasons:

(1) Unprofessional or dishonorable conduct.

(2) ~~[The procuring or aiding or abetting in procuring an abortion unless such is done for the relief of a woman whose health appears in peril because of her pregnant condition after due consultation with another person licensed to practice medicine in this state who is not an associate or relative of the physician or patient and who agrees that an abortion is necessary. The record of this consultation shall be in writing and shall be maintained in the hospital where the consultation occurred or in the offices of all licensees involved for a period of at least three years after the date of such abortion.]~~ *Conviction under section 2 or subsection (2) of section 5 of this 1969 Act or failure to comply with the provisions of section 3 or 4 of this 1969 Act.*

(3) Employing any person to solicit patients for him.

(4) Representing to a patient that a manifestly incurable condition of sickness, disease or injury can be cured.

(5) Obtaining any fee by fraud or misrepresentation.

(6) Wilfully or negligently divulging a professional secret.

(7) Conviction of any offense punishable by incarceration in a state penitentiary or in a federal prison. A copy of the record of conviction, certified to by the clerk of the court entering the conviction, shall be conclusive evidence.

(8) Habitual or excessive use of intoxicants or drugs.

(9) Fraud or misrepresentation in applying for or procuring a license to practice in this state, or in connection with applying for or procuring an annual registration.

(10) Making false or misleading statements regarding his skill or the efficacy or value of the medicine, treatment or remedy prescribed or administered by him or at his direction in the treatment of any disease or other condition of the human body or mind.

(11) Impersonating another person licensed to practice medicine or permitting or allowing any person to use his license or certificate of registration.

(12) Aiding or abetting the practice of medicine by a person not licensed by the board.

(13) Using his name under the designation "doctor," "Dr.," "D.O." or "M.D." or any similar designation with reference to the commercial exploitation of any goods, wares or merchandise.

(14) Insanity or mental disease as evidenced by an adjudication or by voluntary commitment to an institution for treatment of a mental disease, or as determined by an examination conducted by three impartial psychiatrists retained by the board.

(15) Gross negligence in the practice of medicine.

(16) Manifest incapacity to practice medicine.

(17) The suspension or revocation by another state of a license to practice medicine, based upon acts by the licensee similar to acts described in this section. A certified copy of the record of suspension or revocation of the state making such suspension or revocation is conclusive evidence thereof.

(18) Failing to designate the degree appearing on the license under circumstances described in subsection (3) of ORS 677.184.

(19) Wilfully violating any provision of this chapter or any rule promulgated by the board.

(20) Changing his location of practice as provided in ORS 677.170.

(21) Adjudication of or admission to a hospital for mental illness or imprisonment as provided in ORS 677.225.

(22) Making a fraudulent claim.

Section 16. ORS 465.110 is amended to read:

465.110. ~~[(1) Whoever erects, establishes, continues, maintains, owns or leases any building, erection or place used for the purpose of lewdness, assignation or prostitution or any other immoral act, or place where any person administers to any woman, whether pregnant with child or not, any medicine, drug or substance whatever, or uses or employs any instrument or other means, with intent thereby to destroy a child of such woman, unless the same is necessary to preserve the life of such woman or unless such is done for the relief of a woman whose health appears in peril because of her pregnant condition after due consultation with another licensed physician under the conditions and restrictions prescribed in subsection (2) of ORS 677.100, is guilty of maintaining a nuisance. The building, erection or place, or the ground itself, in or upon which or in any part of which such lewdness, assignation or prostitution or place is conducted, permitted or carried on, continued or exists, or in any part of which such medicine, drug or substance is administered or such instrument or other means is used or employed, as aforesaid, and the furniture, fixtures, instruments, appliances, medicines, drugs and contents of such premises are also declared a nuisance, and shall be enjoined and abated as provided in ORS 465.120 to 465.180.]~~ *Whoever establishes or maintains any place used for the purpose of lewdness, assignation or prostitution or any other immoral act, or a place where pregnancies are terminated in violation of sections 2 to 5 of this 1969 Act, is guilty of maintaining a nuisance. The place where such lewdness, assignation or termination of pregnancies is conducted or carried on and the contents of such premises are declared a nuisance and shall be enjoined and abated as provided in ORS 465.120 to 465.180.*

~~[(2) This section shall not be deemed to modify, alter or amend by implication any of the provisions of ORS 163.060, nor to affect prosecutions thereunder.]~~

Section 17. ORS 163.060 is repealed.

Approved by the Governor June 16, 1969.

Filed in the office of Secretary of State June 16, 1969.

Senate Bill Number 193, State of Oregon, enacted 1969

Senate Bill 193

A BILL FOR AN ACT

Relating to abortion; creating new provisions; amending ORS 465.110, 677.188 and 677.190; repealing ORS 163.060; and providing penalties

Be It Enacted by the People of the State of Oregon:

Section 1. As used in sections 2 to 6 of this Act, unless the context requires otherwise:

(1) "Felonious intercourse" means acts constituting a crime under ORS 163.210, 163.220 or 167.035.

(2) "Hospital" means a hospital licensed under ORS chapter 441 but not including nursing homes or convalescent homes.

(3) "Physician" means a person licensed to practice medicine by the Board of Medical Examiners for the State of Oregon.

Section 2. A person who purposely terminates the pregnancy of another for purposes other than delivery of a viable birth, unless justified under section 3 of this Act, shall be punished upon conviction by imprisonment in the penitentiary for not more than 15 years or by a fine not exceeding $5,000, or both.

Section 3. (1) A physician is justified in terminating the pregnancy of an Oregon resident if he has reasonable grounds for believing that:

(a) There is substantial risk that continuance of the pregnancy will greatly impair the physical or mental health of the mother;

(b) The child would be born with serious physical or mental defect;

(c) The pregnancy resulted from felonious intercourse;

(2) In determining whether or not there is substantial risk under paragraph (a) of subsection (1) of this section, account may be taken of the mother's total environment, actual or reasonably foreseeable.

(3) A justifiable termination of a pregnancy shall be performed only by a physician in a hospital.

Note: Matter in Italics in an amended section is new; matter (~~lined-out and~~ bracketed) is existing law to be omitted; complete new sections begin with Section.

Section 4. (1) No pregnancy shall be terminated unless two physicians who are neither related to each other by blood or marriage nor associated with each other in the practice of medicine have certified in writing the circumstances which they believe justify the termination. A signed copy of the certificate shall become part of the hospital record. However, no pregnancy shall be terminated after the 150th day of pregnancy except in accordance with section 8 of this Act.

(2) When there is reason to believe that the pregnancy was the result of felonious intercourse, the administrator of the hospital shall send a copy of the certificate to the district attorney of the county where the hospital is located.

(3) Failure to comply with any of the requirements of this section gives rise to a rebuttable presumption that termination of the pregnancy was unjustified.

Section 5. Except as justified under section 3 of this Act, a person who induces or knowingly aids a woman to use instruments, drugs or violence upon herself for the purpose of terminating her pregnancy other than by viable birth shall be punished upon conviction by imprisonment in the penitentiary for not more than five years.

Section 6. Nothing in sections 1 to 6 of this Act applies to the prescription, administration or distribution of drugs or other substances for avoiding pregnancy, whether by preventing implantation of a fertilized ovum or by any other method that operates before, at or immediately after fertilization.

Section 7. (1) No pregnancy shall be terminated without the written consent of the pregnant woman and:

(a) The written consent of a parent who has custody or the guardian if the pregnant woman is an unmarried minor.

(b) The written consent of the guardian if the pregnant woman has been judicially declared a mentally incompetent person.

(c) The written consent of the husband if the pregnant woman is married and the husband and wife have been living together.

(2) Copies of the consents required under this section shall become part of the hospital record.

Section 8. (1) Nothing in this Act prevents a physician from terminating a pregnancy without complying with this Act if the physician believes in good faith that:

(a) The life of the pregnant woman is in imminent danger; and

(b) There is insufficient time to comply with the requirements of this Act.

(2) A physician who terminates a pregnancy under subsection (1) of this section must report within 48 hours thereafter the termination to the appropriate committee of the hospital in which the termination occurred or to the State Board of Health if the termination occurred other than in a hospital. The report shall include his certification of the circumstances, conditions and reasons for which the pregnancy was terminated and the reasons why he was unable to comply with this Act.

Section 9. (1) Except as provided in subsection (3) of this section, no hospital is required to admit any patient for the purpose of terminating a pregnancy pursuant to section 3 of this Act. No hospital is liable for it's failure or refusal to participate in such termination if the hospital has adopted a policy not to admit patients for the purposes of terminating pregnancies as provided in section 3 of this Act. However, the hospital must notify the person seeking admission to the hospital of its policy.

(2) All hospitals that have not adopted a policy not to admit patients seeking termination of a pregnancy under section 3 of this Act shall admit patients seeking such termination in the same manner and subject to the same conditions as imposed on any other patient seeking admission to the hospital.

(3) No hospital operated by this state or by a political subdivision in this state is authorized to adopt a policy by excluding or denying admission to any person seeking termination of a pregnancy under section 3 of this Act.

Section 10. No hospital employe or member of the hospital medical staff is required to participate in any termination of a pregnancy as provided in section 3 of this Act if he notifies the hospital of his election not to participate in such terminations.

Section 11. No physician is required to give advice with respect to or participate in any termination of a pregnancy as provided in section 3 of this Act if his refusal to do so is based on an election not to give such advice or to participate in such terminations and he so advises the patient.

Section 12. The refusal of any person to consent to a termination of pregnancy or to submit thereto shall not be grounds for loss of any privilege or immunity to which the person is otherwise entitled nor shall consent to or submission to a termination of pregnancy be imposed as a condition to the receipt of any public benefits.

Section 13. (1) The State Board of Health shall require reports from hospitals at such intervals and in such form as the board may require to assist the board in determining the operation of this Act.

(2) Reports submitted under this section shall not disclose the names or identities of hospital patients.

Section 14. ORS 677.188 is amended to read:

677.188. As used in ORS 677.190, unless the context requires otherwise:

~~[(1) "Abortion" means the expulsion of the fetus from the uterus at a period of uterogestation so early that it has not acquired the power of sustaining an independent life. It is conclusively presumed for the purposes of ORS 677.190 that the fetus has not acquired such power earlier than the 150th day after conception or if the fetus weighs less than 400 grams and is less than 28 centimeters in length. A disputable presumption of lack of such power arises if the expulsion takes place earlier than the 182nd day after conception.]~~

~~[(2)]~~ *(1)* "Fraud or misrepresentation" means the intentional misrepresentation or misstatement of a material fact, concealment of or failure to make known any material fact, or any other means by which misinformation or a false impression knowlingly is given.

~~[(3)]~~ *(2)* "Fraudulent claim" means a claim submitted to any patient, insurance or indemnity association, company or individual for the purpose of gaining compensation, which the person making the claim knows to be false.

~~[(4)]~~ *(3)* "Manifestly incurable condition, sickness, disease or injury" means one that is declared to be incurable by competent physicians and surgeons or by other recognized authority.

~~[(5)]~~ *(4)* "Unprofessional or dishonorable conduct" means conduct unbecoming a person licensed to practice medicine, or detrimental to the best interests of the public.

Section 15. ORS 677.190 is amended to read:

677.190 The board may suspend or revoke a license to practice medicine in this state for any of the following reasons:

(1) Unprofessional or dishonorable conduct.

(2) ~~[The procuring or aiding or abetting in procuring an abortion unless such is done for the relief of a woman whose health appears in peril because of her pregnant condition after due consultation with another person licensed to practice medicine in this state who is not an associate or relative of the physician or patient and who agrees that an abortion is necessary. The record of this consultation shall be in writing and shall be maintained in the hospital where the consultation occurred or in the offices of all licensees involved for a period of at least three years after the date of such abortion.]~~ *Conviction under section 2 or subsection (2) of section 5 of this 1969 Act or failure to comply with the provisions of section 3 or 4 of this 1969 Act.*

(3) Employing any person to solicit patients for him

(4) Representing to a patient that a manifestly incurable condition of sickness, disease or injury can be cured.

(5) Obtaining any fee by fraud or misrepresentation.

(6) Wilfully or negligently divulging a professional secret.

(7) Conviction of any offense punishable by incarceration in a state penitentiary or in a federal prison. A copy of the record of conviction, certified to by the clerk of the court entering the conviction, shall be conclusive evidence.

(8) Habitual or excessive use of intoxicants or drugs.

(9) Fraud or misrepresentation in applying for or procuring a license to practice in this state, or in connection with applying for or procuring an annual registration.

(10) Making false or misleading statements regarding his skill or the efficacy or value of the medicine, treatment or remedy prescribed or administered by him or at his direction in the treatment of any disease or other condition of the human body or mind.

(11) Impersonating another person licensed to practice medicine or permitting or allowing any person to use his license or certificate of registration.

(12) Aiding or abetting the practice of medicine by a person not licensed by the board.

(13) Using his name under the designation "doctor," "Dr.," "D.O." or "M.D." or any similar designation with reference to the commercial exploitation of any goods, wares or merchandise.

(14) Insanity or mental disease as evidenced by an adjudication or by voluntary commitment to an institution for treatment of a mental disease, or as determined by an examination conducted by three impartial psychiatrists retained by the board.

(15) Gross negligence in the practice of medicine.

(16) Manifest incapacity to practice medicine.

(17) The suspension or revocation by another state of a license to practice medicine, based upon acts by the licensee similar to acts des-

cribed in this section. A certified copy of the record of suspension or revocation of the state making such suspension or revocation is conclusive evidence thereof.

(18) Failing to designate the degree appearing on the license under circumstances described in subsection (3) of ORS 677.184.

(19) Wilfully violating any provision of this chapter or any rule promulgated by the board.

(20) Changing his location of practice as provided in ORS 677.170.

(21) Adjudication of or admission to a hospital for mental illness or imprisonment as provided in ORS 677.225.

(22) Making a fradulent claim.

Section 16. ORS 465.110 is amended to read:

465.110. ~~[(1) Whoever erects, establishes, continues, maintains, owns, or leases any building, erection or place used for the purpose of lewdness, assignation or prostitution or any other immoral act, or place where any person administers to any woman, whether pregnant with child or not, any medicine, drug or substance whatever, or uses or employs any instrument or other means, with intent thereby to destroy a child of such woman, unless the same is necessary to preserve the life of such woman or unless such is done for the relief of a woman whose health appears in peril because of her pregnant condition after due consultation with another licensed physician under the conditions and restrictions prescribed in subsection (2) of ORS 677.190, is guilty of maintaining a nuisance. The building, erection or place, or the ground itself, in or upon which or in any part of which such lewdness, assignation or prostitution or place is conducted, permitted or carried on, continued or exists, or in any part of which such medicine, drug or substance is administered or or such instrument or other means is used or employed, as aforesaid, and the furniture, fixtures, instruments, appliances, medicines, drugs and contents of such premises are also declared a nuisance, and shall be enjoined and abated as provided in ORS 465.120 to 465.180.]~~ *Whoever establishes or maintains any place used for the purpose of lewdness, assignation or prostitution or any other immoral act, or a place where pregnancies are terminated in violation of sections 2 to 5 of this 1969 Act, is guilty of maintaining a nuisance. The place where such lewdness, assignation or termination of pregnancies is conducted or carried on and the contents of such premises are declared a nusiance and shall be enjoined and abated as provided in ORS 465.120 to 465.180.*

~~[(2) This section shall not be deemed to modify, alter or amend by implication any of the provisions of ORS 163.060, nor to affect prosecutions thereunder.]~~

Section 17. ORS 163.060 is repealed.

EXHIBIT 10

Chapter 67, Laws of 1969, State of New Mexico

CHAPTER 67

House Corporations and Banks Committee
Substitute for HOUSE BILL NO. 207
Approved March 21, 1969

AN ACT

RELATING TO ABORTIONS; CREATING STANDARDS AND PROCEDURES; EXEMPTING AND PROTECTING PERSONS AND INSTITUTIONS NOT PARTICIPATING IN ABORTIONS; CREATING AND DEFINING THE CRIME OF ABORTION; PROVIDING PENALTIES THEREFOR; REPEALING SECTIONS 40A-5-1 THROUGH 40A-5-3 NMSA 1953 (BEING LAWS 1963, CHAPTER 303, SECTIONS 5-1 THROUGH 5-3); AND ENACTING NEW SECTIONS 40A-5-1 THROUGH 40A-5-3 NMSA 1953.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 40A-5-1 NMSA (being Laws 1963, Chapter 303, Section 5-1) is repealed and a new Section 40A-5-1 NMSA 1953 is enacted to read:

"40A-5-1. DEFINITIONS.--As used in this article:

A. "pregnancy" means the implantation of an embryo in the uterus;

B. "accredited hospital" means one licensed by the health and social services department;

C. "justified medical termination" means the intentional ending of the pregnancy of a woman at the request of said woman or if said woman is under the age of eighteen years, then at the request of said woman and her then living parent or guardian, by a physician licensed by the state of New Mexico using acceptable medical procedures in an accredited hospital upon written certification by the members of a special hospital board that:

(1) the continuation of the pregnancy, in their opinion, is likely to result in the death of the woman or the grave impairment of the physical or mental health of the woman; or

(2) the child probably will have a grave physical or mental defect; or

(3) the pregnancy resulted from rape, as defined in Sections 40A-9-2 through 40A-9-4 NMSA 1953. Under this paragraph, to justify a medical termination of the pregnancy, the woman must present to the special hospital board an affidavit that she has been raped and

that the rape has been or will be reported to an appropriated law enforcement official; or

(4) the pregnancy resulted from incest.

D. "special hospital board" means a committee of two licensed physicians or their appointed alternates who are members of the medical staff at the accredited hospital where the proposed justified medical termination would be performed, and who meet for the purpose of determining the question of medical justification in an individual case, and maintain a written record of the proceedings and deliberations of such board."

Section 2. Section 40A-5-2 NMSA 1953 (being Laws 1963, Chapter 303, Section 5-2) is repealed and a new Section 40A-5-2 NMSA 1953 is enacted to read:

"40A-5-2 PERSONS AND INSTITUTIONS EXEMPT.--This article does not require a hospital to admit any patient for the purposes of performing an abortion, nor is any hospital required to create a special hospital board. A person who is a member of, or associated with, the staff of a hospital, or any employee of a hospital, in which a justified medical termination has been authorized and who objects to the justified medical termination on moral or religious grounds shall not be required to participate in medical procedures which will result in the termination of pregnancy, and the refusal of any such person to participate shall not form the basis of any disciplinary or other recriminatory action against such person."

Section 3. Section 40A-5-3 NMSA 1953 (being Laws 1963, Chapter 303, Section 5-3) is repealed and a new Section 40A-5-3 NMSA 1953 is enacted to read:

"40A-5-3. CRIMINAL ABORTION.--Criminal abortion consists of administering to any pregnant woman any medicine, drug or other substance, or using any method or means whereby an untimely termination of her pregnancy is produced, or attempted to be produced, with the intent to destroy the fetus, and the termination is not a justified medical termination.

Whoever commits criminal abortion is guilty of a fourth degree felony. Whoever commits criminal abortion which results in the death of the woman is guilty of a second degree felony."

Section 4. SEVERABILITY.--If any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

EXHIBIT 11

Sections 14-44 to 14-45.1 ("Abortion and Kindred Offenses"), General Statutes of North Carolina

Abortion and Kindred Offenses.

§ 14-44. Using drugs or instruments to destroy unborn child.—If any person shall wilfully administer to any woman, either pregnant or quick with child, or prescribe for any such woman, or advise or procure any such woman to take any medicine, drug or other substance whatever, or shall use or employ any instrument or other means with intent thereby to destroy such child, he shall be guilty of a felony, and shall be imprisoned in the State's prison for not less than one year nor more than ten years, and be fined at the discretion of the court. (1881, c. 351, s. 1; Code, s. 975; Rev., s. 3618; C. S., s. 4226; 1967, c. 367, s. 1.)

§ 14-45. Using drugs or instruments to produce miscarriage or injure pregnant woman.—If any person shall administer to any pregnant woman, or prescribe for any such woman, or advise and procure such woman to take any medicine, drug or anything whatsoever, with intent thereby to procure the miscarriage of such woman, or to injure or destroy such woman, or shall use any instrument or application for any of the above purposes, he shall be guilty of a felony, and shall be imprisoned in the jail or State's prison for not less than one year nor more than five years and shall be fined, at the discretion of the court. (1881, c. 351, s. 2; Code, s. 976; Rev., s. 3619; C. S., s. 4227.)

§ 14-45.1. When abortion not unlawful.—Notwithstanding any of the provisions of G.S. 14-44 and 14-45, it shall not be unlawful to advise, procure, or cause the miscarriage of a pregnant woman or an abortion when the same is performed by a doctor of medicine licensed to practice medicine in North Carolina, if he can reasonably establish that:

There is substantial risk that continuance of the pregnancy would threaten the life or gravely impair the health of the said woman, or

There is substantial risk that the child would be born with grave physical or mental defect, or

The pregnancy resulted from rape or incest and the said alleged rape was reported to a law-enforcement agency or court official within seven days after the alleged rape, and

Only after the said woman has given her written consent for said abortion to be performed, and if the said woman shall be a minor or incompetent as adjudicated by any court of competent jurisdiction then only after permission is given in writing by the parents, or if married, her husband, guardian or person or persons standing in loco parentis to said minor or incompetent, and

Only when the said woman shall have resided in the State of North Carolina for a period of at least four months immediately preceding the operation being performed except in the case of emergency where the life of the said woman is in danger, and

Only if the abortion is performed in a hospital licensed by the North Carolina Medical Care Commission, and

Only after three doctors of medicine not engaged jointly in private practice, one of whom shall be the person performing the abortion, shall have examined said woman and certified in writing the circumstances which they believe to justify the abortion, and

Only when such certificate shall have been submitted before the abortion to the hospital where it is to be performed; provided, however, that where an emergency exists, and the certificate so states, such certificate may be submitted within twenty-four hours after the abortion. (1967, c. 367, s. 2.)

EXHIBIT 12

Chapter 26-12 ("Abortion"), Criminal Code of Georgia

26-1201. Criminal abortion.—Except as otherwise provided in section 26-1202, a person commits criminal abortion when he administers any medicine, drug or other substance whatever to any woman or when he uses any instrument or other means whatever upon any woman with intent to produce a miscarriage or abortion.

(Acts 1968, pp. 1249, 1277.)

26-1202. Exception.—(a) Section 26-1201 shall not apply to an abortion performed by a physician duly licensed to practice medicine and surgery pursuant to Chapter 84-9 or 84-12 of the Code of Georgia of 1933, as amended, based upon his best clinical judgment that an abortion is necessary because:

(1) A continuation of the pregnancy would endanger the life of the pregnant woman or would seriously and permanently injure her health; or

(2) The fetus would very likely be born with a grave, permanent, and irremediable mental or physical defect; or

(3) The pregnancy resulted from forcible or statutory rape.

(b) No abortion is authorized or shall be performed under this section unless each of the following conditions is met:

(1) The pregnant woman requesting the abortion certifies in writing under oath and subject to the penalties of false swearing to the physician who proposes to perform the abortion that she is a bona fide legal resident of the State of Georgia.

(2) The physician certifies that he believes the woman is a bona fide resident of this State and that he has no information which should lead him to believe otherwise.

(3) Such physician's judgment is reduced to writing and concurred in by at least two other physicians duly licensed to practice medicine and surgery pursuant to Chapter 84-9 of the Code of Georgia of 1933, as amended, who certify in writing that based upon their separate personal medical examinations of the pregnant woman, the abortion is, in their judgment, necessary because of one or more of the reasons enumerated above.

(4) Such abortion is performed in a hospital licensed by the State Board of Health and accredited by the Joint Commission on Accreditation of Hospitals.

(5) The performance of the abortion has been approved in advance by a committee of the medical staff of the hospital in which the operation is to be performed. This committee must be one established and maintained in accordance with the standards promulgated by the Joint Commission on the Accreditation of Hospitals, and its approval must be by a majority vote of a membership of not less than three members of the hospital's staff; the physician proposing to perform the operation may not be counted as a member of the committee for this purpose.

(6) If the proposed abortion is considered necessary because the woman has been raped, the woman makes a written statement under oath, and subject to the penalties of false swearing, of the date, time and place of the rape and the name of the rapist, if known. There must be attached to this statement a certified copy of any report of the rape made by any law enforcement officer or agency and a statement by the solicitor general of the judicial circuit where the rape occurred or allegedly occurred that, according to his best information, there is probable cause to believe that the rape did occur.

(7) Such written opinions, statements, certificates, and concurrences are maintained in the permanent files of such hospital and are available at all reasonable times to the solicitor general of the judicial circuit in which the hospital is located.

(8) A copy of such written opinions, statements, certificates, and concurrences is filed with the Director of the State Department of Public Health within 10 days after such operation is performed.

(9) All written opinions, statements, certificates, and concurrences filed and maintained pursuant to paragraphs (7) and (8) of this subsection shall be confidential records and shall not be made available for public inspection at any time.

(c) Any solicitor general of the judicial circuit in which an abortion is to be performed under this section, or any person who would be a relative of the child within the second degree of consanguinity, may petition the superior court of the county in which the abortion is to be performed for a declaratory judgment whether the performance of such abortion would violate any constitutional or other legal rights of the fetus. Such solicitor general may also petition such court for the purpose of taking issue with compliance with the requirements of this section. The physician who proposes to perform the abortion and the pregnant woman shall be respondents. The petition shall be heard expeditiously and if the court adjudges that such abortion would violate the constitutional or other legal rights of the fetus, the court shall so declare and shall restrain the physician from performing the abortion.

(d) If an abortion is performed in compliance with this section, the death of the fetus shall not give rise to any claim for wrongful death.

(e) Nothing in this section shall require a hospital to admit any patient under the provisions hereof for the purpose of performing an abortion, nor shall any hospital be required to appoint a committee such as contemplated under subsection (b) (5). A physician, or any other person who is a member of or associated with the staff of a hospital, or any employee of a hospital in which an abortion has been authorized, who shall state in writing an objection to such abortion on moral or religious grounds shall not be required to participate in the medical procedures which will result in the abortion, and the refusal of any such person to participate therein shall not form the basis of any claim for damages on account of such refusal or for any disciplinary or recriminatory action against such person.

(Acts 1968, pp. 1249, 1277.)

26-1203. Punishment.—A person convicted of criminal abortion shall be punished by imprisonment for not less than one nor more than 10 years.

(Acts 1968, pp. 1249, 1280.)

EXHIBIT 13

Sections 149E to 149G of Article 43 ("Abortion"), Annotated Code of Maryland

Abortion

§ 149E. Conditions under which termination of pregnancy permitted; records and reports.

(a) No person shall terminate or attempt to terminate or assist in the termination or attempt at termination of a human pregnancy otherwise than by birth, except that a physician licensed by the State of Maryland may terminate a human pregnancy or aid or assist or attempt a termination of a human pregnancy if said termination takes place in a hospital accredited by the joint commission for accreditation of hospitals and licensed by the State Board of Health and Mental Hygiene and if one or more of the following conditions exist:

(1) Continuation of the pregnancy is likely to result in the death of the mother;

(2) There is a substantial risk that continuation of the pregnancy would gravely impair the physical or mental health of the mother;

(3) There is substantial risk of the birth of the child with grave and permanent physical deformity or mental retardation;

(4) The pregnancy resulted from a rape committed as a result of force or bodily harm or threat of force or bodily harm and the State's Attorney of Baltimore City or the county in which the rape occurred has informed the hospital abortion review authority in writing over his signature that there is probable cause to believe that the alleged rape did occur.

(b) In no event shall any physician terminate or attempt to terminate or assist in the termination or attempt at termination of a human pregnancy otherwise than by birth unless all of the following conditions exist:

(1) Not more than twenty-six weeks of gestation have passed (except in the case of a termination pursuant to subsection (a) (1) or where the fetus is dead); and

(2) Authorization therefor has been granted in writing by a hospital abortion review authority appointed by the hospital.

(c) The hospital abortion review authority shall keep written records of all requests for authorization and its action thereon. An annual report of the therapeutic abortions performed in Maryland shall be made by the director of the hospital and its governing board. Such reports shall include the number of requests, authorizations and performances, the grounds upon which such authorizations were granted, and the procedures employed to cause the abortions and such reports shall be forwarded to the joint commission on accreditation of hospitals and the State Board of Health and Mental Hygiene for the purpose of insuring that adequate and proper procedures are being followed in accredited hospitals. Such information, which is not subject to the physician-patient privilege, may be made available to the public. Said reports shall not include the names of the patients aborted. (1968, ch. 470, § 2.)

Cross reference.—As to transfer of powers, etc., of State Board of Health and Mental Hygiene to Secretary of Health and Mental Hygiene, see § 111 of this article.

Editor's note. Section 3, ch. 470, Acts 1968, provides that nothing in the act applies to, or affects the prosecution or penalty for, any event or occurrence prior to the effective date of the act. Section 4 ch. 470, provides that the act shall take effect July 1, 1968.

Cited in Vios v. State, 5 Md. App. 200, 246 A.2d 313 (1968).

§ 149F. Refusal to perform or participate in or submit to abortion; refusal of hospital to permit.

(a) 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.

(b) 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.

(c) The refusal of any person to submit to an abortion or to give consent therefor shall not be grounds for loss of any privileges or immunities to which such person would otherwise be entitled nor shall submission to an abortion or the granting of consent therefor be a condition precedent to the receipt of any public benefits. (1968, ch. 470, § 2.)

Cross reference. — See Editor's note to § 149E of this article

Cited in Vios v. State, 5 Md. App. 200, 246 A.2d 313 (1968).

§ 149G. Unlawful acts.

(a) A person is guilty of a misdemeanor if he

(1) Sells or gives, or causes to be sold or given, any drug, medicine, preparation, instrument, or device for the purpose of causing, inducing, or obtaining a termination of human pregnancy other than by a licensed physician in a hospital accredited by the joint commission for accreditation of hospitals and licensed by the State Board of Health and Mental Hygiene; or

(2) Gives advice, counsel, or information for the purpose of causing, inducing, or obtaining a termination of human pregnancy other than by such physician in such a hospital; or

(3) Knowingly assists or causes by any means whatsoever the obtaining or performing of a termination of human pregnancy other than by such physician in such a hospital.

(b) Any person who violates any provision of this section, upon conviction, is subject to a fine of not more than five thousand dollars for each offense, or to imprisonment for not more than three years, or both such fine and imprisonment. The penalties in this section are in addition to and not in substitution for any other penalty or penalties applicable to particular classes of persons under other laws of this State. (1968, ch. 470, § 2.)

Cross references. — See Editor's note to § 149E of this article. As to transfer of powers, etc., of State Board of Health and Mental Hygiene to Secretary of Health and Mental Hygiene, see § 1H of this article.

Cited in Vios v. State, 5 Md. App. 200, 246 A.2d 313 (1968).

EXHIBIT 14

Chapter 180, Laws of 1969, Section 21-3407, as amended ("Criminal Abortion"), State of Kansas

Sec. 21-3407. *Criminal abortion.* (1) Criminal abortion is the purposeful and unjustifiable termination of the pregnancy of any female other than by a live birth.

(2) A person licensed to practice medicine and surgery is justified in terminating a pregnancy if he believes there is substantial risk that a continuance of the pergnancy would impair the physical or mental health of the mother or that the child would be born with physical or mental defect, or that the pregnancy resulted from rape, incest, or other felonious intercourse; and either:

(*a*) Three persons licensed to practice medicine and surgery, one of whom may be the person performing the abortion, have certified in writing their belief in the justifying circumstances, and have filed such certificate prior to the abortion in the hospital licensed by the state board of health and accredited by the joint commission on accreditation of hospitals where it is to be performed, or in such other place as may be designated by law; or

(*b*) An emergency exists which requires that such abortion be performed immediately in order to preserve the life of the mother.

(3) For the purpose of this section pregnancy means that condition of a female from the date of conception to the birth of her child.

(4) For the purpose of subsection (2) of this section all illicit intercourse with a female under the age of sixteen (16) years shall be deemed felonious.

(5) Criminal abortion is a class D felony.

EXHIBIT 15

House Bill 189 (Act 61 of 1969), State of Arkansas

A BILL

FOR AN ACT TO BE ENTITLED: "AN ACT TO DEFINE ABORTION, TO PROVIDE PENALTIES THEREFOR, TO PRESCRIBE CONDITIONS UNDER WHICH ABORTIONS MAY BE LEGALLY PERFORMED, TO PROVIDE PLACES WHERE ABORTIONS MAY BE LEGALLY PERFORMED, TO PROVIDE FOR THE GIVING OF CONSENT FOR LEGAL ABORTION, TO PROVIDE WHO MAY PERFORM LEGAL ABORTIONS, TO STATE AN EMERGENCY; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. It shall be unlawful for any one to administer or prescribe any medicine or drugs to any woman with child, with the intent to produce an abortion, or premature delivery of any foetus before or after the period of quickening, or to produce or attempt to produce such abortion by any other means; and any person offending against the provisions of this Section shall be fined in any sum not to exceed one thousand dollars ($1,000.00), and imprisoned in the penitentiary not less than (1) nor more than five years.

SECTION 2. Notwithstanding any of the provisions of Section 1 of this Act it shall not be unlawful to advise, procure, or cause the miscarriage of a pregnant woman or an abortion when the same is performed by a doctor of medicine licensed to practice medicine in Arkansas by the Arkansas State Medical Board, if he can reasonably establish that:

There is substantial risk that continuance of the pregnancy would threaten the life or gravely impair the health of the said woman, or

There is substantial risk that the child would be born with grave physical or mental defect, or

The pregnancy resulted from rape or incest which was reported to the Prosecuting Attorney, or his deputy within seven (7) days after the alleged rape or incestuous act. The Prosecuting Attorney shall submit a written report of said complaint to the doctor and said report to be made a permanent part of patient's medical records.

SECTION 3. No legal abortion may be performed until the pregnant woman has given written consent for said abortion to be performed, and if the said woman shall be a minor or incompetent as adjudicated by any court of competent jurisdiction then only after permission is given in writing by the parents, or if married, her husband, guardian or person or persons standing in loco parentis to said minor or incompetent.

SECTION 4. No legal abortion shall be performed unless the pregnant woman shall have resided in the State of Arkansas for a period of at least four months immediately preceding the operation being performed except in the case of emergency where the life of the said woman is in danger.

SECTION 5. Legal abortions may be performed only in a hospital licensed by the Arkansas State Board of Health and accredited by the Joint Commission of Accreditation of Hospitals.

SECTION 6. Before any legal abortion shall be performed by a doctor of medicine there must be filed with the hospital where said abortion is to be performed the certificate of three doctors of medicine not engaged jointly in private practice, one of whom shall be the person performing the abortion, which certificate shall state that said doctors of medicine have examined said woman and certify in writing the circumstances which they believe justify the abortion.

SECTION 7. In the event a medical emergency exists and in the opinion of the three doctors of medicine examining said woman, an immediate abortion must be performed, the certificate provided in the above section may be submitted within 24 hours after the abortion.

SECTION 8. (a) 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.

(b) 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.

(c) The refusal of any person to submit to an abortion or to give consent therefor shall not be grounds for loss of any privileges or immunities to which such person would otherwise be entitled nor shall submission to an abortion or the granting of consent therefor be a condition precedent to the receipt of any public benefits.

SECTION 9. All laws or parts of laws in conflict herewith are hereby repealed.

EXHIBIT 16

Chapter 145, Volume 57, Laws of Delaware, enacted June 17, 1969

AN ACT TO AMEND CHAPTER 17 OF TITLE 24, DELAWARE CODE, RELATING TO LICENSURE TO PRACTICE MEDICINE AND SURGERY, THE TERMINATION OF HUMAN PREGNANCY, AND PENALTIES FOR VIOLATION OF THE SAID CHAPTER

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Title 24, Delaware Code, § 1741 (a) (2) is hereby amended to read as follows, viz.:

"Conviction of a felony, including the termination of human pregnancy in violation of the provisions of Subchapter VIII of this chapter."

Section 2. Title 24, Delaware Code, Chapter 17 is hereby amended by the addition at the end thereof of a new Subchapter VIII as follows, viz.:

"Subchapter VIII. Termination of Human Pregnancy

§ 1790. (a) No person shall terminate or attempt to terminate or assist in the termination or attempt at termination of a human pregnancy otherwise than by birth, except that a physician licensed by the State of Delaware may terminate a human pregnancy or aid or assist or attempt a termination of a human pregnancy if such procedure takes place in a hospital accredited by a nationally recognized medical or hospital accreditation authority, upon authorization therefor by a hospital abortion review authority appointed by such hospital, if

one or more of the following conditions exist:

(1) continuation of the pregnancy is likely to result in the death of the mother;

(2) there is substantial risk of the birth of the child with grave and permanent physical deformity or mental retardation;

(3) the pregnancy resulted from

(A) incest, or

(B) a rape committed as a result of force or bodily harm or threat of force or bodily harm, and the Attorney General of this State has certified to the hospital abortion review authority in writing over his signature that there is probable cause to believe that the alleged rape did occur, except that during the first forty-eight hours after the alleged rape no certification by the Attorney General shall be required

(4) continuation of the pregnancy would involve substantial risk of permanent injury to the physical or mental health of the mother.

(b) In no event shall any physician terminate or attempt to terminate or assist in the termination or attempt at termination of a human pregnancy otherwise than by birth unless:

(1) not more than twenty weeks of gestation have passed (except in the case of a termination pursuant to subsection (a) (1) or where the fetus is dead); and

(2) two physicians licensed by this State, one of whom may be the physician proposing to perform the abortion, certify to the abortion review authority of the hospital where such procedure is to be performed that they are of the opinion, formed in good faith, that one of the circumstances set forth in subsection (a) of this section exists (except that no such certification is necessary for the circumstances set forth in subsection (a) (3) (B) hereof).

(3) in the case of an unmarried female under the age of 19 or mentally ill or incompetent, there is filed with the hospital abortion review authority the written consent of such of the parents or guardians as are then residing in the same household with such consenting female, or if such consenting female does not reside in the same household with either of her parents or guardians, then with the written consent of one of her parents or guardians.

(c) The hospital abortion review authority of each hospital in which a procedure or procedures are performed pursuant to this section shall, on or before the first day of March in each year, file with the State Board of Health a written report of each such procedure performed pursuant to the authorization of such authority during the preceding calendar year setting forth the grounds for each such authorization, but not including the names of patients aborted.

§ 1791. (a) 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.

(b) 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.

(c) The refusal of any person to submit to an abortion or to give consent therefor shall not be grounds for loss of any privileges or immunities to which such person would otherwise be entitled nor shall submission to an abortion or the granting of consent therefor be a condition precedent to the receipt of any public benefits.

§ 1792. No person shall, unless the termination of a human pregnancy has been authorized pursuant to the provision of § 1790 of this chapter:

(1) sell or give, or cause to be sold or given, any drug, medicine, preparation, instrument or device for the purpose of causing, inducing or obtaining a termination of such pregnancy; or

(2) give advice, counsel or information for the purpose of causing, inducing or obtaining a termination of such pregnancy; or

(3) knowingly assist or cause by any means whatsoever the obtaining or performing of a termination of such pregnancy."

Section 3. Title 24, Delaware Code, § 1766 is hereby amended to read as follows, viz.:

"§ 1766. Violations and Penalties.

(a) Whoever practices or attempts to practice medicine, surgery or osteopathy within the State contrary to the provisions of this Chapter, other than Subchapter VIII hereof, shall be fined not less than $100 nor more than $500 or imprisoned not more than one year.

(b) Whoever violates the provisions of Subchapter VIII of this chapter shall be fined not more than $5,000 and imprisoned not less than two nor more than ten years.

(c) The Attorney General of the State of Delaware or his deputies shall be charged with the responsibility for enforcement of the provisions of this chapter.

Section 3 (A). Chapter 17, Title 24, Delaware Code, is amended by adding a new Section 1793, to read as follows:

"§ 1793. (a) No person shall be authorized to perform a termination of a human pregnancy within the State upon a female who has not been a resident of the State of Delaware for a period of at least 120 days next before the performance of an operative procedure for the termination of a human pregnancy.

(b) This section shall not apply to such female who is gainfully employed in the State of Delaware at the time of conception, or whose spouse is gainfully

employed in the State of Delaware at the time of conception, or to such female who has been a patient, prior to conception, of a physician licensed by the State of Delaware, or to such female who is attempting to secure the termination of her pregnancy for the condition specified in § 1790 (a) (1) of this chapter."

Section 4. This Act shall become effective upon its approval by the Governor.

EXHIBIT 17

Abortion Act of 1967 (1967, Chapter 87), Great Britain

Abortion Act 1967

1967 CHAPTER 87

An Act to amend and clarify the law relating to termination of pregnancy by registered medical practitioners. [27th October 1967]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Medical termination of pregnancy.

1.—(1) Subject to the provisions of this section, a person shall not be guilty of an offence under the law relating to abortion when a pregnancy is terminated by a registered medical practitioner if two registered medical practitioners are of the opinion, formed in good faith—

(*a*) 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

(*b*) that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.

(2) In determining whether the continuance of a pregnancy would involve such risk of injury to health as is mentioned in paragraph (*a*) of subsection (1) of this section, account may be taken of the pregnant woman's actual or reasonably foreseeable environment.

(3) Except as provided by subsection (4) of this section, any treatment for the termination of pregnancy must be carried out in a hospital vested in the Minister of Health or the Secretary of State under the National Health Service Acts, or in a place for the time being approved for the purposes of this section by the said Minister or the Secretary of State.

(4) Subsection (3) of this section, and so much of subsection (1) as relates to the opinion of two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of the opinion, formed in good faith, that the termination is immediately necessary to save the life or to prevent grave permanent injury to the physical or mental health of the pregnant woman.

Notification.

2.—(1) The Minister of Health in respect of England and Wales, and the Secretary of State in respect of Scotland, shall by statutory instrument make regulations to provide—

(*a*) for requiring any such opinion as is referred to in section 1 of this Act to be certified by the practitioners or practitioner concerned in such form and at such time as may be prescribed by the regulations, and for requiring the preservation and disposal of certificates made for the purposes of the regulations;

(*b*) for requiring any registered medical practitioner who terminates a pregnancy to give notice of the termination and such other information relating to the termination as may be so prescribed;

(*c*) for prohibiting the disclosure, except to such persons or for such purposes as may be so prescribed, of notices given or information furnished pursuant to the regulations.

(2) The information furnished in pursuance of regulations made by virtue of paragraph (*b*) of subsection (1) of this section shall be notified solely to the Chief Medical Officers of the Ministry of Health and the Scottish Home and Health Department respectively.

(3) Any person who wilfully contravenes or wilfully fails to comply with the requirements of regulations under subsection (1) of this section shall be liable on summary conviction to a fine not exceeding one hundred pounds.

(4) Any statutory instrument made by virtue of this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Application of Act to visiting forces etc.

3.—(1) In relation to the termination of a pregnancy in a case where the following conditions are satisfied, that is to say—

(*a*) the treatment for termination of the pregnancy was carried out in a hospital controlled by the proper authorities of a body to which this section applies; and

(*b*) the pregnant woman had at the time of the treatment a relevant association with that body; and

(*c*) the treatment was carried out by a registered medical practitioner or a person who at the time of the treatment

was a member of that body appointed as a medical practitioner for that body by the proper authorities of that body,

this Act shall have effect as if any reference in section 1 to a registered medical practitioner and to a hospital vested in a Minister under the National Health Service Acts included respectively a reference to such a person as is mentioned in paragraph (*c*) of this subsection and to a hospital controlled as aforesaid, and as if section 2 were omitted.

(2) The bodies to which this section applies are any force which is a visiting force within the meaning of any of the provisions of Part I of the Visiting Forces Act 1952 and any headquarters within the meaning of the Schedule to the International Headquarters and Defence Organisations Act 1964; and for the purposes of this section— 1952 c. 67. 1964 c. 5.

(*a*) a woman shall be treated as having a relevant association at any time with a body to which this section applies if at that time—

(i) in the case of such a force as aforesaid, she had a relevant association within the meaning of the said Part I with the force; and

(ii) in the case of such a headquarters as aforesaid, she was a member of the headquarters or a dependant within the meaning of the Schedule aforesaid of such a member; and

(*b*) any reference to a member of a body to which this section applies shall be construed—

(i) in the case of such a force as aforesaid, as a reference to a member of or of a civilian component of that force within the meaning of the said Part I; and

(ii) in the case of such a headquarters as aforesaid, as a reference to a member of that headquarters within the meaning of the Schedule aforesaid.

Conscientious objection to participation in treatment.

4.—(1) Subject to subsection (2) of this section, no person shall be under any duty, whether by contract or by any statutory or other legal requirement, to participate in any treatment authorised by this Act to which he has a conscientious objection:

Provided that in any legal proceedings the burden of proof of conscientious objection shall rest on the person claiming to rely on it.

(2) Nothing in subsection (1) of this section shall affect any duty to participate in treatment which is necessary to save the life or to prevent grave permanent injury to the physical or mental health of a pregnant woman.

(3) In any proceedings before a court in Scotland, a statement on oath by any person to the effect that he has a conscientious objection to participating in any treatment authorised by this Act shall be sufficient evidence for the purpose of discharging the burden of proof imposed upon him by subsection (1) of this section.

Supplementary provisions. **1929 c. 34.**

5.—(1) Nothing in this Act shall affect the provisions of the Infant Life (Preservation) Act 1929 (protecting the life of the viable foetus).

(2) For the purposes of the law relating to abortion, anything done with intent to procure the miscarriage of a woman is unlawfully done unless authorised by section 1 of this Act.

Interpretation.

6. In this Act, the following expressions have meanings hereby assigned to them:—

"the law relating to abortion" means sections 58 and 59 of the Offences against the Person Act 1861, and any rule of law relating to the procurement of abortion; **1861 c. 100.**

"the National Health Service Acts" means the National Health Service Acts 1946 to 1966 or the National Health Service (Scotland) Acts 1947 to 1966.

Short title, commencement and extent.

7.—(1) This Act may be cited as the Abortion Act 1967.

(2) This Act shall come into force on the expiration of the period of six months beginning with the date on which it is passed.

(3) This Act does not extend to Northern Ireland.