

P U B L I C H E A R I N G

before

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

Held:
November 13, 1968
Council Chamber
City Hall
Newark, New Jersey

Members of Commission present:

Assemblyman William M. Crane [Chairman]

Senator Frank J. Guarini, Jr.

Rev. Thomas F. Dentici

Rev. Alexander Shaw

Rabbi Barry Dov Schwartz

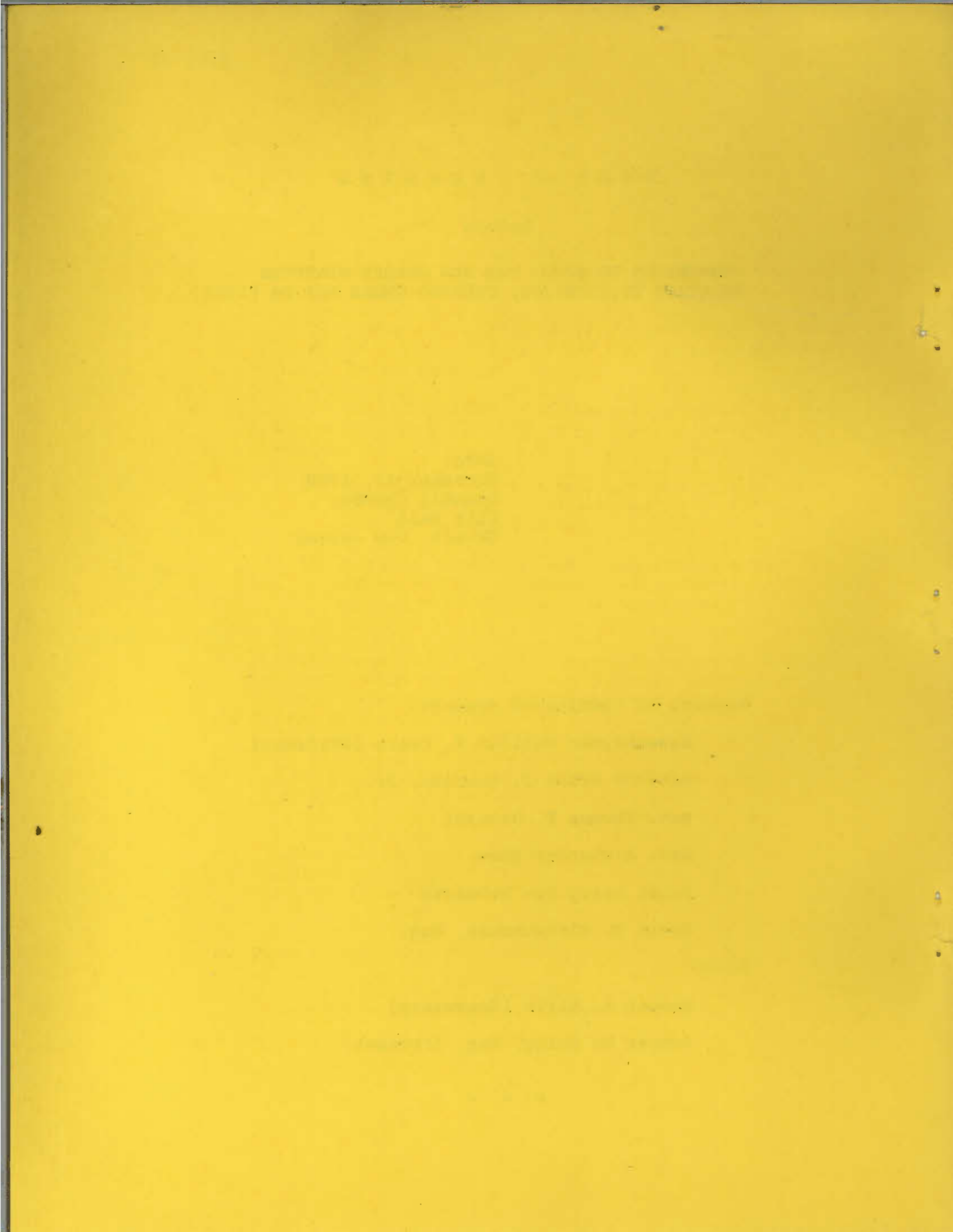
Oscar W. Rittenhouse, Esq.

Also:

Samuel A. Alito [Secretary]

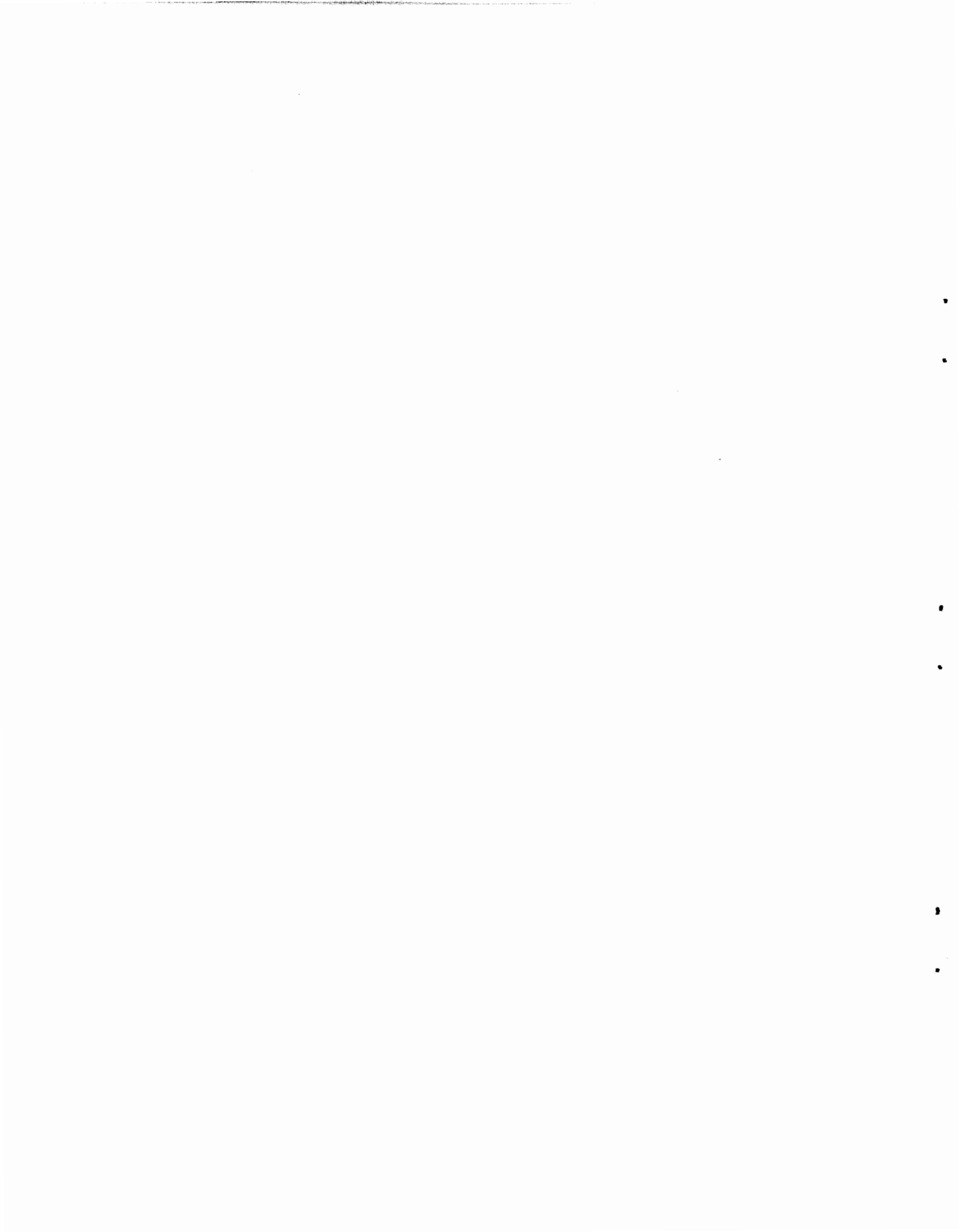
Robert M. Poley, Esq. [Counsel]

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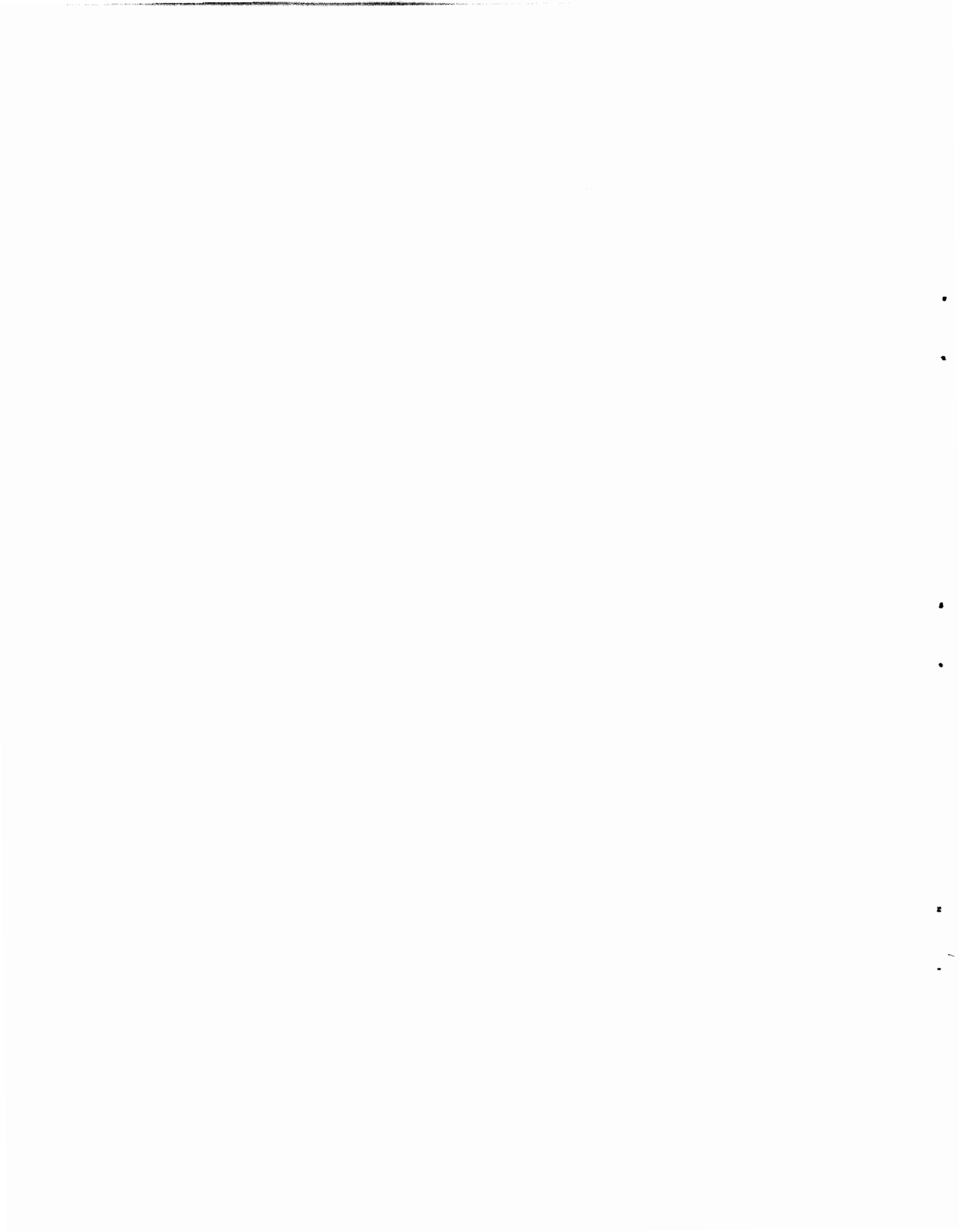
I N D E X

	<u>Page</u>
Dr. Felix H. Vann Englewood, New Jersey	1 and 191
Justice Harry Heher Trenton, New Jersey	8 and 218
Rabbi Phillip Sigal Rabbinical Assembly of America	11 and 223
Rev. J. Eric Hayden Department of Christian Social Relations Episcopal Diocese	16
Rev. Charles Carroll Episcopal Priest Diocese of California	21
Dr. Alan F. Guttmacher President Planned Parenthood World Population	32
Dr. Samuel Breslow Perth Amboy, New Jersey	51
Dr. Frank P. Pignataro Red Bank, New Jersey	61
Ruth Russell Gray Attorney, Watchung, New Jersey	73
Dr. Dorothy N. Naiman American Civil Liberties Union of New Jersey	88
Dr. Ann Lucas Chairman, Department of Psychology Fairleigh-Dickinson University	97 and 234
Dr. Luke Mulligan Leonia, New Jersey	103
Dr. Michael R. DeVita Assistant Clinical Professor New Jersey College of Medicine	109
Sister M. Concordia Byrnes Administrator St. Joseph's School for the Multiple Handicapped Blind	114



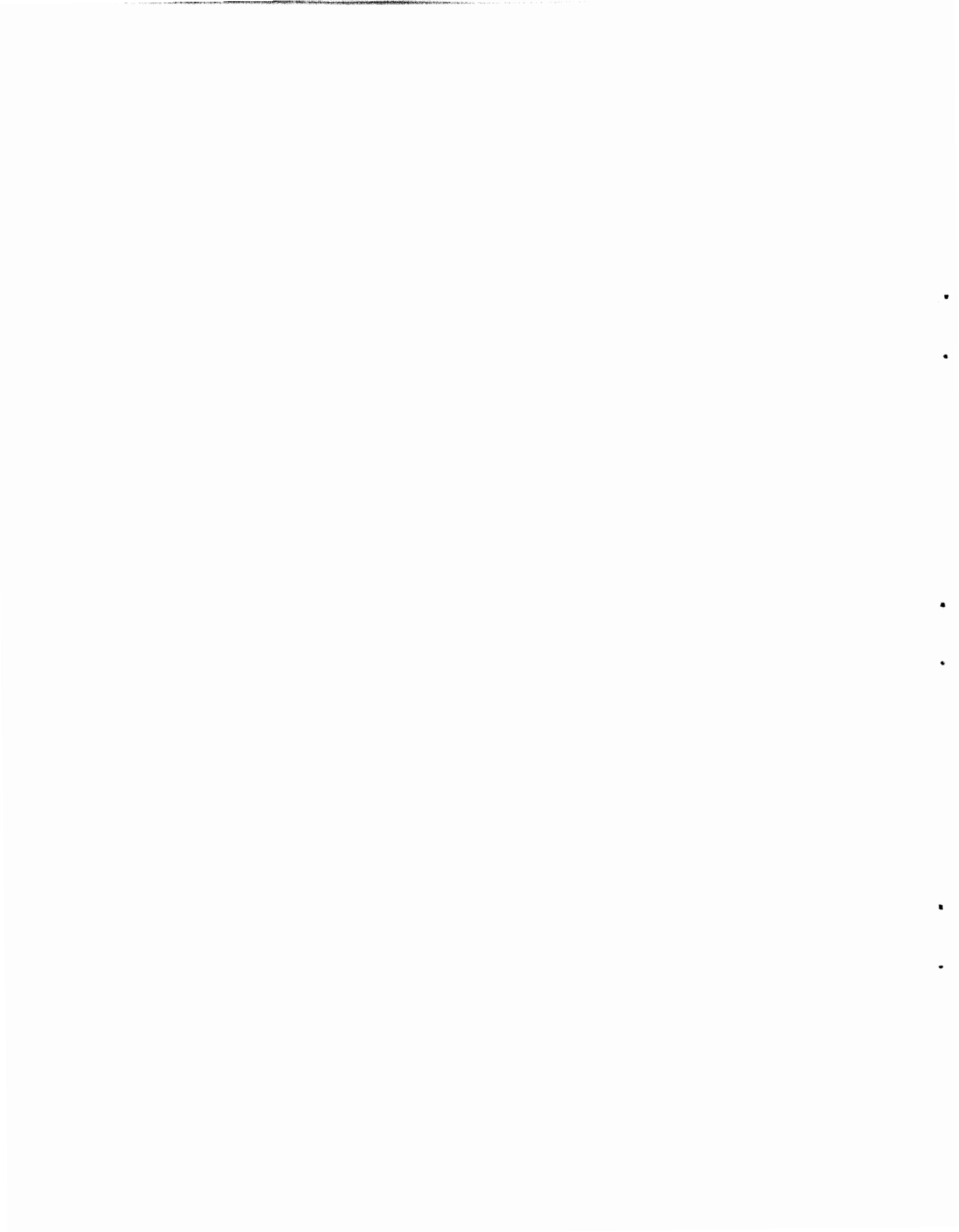
Index [Continued]

	<u>Page</u>
Rev. John Seabrook Division of Social Sciences Essex County College, Newark, New Jersey	116
Mrs. Esther S. Frankel New Jersey Branch of the Women's International League for Peace and Freedom	121
Mrs. Suzanne Schad-Somers Board of Directors National Organization for Women	126
Mrs. Ginette Weld Ethical Culture Society of Bergen County	128
Dr. Ellis J. Mischel	131
Miss Kathleen Sidney Oakland, New Jersey	134
Joseph A. Hayden, Esq. Newark, New Jersey	137
Rev. Charles H. Straut, Jr. East Rutherford, New Jersey	143
Mrs. Joseph Wyngaarden	146
Rev. John Wightman United Church of Christ Woodbridge, New Jersey	150 and 242
Richard Canning	151
Mrs. Richard Canning	156
Newton J. Burkett, Jr. President, Board of Christian Social Concerns Northern New Jersey Conference United Methodist Church	159
Dr. Palma E. Formica	161
Valerie Dillon	172
John E. Berke Newark, New Jersey	180
Rev. Carl J. Westman Montclair, New Jersey	183



Index [Continued]

	<u>Page</u>
Dr. Jules Rivkind Asst. Clinical Professor of Obstetrics and Gynecology New Jersey State College of Medicine	186 and 243
Miss Micki Lynn Tuschak Plainfield, New Jersey	189
- - - - -	
Letter from Harry J. Russell Director, Perth Amboy General Hospital	246
Letter from Robert M. Byrn, Professor of Law, Fordham University	249
Statement of Charles E. Rice, Professor, Fordham University School of Law	255
Letter from Dr. and Mrs. Louis A. Klos	260
Letter from Vincent P. Keuper, Prosecutor, Monmouth County	265
Letter from Guy W. Calissi, Prosecutor, Bergen County	266
Letter from Martin J. Queenan, Prosecutor, Burlington County	268
- - - - -	



ASSEMBLYMAN WILLIAM M. CRANE [Chairman]: This legislative hearing will please come to order.

This is a legislative hearing in accordance with Assembly Concurrent Resolution No. 24, 1968, which creates a Commission to investigate abortion laws of the State of New Jersey.

I will introduce the members of the Commission. On my far right is Mr. Poley, Counsel to the Commission. On my right is Rev. Thomas Dentici, Diocese of Trenton. On my far left is Rev. Alexander Shaw, New Jersey Council of Churches. The next gentleman is Oscar Rittenhouse, Prosecutor of Hunterdon County. And on my immediate left is Rabbi Barry Dov Schwartz from Perth Amboy. I am Assemblyman William Crane, Chairman of the Commission.

The rules for this evening will be that the Chair will be in control, of course, of the hearing. Everyone will be allowed five minutes of testimony. Because of the evening hearing, we do have to limit testimony. We have a large number of people wishing to be heard. You will please present your testimony and if you have a written statement to go along with your testimony, will you please present that to Mr. Alito who is sitting here before the podium. Mr. Alito is Secretary of the Commission.

The first witness will be Dr. Felix Vann.

D R. F E L I X H. V A N N: Assemblyman Crane and members of the Commission: I am very appreciative of being able to speak to the Commission on behalf of a change in the present law of abortion in the State of New Jersey.

I am Felix H. Vann, a doctor of medicine, licensed to practice in the State of New Jersey. I have practiced obstetrics and gynecology in Englewood, New Jersey, since 1940. I am on the medical staffs of the Englewood Hospital and of the Bergen Pines County Hospital, in Paramus. I am a member of the Bergen County Medical Society and of the Medical Society of New Jersey. I am a Fellow of the American College of Surgeons and of the American College of Obstetricians and Gynecologists. In addition, I am a member of the Board of the Planned Parenthood Center of Bergen County and of the New Jersey Committee on Abortion. I also belong to the American Association for the Study of Abortion, the American Fertility Society, the American Association of Planned Parenthood Physicians and the Sex Information and Education Council of the U. S.

This statement I make on my own behalf and on behalf of the American College of Obstetricians and Gynecologists and its 12,000 members, as a member of its Executive Board and Chairman of its District III comprising the states of Delaware, New Jersey and Pennsylvania.

I am familiar with the New Jersey Statutes on abortion and have read the testimony and judicial decisions in the case of Gleitman vs. Cosgrove. I, too, have been subjected to a similar lawsuit. While I personally do not agree with all the opinions expressed by the members of the New Jersey Supreme Court, I do feel that they stated a universal truth that the courts cannot interpret the 118-year old law and bring it into the social and medical practice of the Twentieth Century.

It is up to the legislative bodies of the State to define the problem and to create new laws, or eliminate the restrictive ones, which do an injustice to or interfere with the constitutional rights of a woman who seeks medical advice of her physician who must practice in an ethical and legal manner.

Governor Hughes courageously asked the Attorney General to make an interpretation of the present out-moded New Jersey Statutes. Attorney General Sills and his ad hoc Committee of County Prosecutors have put forth an interpretation that defines an abortion "lawfully justified" when a committee of licensed physicians, in good faith, deem such abortion as medically indicated; and, it be performed in a hospital licensed by the State. This is the essence of an interpretation that we New Jersey doctors can legally and ethically function under.

This past year has seen more liberal laws passed in Colorado, North Carolina, California, Maryland and Georgia, based predominantly on the 1962 Model Penal Code as devised by the American Law Institute. Other states are similarly involved in studies of their respective laws or already have proposed legislation which is being presented to their respective legislative bodies.

In these days of rapidly increasing population, with a 2 per cent growth rate a year, a doubling of our population (close to 400,000,000) is predicted by the year 2000 A.D. We are already witnessing strife and civil commotion in our teeming, urban ghettos and an increasing disregard for law and order as most of us have understood this phrase. We must

be mindful of the biological problems of overcrowding and of the consequent disruption of human existence, lest we die of starvation or rush headlong into a war of destruction, like lemmings who senselessly destroy themselves by rushing madly into the sea. This is not to suggest that legalized abortion is a means of birth control. It is the woman with an unwanted pregnancy who seeks an abortion. It is the unwanted pregnancy, in most instances, that can be prevented.

The indications for performing a legal, therapeutic or eugenic abortion are extremely circumscribed in our present law, by the phrase, "to save the life of the mother". The background of the New Jersey Statutes as promulgated 118 years ago was based on a situation that cried out for relief in the context and knowledge of the times. Today, the problem of unwanted pregnancy can be treated in many ways - primarily by prevention. It can be prevented by the active use of the "pill" or by the "I.U.C.D." (the intrauterine contraceptive device) as well as by other tried and true methods in common use for many years. It may also be prevented by voluntary sterilization of either the male or the female. And lastly, it may be treated by legalized abortion for proper, medical indications which are deemed ethical, worthy and suitable as acts of public policy and in the public interest.

I am appending to this statement the resolutions passed in 1967 and 1968 by the American Medical Association, by the American College of Obstetricians and Gynecologists, the New Jersey Obstetrical and Gynecological Society and, by the Medical Society of New Jersey. The latter three were

presented to their respective memberships-at-large, and of those who voted, an overwhelming 80 to 85 per cent voted for the liberalization of abortion laws throughout the country.

I personally subscribe to these Resolutions as to medical indications, the consultations and medical safeguards, as noted. A therapeutic abortion is a medical procedure and should depend on a full consideration of the patient's health and personal situation, taking into account her social, economic and cultural environment as these are reflected in the total aspects of her health - and as defined by the World Health Organization, which states that total health is "a state of complete physical, mental and social well-being, not only the absence of illness and disease." Statutes should not be restrictive, but should be defined within the medical practice act, as has recently been done in the State of Maryland, where they eliminated the law within the criminal code and placed it in the medical practice act where it belongs. This would take into account such care of a patient as an integral part of medical care. I thank you.

ASSEMBLYMAN CRANE: Thank you, Dr. Vann. Do any members of the Commission have any questions of Dr. Vann?

REV. DENTICI: Dr. Vann, of the three ways you mentioned of preventing unwanted pregnancies, which of the three would you suggest would be the best for us to consider?

DR. VANN: Well, obviously from the point of view of the patient and from the point of view of public policy, birth control by whatever means is certainly, I think, generally more acceptable to more people and I would certainly put that at

the top of my list.

REV. DENTICI: Well, wouldn't it be best also from the point of view of the child, the unborn child?

DR. VANN: Well, if you have birth control practiced, there is no child to consider. There is no pregnancy.

REV. DENTICI: But assuming an abortion, there would be.

DR. VANN: Well, I assume that you are referring to an unwanted pregnancy.

REV. DENTICI: Yes.

DR. VANN: If you are speaking to me as a physician and as an obstetrician and gynecologist, you are getting into technical matters as to what methods and techniques are used in performing therapeutic abortions. These obviously will depend upon the duration of the pregnancy, whether it is within the first three months, as we term the first trimester of pregnancy, or under 20 weeks. Usually by law in this State 20 weeks, which is 4 1/2 months, is the dividing line between abortion in terms of spontaneous abortion and immature or premature fetus.

REV. DENTICI: Wouldn't a better family planning program be a better method than performing an abortion where there would be the question of possible danger to the woman and, of course, the killing of the fetus?

DR. VANN: Well, I think the danger to a woman today when an abortion is properly done under proper circumstances and conditions in a hospital that is well equipped - I don't think it should be any more dangerous perhaps than a tonsillectomy.

REV. DENTICI: Thank you, Doctor.

ASSEMBLYMAN CRANE: Any further questions from members of the Commission?

You said in your testimony, Doctor, if I can paraphrase your testimony, that you would like to see the abortion laws divorced from the criminal statutes and put into the medical practice act. If this were done - if this were in practice today and if this were the law today, what would you say would be the situation in New Jersey? Would there be abortion on demand for any reason whatsoever, depending on what the physician would think, or would it be a matter of some control by the Medical Society or how would you like to see that controlled?

DR. VANN: Sir, I have included with my resolutions the statement put out by the American Surgical Faculty of the State of Maryland. They have taken parts of the law, they have taken parts of the recommendations of the American College, parts of the recommendations of the Joint Commission on Accreditation of Hospitals, and they have constructed a series of guidelines which serve both for the physician in practice in the State of Maryland as well as the hospital.

Now I would say that if this becomes a statute under the medical practice act, whatever transpires is entirely dependent upon the relationship between the woman and her doctor. It is very difficult to generalize. Every patient that comes into the office has a different type of complaint or a different kind of problem and a physician must deal with individuals. To be sure, he has his own basic philosophy of what methods of treatment and I would say that the circumstances would depend

entirely upon the problem as presented to the physician. I certainly could envisage someone perhaps coming in my office who perhaps might want to have an unwanted pregnancy terminated. Perhaps under the circumstances I would agree. Perhaps under the circumstances I would not. I think this is something you have to individualize entirely.

But part of my testimony here is that I think that this should be a matter between the patient and the physician and then depending upon the way in which the new law is set up and depending upon the rules and regulations of the hospital in which the doctor operates, I think that this thing would be handled in a perfectly legal and ethical way.

The important thing is to take medical practice out of the hands of quacks and anybody else who should not be doing this type of thing.

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

[The exhibits presented by Dr. Vann can be found beginning on page 191 of this transcript.]

The next witness will be Justice Harry Heher.

J U S T I C E H A R R Y H E H E R: Mr. Chairman and members of the Commission, I have submitted nine copies of what I consider to be the principles applicable to the solution of the issue and I conclude our position by holding that the inquiry is to determine whether or not there should be a legal guardian to protect the right of life.

I won't undertake now to go through the five pages setting forth what I consider to be the basic principles and especially since you have not had an opportunity to consider the

views that we have expressed in the copy given to you a short time ago.

We suggest that regardless of how many physicians are provided in a given case to act upon the circumstance of that case to determine what course should be taken, there be a legal guardian as well as physical representation in determining the action to be taken.

My effort was to assemble the principles that govern in this case and to deal with their application and what is within the competency of the State or an agency of the State in dealing with the particular case.

I will not take the time now to discuss the reasoning and all the principles that we consider to be applicable. I think that you should acquaint yourself with the views that are in writing and we will be very happy to submit a reply to any questions that you may have if you will make them known to us.

This document that you have covers 5 pages and when you read that you will understand our position and we will await any action that you may see fit to take in order to supply answers to any questions that may occur to you in relation to the disposition of the particular case.

I will be happy to answer any questions that you would like to ask at this time.

[Statement submitted by Justice Heher can be found beginning on page 218 of this transcript.]

ASSEMBLYMAN CRANE: Thank you, Mr. Justice, for your testimony. Of course, we haven't read your written statement

yet. We certainly shall and it will be a part of the record. The only thing I would ask at this time is that you summarize what changes you think from your point of view, in view of your tremendous legal background, should be made in the New Jersey law. I imagine they are in here, but, of course, we don't have the opportunity to get them at the moment.

JUSTICE HEHER: Well, I have dealt with that in this writing and the principle to be applied, of course, depends upon the circumstances in the particular case and I think it would serve the interest of all if after you have read our submission, to make known what you conceive to be the subject of further submission on our part, the facts on the law applicable in the case. I think that that would really be more fruitful in the end than to discuss it now when you are not fully acquainted with the case that we are taking, the principles that we think are applicable. So I think time would be served if that came later and I want to say that I will be at your call at any time if you will let me know and at the next session perhaps, the next and last session of the Commission, I will be very happy to reply.

ASSEMBLYMAN CRANE: Thank you, Mr. Justice. Any questions of the Justice?

RABBI SCHWARTZ: On a few occasions, you mentioned "we." You spoke in the plural. Are you referring to other people in addition to yourself?

JUSTICE HEHER: Referring to others?

RABBI SCHWARTZ: Yes.

JUSTICE HEHER: No. I referred to those whom I

represent --

RABBI SCHWARTZ: Whom do you represent?

JUSTICE HEHER: -- in submitting the views on the questions involved.

ASSEMBLYMAN CRANE: Mr. Justice, are you here as an attorney or speaking as an individual at the moment or just what position are you in right now?

JUSTICE HEHER: Well, I am an attorney for the submission of what we consider to be the principles applicable.

ASSEMBLYMAN CRANE: I see. Are you speaking for yourself now, sir, or do you represent ---

JUSTICE HEHER: Speaking for myself.

ASSEMBLYMAN CRANE: I see. Thank you, sir.

JUSTICE HEHER: Well, there are others that have the same views that I have. I am not here as an attorney to be recompensed. I want to assure you of that.

ASSEMBLYMAN CRANE: Thank you, Mr. Justice. Any further questions of the Justice? (No response.) Thank you very much for coming.

JUSTICE HEHER: You are welcome, I am sure.

ASSEMBLYMAN CRANE: May we have Rabbi Phillip Sigal, please.

R A B B I P H I L L I P S I G A L: Mr. Chairman and members of the Commission: It is a privilege for me to be present here tonight. The Commission has on file my original brief relating to the New Jersey abortion law and the recommendations that I made therein. What I am reading here tonight is an extract and a summary of that brief with one specific

and significant change.

On page 5 of that brief I stated that "as a witness before this Commission, I purport only to speak as an individual who has carefully perused the relevant Talmudic passages and later codes." At this time, however, I would like to indicate that in my capacity of Secretary of the Committee on Jewish Law of the Rabbinical Assembly, the rabbinic arm of the conservative movement in Judaism, I have been authorized to speak on behalf of my colleagues.

The New Jersey Statute prohibits abortion without justification, and "justification" is never spelled out in law. New Jersey Supreme Court Justice John Francis has made clear that our statute has "intended to make criminal all abortions of a pregnant woman. . . except those performed solely to save or to preserve the life of the mother." It is my contention that this is a hopelessly obsolete approach to this very sensitive social and personal problem that confronts thousands of women annually. Other states, and the English Parliament, as well as other countries have already liberalized abortion legislation. Neither morality nor respect for law nor the health and welfare of any society is served with laws that are neither rational nor humane. And since the problem of abortion is so intimately related to morality and human welfare, it is of concern to Religion with a capital "R". On the other hand, since we believe in our society in the separation of Church and State no single religious denomination or combination of denominations should have its point of view embodied in a statute.

One of the great problems involved in abortion is the question of when life begins. Some spokesmen of various faiths, and among them scientists, argue that life begins at conception. Judaism would not argue this. "Life" - to be semantically protected - might begin at conception, but the "life" that begins cannot, from the point of view of Jewish religious thought, be considered a human person.

Medical science, both of the psyche and the soma, is not unanimous on any of the issues that confront us, such as when life begins, what the hazards are of malformations under certain circumstances, how much psychological disaster will result from a woman being compelled to have an unwanted or threatened child, or the product of rape or incest. The legal and judicial branches of society are not unanimous on how to frame statutes or interpret them after they are framed. Religious groups differ in their approach to the problem of abortion, when life begins, when a foetus is a human, and so forth.

The Jewish tradition begins with the assumption that God created man in His image and that God infused man with the breath of life making him, what we call in Hebrew, a living "nephesh." It is when man begins to function as a "nephesh" or a person, when he enters into life, that we consider him a living human person. Our tradition therefore regards a foetus as a living human person only after it has emerged into the air of our world. Otherwise a foetus is considered a limb of the mother and surgery upon it is no different from surgery upon another limb, including amputation, which in effect causes

life to cease in that limb. Based upon Exodus 21:22-23 medieval codes insisted there can be no capital punishment because there is no killing of a foetus. It cannot be considered a homicide. In modern terms, to even consider it a high misdemeanor is unreasonable.

In our time when we have greater medical knowledge to prevent miscarriages or minimize still-births, and understand far more about malformed and retarded children, the problem of seeing a pregnancy through to its end is far more aggravating a social question than it was for the Talmud and our medieval codes. Nevertheless, it is evident from all the progressive thinking the ancients did on such matters as birth control, protecting of the rights of women in divorce, the status of an unborn foetus, concern for the mental and physical health of the mother and the common welfare of society in such matters as poverty and overpopulation, that in our time these same sages would have dealt boldly and honestly with the need to update abortion legislation. As late as the 20th century a Palestinian Rabbi ruled that even to save the hearing of a mother it would be permitted to perform an abortion.

It is not rational to argue that new techniques in the distribution of wealth, finding new sources of food, or discovering new techniques in plastic surgery, will alleviate problems of overpopulation, poverty or malformations. Each person must ask himself whether he would like to be the malformed or retarded person living in the real world.

The problem of abortion must be seen for what it is - a personal medical problem relating to the parents of the potential

child and to their physician. No parent ought to be forced beyond conception to nurture a product in her womb. Not only should the saving of the mother's life be considered, but also her physical and mental health. Certainly abortion should be permitted in cases of rape, incest and other felonious intercourse where a child is unwanted and may later be hated, or where the mother may suffer emotional disintegration and mental disorientation.

Legislation will never satisfactorily solve all contingencies. The interpretations of courts are subject to human error. The position taken by any religious group should not be embodied into a statute which compels all citizens to live by a Jewish, a Christian or a Mormon religious idea. The fairest, most just and equitable approach to this truly challenging and sensitive question is to take it out of the realm of criminal law and out of the courts. We therefore recommend that the question of abortion should be recognized as a purely medical matter and left to the Medical Practice Act, to allow for a woman to make an independent decision and judgment in concert with her physician. Should she also wish to consult her clergyman to ascertain the position of her own denomination, this too would be an independent decision and no other citizen would be bound by the views of her clergyman. Thank you.

[Brief submitted by Rabbi Sigal can be found beginning on page 223 of this transcript.]

ASSEMBLYMAN CRANE: Thank you, Rabbi. Rabbi, I have a question, please. Do I interpret your remarks correctly that you would recommend that the entire criminal abortion statute be repealed and that there be something written in the medical

practice act to cover the subject?

RABBI SIGAL: That is correct.

RABBI SCHWARTZ: Rabbi Sigal, in speaking as Secretary of the Rabbinical Assembly of America, approximately how many rabbis do you represent?

RABBI SIGAL: The Rabbinical Assembly consists of over 800 rabbis.

ASSEMBLYMAN CRANE: Rabbi, once again, is that an official position of your Rabbinical Association?

RABBI SIGAL: The position of taking the subject of abortion out of the criminal code and placing it into the medical practice act can be considered an official position.

ASSEMBLYMAN CRANE: Thank you, Rabbi.

The next witness will be the Rev. J. Eric Hayden, please. Would you identify yourself?

R E V. J. E R I C H A Y D E N: I am Father John Eric Hayden of the Episcopal Diocese and I am speaking on behalf of the Diocesan Department of Christian Social Relations.

There are sincere opponents of liberalization of our present abortion laws who oppose abortions on moral grounds. These opponents will usually cite arguments from traditional moral theology and from certain passages in Holy Scripture. As a minister of the Gospel and as an Episcopal priest representing the Department of Christian Social Relations of the Diocese of Newark, I wish to answer and to challenge some of these moral theological arguments.

This is neither the time nor the place to debate the

conflicting theologies through the past two thousand years that have caused the unhappy divisions among our Christian brethren. But a brief review of the history of canon law in England and the subsequent developments in the common law of that country give us an understanding of the religious and moral opinions that influenced the enactment of statutes prohibiting abortion in this country.

Abortion during the middle ages was condemned by the canon law of the Church of England and punishable in the ecclesiastical courts then in existence. The decline of the ecclesiastical jurisdiction over what were once extensive areas of social behavior left a vacuum which in time was to be filled by the state declaring certain social acts to be secular crimes. The enactment by the State was a logical step in filling the gaps in the power and authority of the law. However, it was not until 1803 in England and 1821 in Connecticut and not until 1849 in New Jersey that the procuring of an abortion became a statutory crime.

During this period of transition from the decrees of canon law to the determination of statutory crime, the common law lawyers took over from canon law the distinction between the "animate" and the "inanimate" fetus determined at the point of "Quickening."

It is this vague scholastic differentiation between "animate" and "inanimate" that causes many of the moral problems surrounding abortion. Whenever certain religious or philosophical beliefs, as in Hinduism, Buddhism and Christianity, prohibit abortion, these beliefs take on an air of absolute certainty and

value. Since the present laws are rooted in the Christian traditions, it is well for us to examine these traditions. From the time of Tertullian around A.D. 200 and onwards, many churchmen have explicitly condemned feticide as a form of homicide. They have frequently quoted part of the Mosaic law, namely, Chapter 23:7 of Exodus, which reads: "The innocent and righteous slay thou not," and churchmen have extended the protection of this ecclesiastical law to the child in the womb. However, determination at what point in its development the fetus became entitled to this protection was, from very early times, a matter of doubt. The scholastics in the early middle ages developed a theory of "animation" which they attributed to Aristotle, but modern scholarship has not unearthed this theory in such specific detail in the surviving works of the Greek philosopher. At conception, according to the scholastics, the "soul" of the zygote was vegetative only; after a few days it was informed by an "animal soul"; and later by a "rational soul" -- between the thirtieth and fortieth day for a male, and between the sixtieth and eightieth day for a female! How they ever determined any of these speculations empirically is beyond me. They do not warrant serious consideration today. They can be dismissed as simply the mental gymnastics of the medieval monks who knew very little about physiology, genetics, empirical psychology or biblical theology. There can be no certainty in any verifiable sense of the relationship between "soul" and embryo or of the precise moment or stage at which the relationship begins to exist.

As to the moral right to existence, it is not as simple

as the opponents of liberalization of the abortion laws maintain. We must ask what do they mean by "life"? Do they mean "human life" and how do they define this? Do they mean "human life potentially" as an existent in the fetus or existentially as it is lived in the post-natal environment? These are important questions troubling the Christian conscience. If we were to accept the absolutist principle of the scholastic and declare the fetus to be in all circumstances inviolable, there would be no moral question. But this right to existence must be weighed against our moral concern for the welfare of the mother and the quality of the future life of the unborn. We are concerned about the mother in a complicated pregnancy, or an unwanted pregnancy or the development of an ectopic or anencephalic fetus; we also care about the mother with Rubella or the girl of fourteen impregnated by rape or incest or felonious seduction. These conditions are real physiological and psychological and social problems. They are realities that have to be lived with by moral and law-abiding citizens. They are not vague speculative categories such as "soul", "person", "human" or other elusive concepts. Categories like "soul", "life" and "person" are too pliable and can be distorted out of the context of biological and social life as it is actually lived. These vague philosophical concepts cannot be helpful in making ethical decisions. We cannot erect a moral theology on medieval speculation, but instead must seek our moral guidelines in the context of real life situations. We do not turn to sterile legalisms of the past, but turn instead to God to share with God's humanity in all its glories and its travail.

We feel that ecclesiastical legalism has no foundation

in the Gospel message. The outdated legalisms of certain Christian churches cannot offer any meaningful guides to ethics or law today in 1968.

Instead we recognize in principle that therapeutic abortion may be a legitimate Christian course of action but stress that this moral decision is the ultimate responsibility of the parents or of an unwed mother and should be made in the light of the best available medical advice and only after prayerful consideration. We support the American Law Institute's Model Penal Code which would legalize therapeutic abortion when there is a substantial risk that continuance of pregnancy would gravely impair the physical or mental health of the mother or that the child would be born with grave mental or physical defect and/or where the pregnancy results from rape, incest or other felonious intercourse involving a minor. In the latter case, the abortion should not take place unless the girl consents. No physician or hospital staff member should be compelled to perform or participate in the preparation for an abortion against their conscience.

To my Christian and Jewish brethern who may disagree with the position we have taken, let me remind them of the words of Thomas Merton, the famous contemporary Roman Catholic monk - "The inability to entrust him to God and to his own conscience, and the insistence on rejecting him as a person until he agrees with me, is simply a sign that my own faith is inadequate."

ASSEMBLYMAN CRANE: Thank you, Rev. Hayden. Any questions of Rev. Hayden?

REV. DENTICI: Reverend, would you suggest to us that we make a multi-recommendation for the removal of all the

laws relative to abortion?

REV. HAYDEN: Pardon?

REV. DENTICI: Would you suggest that we recommend as a Commission the removal of all the laws relative to abortion?

REV. HAYDEN: No, I recommend and the Department of Christian Social Relations of the Diocese recommends the statement of the Law Institute's Model Penal Code, that specifically should be the legislation, the changes in the present law or statute under those specific conditions.

REV. DENTICI: The reason I asked the question is because in some of the law, in some of the interpretations, the words "life and person" are used. If these are elusive terms, we should clarify them or else remove them.

REV. HAYDEN: Yes, I think you should remove them then.

ASSEMBLYMAN CRANE: Thank you, Rev. Hayden.

I would like to announce at this time the arrival of Senator Frank Guarini of Hudson County. And I have received a message from Senator James Wallwork of Essex County that he is down with the flu and cannot be with us this evening.

The next witness will be Rev. Charles Carroll.

R E V. C H A R L E S C A R R O L L: Mr. Chairman, I will be very brief. I would just like to present the arguments. I happen too to be an Episcopal --

ASSEMBLYMAN CRANE: Will you identify yourself, please, and the organization you represent.

REV. CARROLL: I am an Episcopal Priest of the Diocese of California and the Protestant Chaplain of the University of

California, San Francisco Medical Center.

It seems to me the basic issue is: When does human life begin? The majority of scientists agree at conception and it is quibbling indeed to differentiate between biological life and human life and to assign the 20th or 21st week of pregnancy as one after which an abortion cannot be undertaken. My reasons for this are very plain and simple. If we begin to define death in terms of independence, to wit, when the fetus becomes viable or when the fetus is capable of life independent of the mother, let us just ask ourselves for a moment what we have said. We have incorporated the word "independence" into a definition of life. And I would ask you in all sincerity: When did you become independent of your mother? How many months after birth? Or what are we really saying about the retarded children in this country, 6,000 of whom are in one hospital in Northern California alone? Admittedly their liquidation could reduce budgetary pressures. What are we saying about those who are deformed after birth in the course of an automobile accident or as now in the course of a war in Vietnam? What are we saying to the old and the senile in this country?

Now we are in the midst not alone of a debate as to when human life begins - and I would qualify that - human life began millenia ago - but we are also engaged in a debate right now as anyone who serves in medical centers is keenly aware as to when does individual human life end. You know, as well as I know, that throbbing hearts are taken from men's chests for organ transplantation. You know, as I know, the medical community

here and everywhere is seeking a new definition of death.

Now I became interested in this not alone because I was a Priest, but because I was an officer of the Military Government in Berlin after the war and I was an observer at the Nazi doctors' trials in Nuremberg. I submit there are a lot of questions we have to ask and dependent upon those answers will depend the course of medicine in this country for many years to come.

To paraphrase Clemenceau when he said, "I think war is too important to be left to Generals," I say that the great issues of life and death are too great to be left to the medical community alone and that in this pluralistic society - and I came here because I know what is being said - it's the Catholic Church. Well, I happen to be married and I happen to have four children and I happen to have practiced birth control. I happen to have made a number of these decisions that must be made in the course of life. But on this issue, I am at one with them and I submit many more than we in this room dream of are.

Let me just give you one example. Some years ago it was my pleasure to spend a week with Dr. Schweitzer in Lambarene and he talked to me one night at great length about the inhuman treatment that some men visit upon animals and specifically told a story of being on tour in Barcelona and after his concert walking through the streets in the morning and finding a group of young boys had taken a dog and tied his fore paws and his after paws and were swinging him by his tail around their heads. And he just walked in the midst of this group and freed the dog and let him go. He said, "My friend was a religious man,

but he didn't understand my concern." I don't know that I understood Dr. Schweitzer until I looked behind him and there sat Dr. Richard Freedman, the number still on his arm that had been tattooed at Dachau.

I would ask you what we are doing to cheapen human life.

If you have any questions, I will be glad to answer.

ASSEMBLYMAN CRANE: Reverend Carroll, thank you for your testimony. You, of course, dealt with the question of when does human life begin and when does it end. These are some of the great questions of our time and I don't believe we as a Commission could resolve them, but we do have to make some determination as a Legislative Commission here and what the determination will be, of course, we don't know as yet. That is why we are hearing testimony from such people as yourself. You, of course, are from California. California is one of the states that has liberalized the abortion law recently. What is your interpretation of the California experience with a little better than a year - isn't it now? - of a liberalized abortion law?

REV. CARROLL: Well, 83 per cent of the reasons for abortion in the State of California since the enactment of this legislation have been on grounds of mental health and this is very interesting. I think one of the most interesting commentaries that can be made on the whole problem is what this is doing to the family life and family law. May I suggest that you read the case of O'Beirne versus O'Beirne which came before the Supreme Court of California December 5th, last, in which a sergeant of the Santa Clara County Sheriff's Office

impregnated his wife in July, filed for divorce against her in September. She cross-filed. In October, she petitioned the Kaiser Hospital in Santa Clara for an abortion. She was granted this on mental grounds. He entered the court to save the child and was denied both by the Superior Court and the Supreme Court of California and while the doctors at Kaiser were ready to operate around the 6th of December, she refused the abortion and since has had the child. Now, as I said to my son who is at U.C., Berkeley, Johnny, "If you go out and impregnate a girl under 18, what happens?" He said, "Statutory rape." I said, "That's right." And I said, "If I go out and impregnate a woman other than your mother, what happens to me?" He said, "You'd be engaged in a paternity action and you'd be made responsible for the child's care." I said, "That's quite true." I then said, "What happens if mother chooses to divorce me, to whom would the custody of the children be granted?" He said, "To her, and the responsibility for maintaining them, to you."

Now a hundred years after the fight for equal rights began, we find that a husband and father has no rights to defend even his own child in a legal action under the laws of the State of California at the present time. This, I might say, would work a real inequity and would be worth your consideration. It is being studied and explored now by the University of California Law School.

REV. DENTICI: Father Carroll, from your experience in California, do you feel when they enacted these laws that they had sufficient facts at their disposal?

REV. CARROLL: Well, I think it is very difficult to argue about statistics. Most of the statistics that were offered by those who supported therapeutic abortion were seldom questioned: first, the statistic on how many were undertaken each year; second, how many women died in the course of illegal abortions. I would prefer to accept the statement of Mary Calderone of the Department of Labor which placed both illegal abortions and deaths consequent to them at a much lower figure than those that have been used by exponents of this present legislation. And let me say too, Father, that this will not reduce the number of illegal abortions in the United States any more than it has overseas.

I remember two weeks ago having the opportunity to discuss this problem with two very distinguished Czech Communists and while their laws were liberal, they have tightened them. And if we are going to use the argument that this is going to legalize abortion, I think we had best examine again what is really happening because a woman may go to a town other than her own, but she also may go to a country other than her own and not always to those who are legal practitioners.

REV. DENTICI: Has it been the experience also that the plight of the poor has been alleviated by this law in California?

REV. CARROLL: Well, let me say this - and I would accuse no one who opposes me of malice; I would accuse him of blindness - I think there are genocidal implications in therapeutic abortion legislation and let me tell you why. You know and I know the argument that constantly ensues about

welfare aid to dependent mothers. Now once the woman in the ghetto has been given the right to be aborted, which is about the only right we are willing to give her, then the Welfare Department need only come along and limit the children who will be supported by the Welfare Department to three to force her into abortions.

It so happens I am not a conservative by nature. It so happens that in the course of this debate I came to a firm position on a number of things, all of which hinge on the sanctity of life. Human rights in this country, the grape strike, the war in Vietnam, capital punishment, are all part and parcel of the same package and we shall again come to an appreciation of the sanctity of life or we shall be headed for an experience not unlike that of our German friends in '33 to '45.

RABBI SCHWARTZ: Would you not say with reference to the sanctity of life, taking into consideration the difficulties that it might produce regarding those who are already living, such as the mother and the father and the family conditions - that they would necessitate an equal amount of consideration as the unborn child?

REV. CARROLL: Well, this would depend entirely upon whether our society was willing to support, as you say, the unwanted child. But I can't imagine that we have come to a point so low in this country that we take life indiscriminately and to me this is indiscriminate taking of life. To me, frankly it is what Dietrich Bonhoeffer said - and none of my Protestant theologians ever quote him - who was the German martyr under

the Nazis - or Karl Barth or the present Director of the University of Hamburg, Helmut Thielicke, all of whom lived and suffered under the Nazis - nothing short of murder. That's my position and I respect yours.

When is society really going to accept responsibility for its brother? What are we saying here tonight? And don't you, too, Rabbi, hear the voice of budgetary concern? I do in California. If I have a dialysis machine and there are ten men whose lives depend upon access to it, to whom do I allow access? Christian Barnard in Germany startled the German medical profession because he was asked, "To whom would you transplant a heart, a distinguished physicist or a father of six who had a happy marriage?" He said, "A physicist." Is this a decision to be made by doctors?

Once you entrust this power as it was to the Nazis, there will be no limit to the excesses that are committed.

Rabbi, did you know that of 300,000 mental patients in German between 1939 and 1945, at some of the finest hospitals, 260,000 people were liquidated by carbon monoxide gas? They weren't Jews. They weren't "inferior people." To whom do you want to entrust these decisions over life and death?

I am just one, and I realize that, but I am one in a pluralistic society and I would hope that we in our society busy ourselves with making those decisions together and fashion a set of values by which we are to live that will protect the individual and will protect society.

RABBI SCHWARTZ: Wherein we basically differ in our

personal viewpoint is that I cannot conceive of the Nazi policy of genocide in the same light as I conceive of a doctor's concern for a mother in his desire to help her with an abortion.

REV. CARROLL: All I can say is, again take a look at the judgment at Nuremberg - the last scene. I was there and I know whom Spencer Tracy portrayed. I know the German judge into whose cell he went. I can still his words, "Believe me, I didn't know it would come to that," and Spencer Tracy saying, "You did that the first time you sentenced an innocent man to death." Let's ask ourselves where we are going?

Any further questions?

ASSEMBLYMAN CRANE: Senator.

SENATOR GUARINI: Father Carroll, I understand your position, but to get a reference point, you have an opinion, of course, as to where human life begins, and what is your opinion as to what point, what instant, human life actually begins and the theories become operative?

REV. CARROLL: Let me just say - I don't happen to know you - I can't address you by name - but I sent out 500 letters to every member of the faculty of our Medical Center and invited them to discuss this issue. And there was no doctor whether he opposed me or supported me on this proposal before you now who claimed that life began at any point other than conception. Now you can argue the difference between biological life and human life and say that human life begins at the 21st week, but that is exactly where I started my presentation tonight and that's where I end. It begins at conception and if you arbitrarily choose any other point at which suddenly

you can take it, when are we going to get at the other side of the spectrum to a point where -- you know all we need is an electroencephalogram to declare a man irreversibly unconscious and remove his organs.

Let me say in all sincerity - and I have the greatest respect for Phillip Oppenheimer when he said he and his physical scientist friends looked into the jaws of hell at Alamogordo in 1945 - I think the life scientists are at this point faced with the prospect of a similar experience. We are not going to talk about scientific experimentation on human beings. We are not going to talk about biological concepts. I didn't come to talk about that.

Let me just thank you for your courtesy and the kindness with which you have listened to me and I trust if you don't agree with my opinion, you at least share my concern. This is one of the biggest issues before this country today. And if you start here now discussing abortion, you are going to be back year after year after year because this leads to all kinds of implications.

SENATOR GUARINI: Father, just let me press that a little further. You say there is a difference between biological life and human life.

REV. CARROLL: I didn't. I believe biological life and human life begin at the same time, conception.

SENATOR GUARINI: That would be the point the ovum is pierced, period.

REV. CARROLL: That's right.

ASSEMBLYMAN CRANE: Father Carroll, you spoke of

human rights before in your presentation. What about the people who say that the rights of the female are violated when she is forced to carry through a pregnancy that she is not desirous of terminating, that is, if the pregnancy were as a result of incest or rape or if she had a very serious medical problem? What about her human rights?

REV. CARROLL: Mr. Chairman, you know as well as I do how few instances there are in which this has been the grounds for therapeutic abortion in any one of the states that now has this "liberalized" legislation. I simply would suggest respectfully that you study the statistics upon this and then ask yourself why the proponents of this legislation have not confined themselves to these two grounds because you know and I know that once you say "where the physical and mental health of the mother is threatened," you have opened wide the gate and California stands as a splendid example where 83 per cent of the therapeutic abortions in that state were undertaken for mental health reasons alone.

ASSEMBLYMAN CRANE: One final question, Doctor.

REV. CARROLL: I am not a doctor, but I thank you for the title.

ASSEMBLYMAN CRANE: You said the California experience has not reduced the incidence of illegal abortion in that state to your knowledge. Do you have any means to suggest to this Commission whereby we might be able to reduce the, I assume, high incidence of illegal abortions?

REV. CARROLL: If you want me to be absolutely forthright honest --

ASSEMBLYMAN CRANE: Yes.

REV. CARROLL: -- I think the church has failed society and I think the church has failed society in this way, that invading all our churches in America is this puritanical, cultural strain. The worst sins, you know, are not sex sins. The worst sins are calling my brother a "kike" or a "nigger." Now I think there has to be a readjustment of our sights in this society. I, for example, suggested that there is no such thing as an illegitimate child. There are illegitimate parents. I think maybe we had better get on with preaching this from our pupils. I think in short we have too much knowledge and too little love and you see it on every side in every community in this country today. These are not people to be condemned, but people to be loved. Maybe it is time we begin to imitate Our Lord again and love them, whatever the cost.

ASSEMBLYMAN CRANE: Any further questions of Rev. Carroll? [No response.] Thank you very much for coming.

REV. CARROLL: Thank you, gentlemen.

ASSEMBLYMAN CRANE: Dr. Alan Guttmacher, please.

D R. A L A N F. G U T T M A C H E R: I don't know whether the members of this Commission have read my statement or not or do you prefer that I read it so we can analyze it together?

ASSEMBLYMAN CRANE: I would suggest you proceed with your statement, Doctor. It is not too long. Would you please identify yourself first and proceed from there.

DR. GUTTMACHER: The current New Jersey abortion statute regulating induced abortion, passed in 1953, is essentially no different than the original statute passed 120 years ago in 1849. Abortion is proscribed "without justifiable cause." Ordinarily preservation of the life of the pregnant woman is recognized as the sole justifiable cause. Even though verbiage differs from state to state, all 50 states of the United States had abortion statutes with the same content until 1967. The result throughout the country was:

1) Legal abortion was infrequently performed - about two abortions per 1000 pregnancies, a total then in the United States year after year of between 7000 to 9000 per year legal abortions.

2) Even with such a low incidence, studies show a marked discriminatory pattern in those legally aborted in regard to, one, their socio-economic status (a private patient in New York had at least three times the likelihood of being legally aborted as a clinic patient) and, two, the ethnic group. All over the country a white patient has about 10 times the likelihood of a black patient in being legally aborted.

3) At the same time approximately one million pregnancies were being terminated each year by illegal abortion which has created the third largest racket in America, second only to gambling and drugs. I would say that this figure of one million abortions is open to question. In the Calderone book referred to by the previous man on the stand, the figure is given between 200,000 and 1,200,000. I was at the conference when this figure was created and I must admit it is a "guesstimate."

So I think we have no way of knowing, except on the basis of the Kinsey study which showed that one in five pregnancies terminated in illegal abortion in the United States and since there are approximately four million births, this would lead us to the figure of one million abortions.

So I say that illegal as well as legal abortion is discriminatory, particularly in regard to risk of death and serious illness. Persons with money may obtain safe abortions either by traveling to other jurisdictions; by going to a local expensive, competent though illegal medical abortionist; or by obtaining legal abortion in their home area based on a "sophisticated" artificial psychiatric indication. The poor have only one choice, illegal abortion. When it comes to illegal abortion, they have two choices, both dangerous and painful. They can either abort themselves or recruit the services of a friend or an inexpensive para-medical operator.

4) Because of the restrictive nature of the New Jersey statute and that of the remaining 49 states, well-trained physicians are prevented from practicing a high quality of medical care. In medical school students are taught the importance of preserving the individual's health - not only physical but emotional as well. Then, too, they are taught the importance of the quality of life - particularly in regard to physical and mental normalcy of the newborn. Yet the New Jersey statute provides no grounds to include such considerations when it comes to the matter of performing a legal abortion.

My belief is that a revised statute should attempt to accomplish four things:

- 1) reduce the incidence of illegal abortions;
- 2) reduce discrimination against the poor and racial minorities;
- 3) permit physicians to practice the high quality medicine for which they are trained;
- 4) discourage hypocrisy and defiance of the law with its unfortunate and tragic consequences.

I think it would probably be repetitive to remind this Commission that five states in the course of the last two years have modified their laws. I will exclude that from my testimony.

After earnest thought and much study because I had the privilege of being a member of Governor Rockefeller's Abortion Commission and we studied the problem in depth, I suggest to you seven categories of indications should be legalized:

- 1) to preserve the physical or mental health of the pregnant woman as well as her life;
- 2) if the woman has a physical or mental incapacity which renders her incapable of caring for the child if born;
- 3) if there is scientific evidence that there is strong likelihood of the child being born severely deformed or handicapped;
- 4) rape or incest if police are notified within 30 days after its stated occurrence;
- 5) any woman who has borne four or more children, provided no abortion has been done for this indication within the previous 12 months;

6) any woman of 40 or more, provided no abortion has been performed for this indication within the previous 12 months;

7) all unmarried girls of less than 17.

Dr. Tietze who was a member of Governor Rockefeller's Commission - he was a statistician - studied this, and he came to the conclusion that this would probably reduce the incidence of illegal abortions about 50 per cent in the State of New York. It would certainly not eliminate it, but we thought it would reduce it to approximately 50 per cent of its current level.

Indications 1, 2 and 3 require the written recommendation of two physicians, one of whom must be a recognized specialist in the particular area of practice involved.

Indication 4 requires some authorization mechanism - that is, of course, rape and incest - to be worked out with the State Attorney's office.

Indication 5, and that is any woman who has borne four or more living children, is justified because a woman who has already borne four children is in a far better position to determine whether a fifth child is wanted and will contribute to the welfare of the existing family than any outside agency, no matter how skillful.

It is also to be borne in mind that in the 225 consecutive autopsies that Fox reports from the State of California on women who died over a ten-year period from abortion, 55 per cent of these women had borne four or more children. Therefore, one of the commonest indications for abortion, particularly among the poor is the woman who has what she considers an

excessive number of children and cannot see her way clear to support others. This then would certainly be the fourth category.

Indication 5 - I go into the next grounds - we feel that a woman of 40 should be given a chance to determine whether or not she wants to remain pregnant because her chance of some mishap is increased by her advanced age and, of course, congenital malformations are increased. I would not say dramatically, perhaps from the 1 per cent incidence which we ordinarily expect of severe malformation to perhaps 3 per cent. The condition of Mongolian idiocy or Downs disease, as we physicians call it, in children born to mothers of 20 is 1 in 2500 births. At the age of 45, the incidence rises to 1 in 40 births.

Category 7 - we are talking about the unmarried woman who is 17 or less and my feeling is that she has a poor likelihood of creating a superior environment for her newborn; furthermore, delivery of an illegitimate child stigmatizes her life so severely that it greatly reduces the chance of the unmarried mother becoming a contributing and self-supporting member of her community.

These, gentlemen, are my sentiments and I will be very glad if you will be good enough to ask me questions to sustain them. I will be very happy to try to discuss them with you.

ASSEMBLYMAN CRANE: Would you be good enough to identify yourself. You are well known, of course, to most of the members of the Commission, but for the record would you identify yourself?

DR. GUTTMACHER: Yes, I am Dr. Alan Guttmacher. I graduated from medical school at the Johns Hopkins in Baltimore in 1923 and served a residency in obstetrics and gynecology. I practiced in Baltimore from 1929 to 1952 and was Associate Professor of Obstetrics at the Johns Hopkins and then came to New York in '52 and was the Chief of Obstetrics and Gynecology at New York's Mount Sinai Hospital from 1952 to 1962. Since 1962 I have been President of Planned Parenthood World Population.

ASSEMBLYMAN CRANE: Thank you, Doctor. I have a question. You have presented seven indications that, of course, were presented in New York. Some of these indications are medical and some sociological. Is it possible for you to put any particular emphasis on the importance of the two considerations, that is, is the medical problem the most pressing one or is the sociological one the most pressing?

DR. GUTTMACHER: Well, I don't think you can separate medicine and social well-being. The World Health Organization has reminded us that good health is not the absence of illness and disease; it is a state of complete mental, physical and social well-being. This is health. And I refuse to attempt to separate social factors from health factors. To me, they are inseparable.

ASSEMBLYMAN CRANE: Doctor, you indicated the seven indications here and I imagine that the statement of Dr. Tietze played a part in it with you that it would reduce illegal abortions in New York State by approximately 50 per cent.

DR. GUTTMACHER: No, I would like to qualify that. Number one, the Commission, of course, was composed of ten

people. This is the majority report of seven and we agreed on 16 rather than 17, but my feeling was that I preferred 17, and we did not include the woman of 40. And when I said that we would reduce the incidence by 50 per cent, I am using my criteria rather than the criteria of New York. I would assume perhaps if we had passed the New York law, which we did not pass--that would be a child of 16 or less, and leaving out the woman of 40.-- I would assume that perhaps the illegal abortions would be reduced by 40 or 45 per cent rather than the 50 per cent when we raise the age to 17 and allow women of 40 to be aborted.

ASSEMBLYMAN CRANE: Then the seven points you have presented, would you say these are the most important reasons that persons seek illegal abortions?

DR. GUTTMACHER: Well, I would say they are, sir. As you know, studies done show that approximately 70 per cent of women who seek abortions are married and impregnated by husbands, so that it is a family problem in the main and the family problem usually becomes prominent because of economic and social situations and perhaps one can consider unwanted children as a social situation. I certainly think they are. On that basis, I would think that the indications which I gave you are responsible for perhaps most of the abortions illegally done.

ASSEMBLYMAN CRANE: It occurs to me, of course, in the situation where a woman is impregnated by her husband and, of course, the husband is the person responsible, what about sterilizing the husband? Is this a course that might

be thought of?

DR. GUTTMACHER: What?

ASSEMBLYMAN CRANE: Sterilizing the husband.

DR. GUTTMACHER: Well, that won't terminate this pregnancy.

ASSEMBLYMAN CRANE: No, it wouldn't, but future ones perhaps.

DR. GUTTMACHER: Certainly I think that we ought to use male sterilization more freely than we do.

ASSEMBLYMAN CRANE: Any other questions?

SENATOR GUARINI: Then we get back to the pill.

Doctor, you said that it would reduce illegal abortions by 50 per cent. What would your program do to the over-all number of abortions that would be perpetrated?

DR. GUTTMACHER: Well, I think you would increase them rather markedly. If we accept this figure of one million illegal abortions, we have 200 abortions per thousand live births. Two of these are probably legal and 200 are illegal. If we reduce the illegal abortions then by half, we would then substitute 100 legal abortions per thousand live births rather than the figure of 2 which we now have. You would multiply legal abortions by about 50 fold.

SENATOR GUARINI: So there would be a marked increase under your program?

DR. GUTTMACHER: Oh, yes, there would be.

SENATOR GUARINI: Now you say that you refuse to differentiate between social and health reasons. Now a girl who is 17 - I assume that is an arbitrary age that you have taken ---

DR. GUTTMACHER: Well, it is not entirely arbitrary. I think from the social point of view a young woman less than 17 is hardly mature enough to qualify to be a good parent. I don't think that her child is going to be greatly helped by this and I doubt very much whether a pregnancy is constructive in her life pattern. When a woman is 18, perhaps we have more justification for continuing pregnancy. So I don't think it is entirely arbitrary. But it is what I would say, a matter of rather considerable judgment.

SENATOR GUARINI: The fact is though that the consideration would be largely an eco-social consideration, not a health consideration.

DR. GUTTMACHER: Yes, of course it would be.

SENATOR GUARINI: Is that right?

DR. GUTTMACHER: Yes. There is very little medical ground to abort a woman simply because she is less than 17 and pregnant.

SENATOR GUARINI: As far as the health is concerned, which, of course, as a doctor that would be one of your prime considerations - what would you say, Doctor, from your practice and experience as a physician would psychologically happen to a girl who has an abortion under 17? Would there be any impact on her mental health?

DR. GUTTMACHER: Well, I think she would be a pretty hard customer if there weren't. I am sure in some there is not. But I am sure in others, it makes quite a whole difference and change in life. Of course, I have seen psychotic women who have borne children in this age group and some do not become

psychotic. Of course, it depends a good bit on the empathy for the way they are handled and their home environment and whether or not they are treated in a humane way. I think there are so many factors involved. But it is awfully hard to believe that a deep scar is not left in the mind of such an individual.

SENATOR GUARINI: Would we not be running a risk for the sake of economics and social interest to perhaps endanger the health of this woman?

DR. GUTTMACHER: Abortion does not endanger health. An abortion is a very safe procedure fortunately today.

SENATOR GUARINI: I am talking psychiatrically.

DR. GUTTMACHER: Oh, psychiatrically. These studies have been done and the overwhelming reports are that there is no psychiatric damage done to individuals aborted. There is no grounds for this. There is a constant statement of this which cannot be verified in the literature.

SENATOR GUARINI: You don't think that there are guilt complexes?

DR. GUTTMACHER: Obviously in a very small percentage of patients there are guilt complexes. But just think of the vast majority who are tremendously relieved and put into an entirely different emotional state by this thing being done. This to me outweighs the other in almost incomprehensible difference.

SENATOR GUARINI: This is your position then as far as that is concerned?

DR. GUTTMACHER: Oh, yes, I feel it very strongly as

probably my words indicated.

ASSEMBLYMAN CRANE: Doctor, the girl under 17 who has an abortion - is it likely to change her life pattern? Is she likely to require another abortion within six months or a year?

DR. GUTTMACHER: I hope not.

ASSEMBLYMAN CRANE: Are there any figures on that?

DR. GUTTMACHER: We have had, of course, some very interesting experiences in trying to change the life pattern of girls who have had illegitimate children. This may not seem germane when I start the discussion, but we learned from Dr. Cirell in the remarkable experiment he carried out at Grace New Haven Hospital -- This young man was very much agonized because he was delivering young women of their third, fourth and fifth illegitimate child. He went back to the record room of the Grace New Haven and pulled a hundred charts of girls less than 16 who had delivered there in 1960 and these young women had created 360 children in the five years from 1960 to 1965. Then what he did was to mobilize the whole community into an extraordinary experiment with these young women. What he did was to get the schools to create a separate school, a special school, for them, and they were educated. They weren't dropping out of their classes. He met with them. I won't go into the whole experiment. But he delivered these 50 girls and according to the statistical pattern in the first six months, 17 of them should have been pregnant again. But due to the fact that he gave with the mothers' permission 42 of them birth control pills and 8 got

no birth control, there was one single pregnancy instead of 17, which statistically would have happened on the recidivism of the illegitimacy. Now if you abort a child, obviously, I think, one has to handle the thing realistically. We hope some type of work will be done with the child and very likely she may have to go on birth control. These are the facts of life. As you know, there is a fascinating experiment going on in Baltimore and Washington in which we are attempting to prevent the first illegitimate pregnancy by giving children with high risk birth control before they have their initial coital experience. Now these are very important sociologic experiments and this is the redemption of this group living in the ghettos who unfortunately through circumstance manufacture such a high incidence of illegitimate pregnancy. And I feel we have to do the same thing with young children we abort. We just don't abort them and drop them at that point. Obviously some social-psychiatric studies must be done and they must be redeemed in some way so that this does not become a repetitive pattern. It would be a sorry thing if it became a repetitive pattern.

In our rules, as you probably remember, we say we would not abort such children more often than 12 months so that obviously we do not encourage impregnation after impregnation.

SENATOR GUARINI: However, if she is mentally affected by having more than one pregnancy within 12 months, under another section she could have an abortion very easily, couldn't she?

DR. GUTTMACHER: Yes, if it were done on psychiatric

grounds, I suppose she could.

MR. RITTENHOUSE: Doctor, in going through your seven criteria, I take it that in no case would the abortion be performed unless it was requested by the mother.

DR. GUTTMACHER: Oh, Good Lord, no, not only requested by the woman, but obviously agreed to by the husband.

MR. RITTENHOUSE: That would also be a requirement in every instance that the husband would have to agree?

DR. GUTTMACHER: Well, of course, if the girl is unmarried, that would not be a necessity.

MR. RITTENHOUSE: In every case were a woman is married, it would be.

DR. GUTTMACHER: Of course, if she is legally incompetent, then the court has to act for her or her guardian has to act for her, but I am talking about legally-competent women.

MR. RITTENHOUSE: What about this second criteria for abortion? Do I understand you to say this involves the question of a physical or mental incapacity of the mother to care for her children?

DR. GUTTMACHER: Yes, we as physicians so often see tragic cases in which a woman, for example, is advanced in multiple sclerosis and perhaps is even a wheel-chair case and she leads fortunately for her a normal emotional life. She becomes impregnated. And here is a poor soul who can never take care of a child, who is doomed to die in three or four or five years. This is the kind of woman we are talking about.

MR. RITTENHOUSE: What about the woman who is a wheel-chair case who isn't going to die in three or four or five years

who comes to her family physician and asks him for an abortion?

DR. GUTTMACHER: She must be given the choice whether she remains pregnant or not. I don't think you or I can ---

MR. RITTENHOUSE: Is the choice purely one of the mother when she comes to the family physician and is it the family physician who makes the recommendation?

DR. GUTTMACHER: Well, in the final judgment, no doctor is forced to do an abortion under any circumstance.

MR. RITTENHOUSE: You indicated in the first three criteria the written recommendation of the physician was required. Are you talking here about the family physician?

DR. GUTTMACHER: Well, we talk about two physicians, I believe, and furthermore one physician must be a specialist in this particular area. Perhaps in physical medicine, if you have a wheel-chair case, if you wish to have such a person testify, his testimony might be valuable as to whether or not this woman is likely to improve and so forth and so on and be able to take care of her own child.

MR. RITTENHOUSE: Well, supposing a woman is emotional by nature and has an ulcer and goes to her family physician and says, "I really don't care for this child," and the family physician agrees and writes a letter to the local obstetrician in the local hospital, would that be sufficient cause under the statute you are proposing to be passed in this case?

DR. GUTTMACHER: I would think if there is medical evidence that the pregnancy would injure her health, I think the law would state that for the preservation of life and health

if there is serious medical opinion that health would be injured, obviously there would be an indication for abortion.

MR. RITTENHOUSE: Well, I want to pin you down on this medical opinion. Is that medical opinion then --

DR. GUTTMACHER: It is going to vary from physician to physician. We have no unanimity. I do not consider a gastric ulcer an indication for abortion. I have seen women with gastric ulcers go through pregnancy quite satisfactorily. As a matter of fact, they usually do better because of less acidity and so forth and so on. So it depends on the experience and the judgment of the physician. But as you know, medicine is not an exact science and not all doctors are going to be in agreement.

MR. RITTENHOUSE: But the general question as to whether the mother has physical or mental capacity to care for children once born is a decision you feel should in this case and could be made properly by the family physician?

DR. GUTTMACHER: Yes. I would hardly think -- Perhaps I misunderstood you. But certainly a woman with an ulcer - I think we talked about her - that is not a permanent situation. I am talking primarily of women incapable because of psychiatric state or physical state of actually caring physically for her child. That is what we mean. Perhaps it is not properly expressed. It is just the inability to physically take care of the child.

MR. RITTENHOUSE: Thank you.

REV. DENTICI: Doctor, about this question of the poor, we have been reading - in fact, recently in Time Magazine -

that one of the reasons that they are having difficulty with the poor in abortions is that the poor cannot afford the price of a legal abortion.

DR. GUTTMACHER: Of an illegal abortion.

REV. DENTICI: No, Doctor, in these states where the laws have been liberalized, one of their problems with the poor, so it is quoted, is that they are not going to the doctors who could perform the legal abortions because of the price.

DR. GUTTMACHER: That is strange because there must be hospitals in those communities like there are in this community which do free work. I can't understand that.

REV. DENTICI: Well, this is difficult ---

DR. GUTTMACHER: I don't take Time as an authority on medicine, sir. I don't accept Time as an authority on medicine.

REV. DENTICI: I just wanted to ask you about this particular question. Will the poor be helped necessarily if abortion is liberalized?

DR. GUTTMACHER: Good God, yes, in any kind of a decent society, but if the physicians act like a bunch of apes, they won't be helped. But, my God, we are better than that, I hope.

REV. DENTICI: Would you suggest then that perhaps we recommend to the Legislature that anyone who qualifies for an abortion under the seven things that you give us, that there be no charge?

DR. GUTTMACHER: No, I think that would be not proper

because I think that under all conditions that I know of, the poor can get good medicine in our great institutions and I certainly hope that the university institutions would take the lead in this. Now I can certainly think of abortions I have done in my life, and legal ones, without a fee under certain situations. On the other hand, I feel that sometimes I am justified in charging a fee. But I think you are underestimating the quality of the doctor - at least perhaps I am overestimating it and I hope that we have enough humanity left in us that under some conditions we still could do free abortions even on a private service. And certainly I feel in the ward service there is every reason to believe that covered by Medicaid or what you will that the abortion could be perfectly well covered. I hope we can wipe out this hideous discrimination against the poor in this area. That is one of the things we are anxious to do.

REV. DENTICI: Doctor, are you in favor of abortion on demand?

DR. GUTTMACHER: I think that is a tough question to answer. I will eventually feel that way, yes. I think that what we do - we have to make these social changes gradually. I think that we are much less likely to have problems if we do it by evolution rather than revolution. I think perhaps the generation of doctors to come after we have seen what progress there is, whether we have seen we actually have reduced illegal abortions by 50 per cent -- If we find we cannot substitute effective contraception for the necessity for abortion, and this obviously to me is much better - abortion is a second line of

defense - the first line of defense is effective contraception. Now if we are able to make the body politic contraceptive-minded and we get better contraceptives, I hope we can eliminate this whole problem and this will be an archaic discussion.

REV. DENTICI: You say abortion is a second line of defense and that birth control would be preferable. Do you say that because there is danger in abortion?

DR. GUTTMACHER: No. I think psychologically and I think physically it is far safer to prevent a pregnancy than to eliminate a pregnancy.

REV. DENTICI: Then there would be danger in the performance of an abortion.

DR. GUTTMACHER: Well, it all depends. It is much more dangerous to have a baby than to have an abortion. I am perfectly serious as you know. I am not trying to be jolly. We have 160,000 consecutive abortions reported from Hungary and Czechoslovakia without a maternal death, for example. So the danger of abortion, I think, is considerably less than having a baby. But certainly practicing contraception is less dangerous than having an abortion.

REV. DENTICI: One last question: When would you consider from your medical experience that human life begins?

DR. GUTTMACHER: That's not a medical problem; that's a philosophical problem, a theological problem. Why should a doctor have a better understanding when life begins. It's all in one's attitude. I think life begins at the minute of fertilization, but I may be quite wrong. I don't think there is any difference between life then and life at 20 weeks. But I

think there is quite a difference perhaps in eliminating a baby at eight weeks and a baby that is twenty-four weeks. To me, that makes quite a difference and there are medical reasons that I am against the elimination of pregnancy after the twenty-fourth week. But if you pin me down to morals or theology, I am no theologian. But my little theology would make me believe that the moment fertilization occurs a life has begun.

ASSEMBLYMAN CRANE: Thank you, Dr. Guttmacher.
Thank you for coming.

Dr. Samuel Breslow, please.

D R. S A M U E L B R E S L O W: I am Dr. Samuel Breslow, former Director of Obstetrics and Gynecology at Perth Amboy General Hospital and now President of the Medical Staff at Perth Amboy General Hospital.

Thank you and it is very hard to follow the master, but I have been practicing obstetrics and gynecology in Central New Jersey for the past 36 years. In that time, I have seen hundreds of mothers and fathers beam with happiness when their child was born.

But I have also had the sad experience of taking care of women who were bearing a child conceived in rape, incest, or debilitating mental or physical illness. The fear, frustration and hate that burdens these women disturbs even the seasoned physician. His lifetime of training in doing what is best for the patient tells him that there ought to be a way to save these women from bearing a child that is not only unwanted, but may also be diseased or deformed. In New Jersey, however, it is not

legal for him to provide that medical procedure. Instead, he must help her to bear this child even though both he and his patient know that the future for the mother, the child, and others in the family may be complicated by even more emotional, financial and health problems.

I urge that the law that requires this be changed. I do not recommend a revision that would make abortion freely available under all circumstances. But I do strongly urge that the state of New Jersey make it legally possible for the victims of rape, incest, serious mental or physical illness or handicap, to have an abortion, if they wish, under professional supervision and control.

Put yourself in the position of these parents. Can you imagine the lifelong anguish of caring for such a helpless child? What about the effects upon the other children in the family, upon the family's finances, the family's stability? Such parents are condemned to a life of sacrifice that we can hardly imagine.

There are other humane justifications for therapeutic abortion. To make a woman who is already emotionally unbalanced or mentally retarded endure a pregnancy or bear a child she cannot care for is to inflict punishment that can only be compared to the Middle Ages. In these days of enlightened social concern, it is an anachronism not to permit therapeutic abortion for patients of this kind.

Humane considerations should also govern the granting of permission for therapeutic abortion in cases where it is medically certain that birth anomalies will result from genetic causes. Science is beginning to discover that certain diseases and deformities are caused by combinations of chromosomes. As this knowledge develops, it certainly would not be humane to let such anomalies be born.

As part of this presentation, I would like to introduce as an essential part of the record the splendid series on abortion which appeared in The Evening News in Perth Amboy in May. It portrays in great detail the trials and tribulations suffered by actual victims under an antiquated and inadequate abortion law.

It is well worth your reading and serious thought.

Such cases and many more lead to the inevitable conclusion that the New Jersey law requires revision to meet the needs of the people who live here now.

That revision should NOT mean the lifting of all restrictions on therapeutic abortion, nor should it make abortion mandatory under any circumstances. Few people would recommend or support such extremes.

Rather, the revision should allow hospitals and physicians to provide therapeutic abortions, under carefully controlled regulations, for specific medical reasons.

I say medical reasons so that the matter of moral or religious conviction can be left in the domain of private privilege. By making the grounds for abortion medical-legal, each person will not be put in the position of enforcing his or her own beliefs upon others who may not have the same beliefs. Instead, the individual will still have the right and opportunity to follow the dictates of personal religion or custom.

New Jersey's 119-year-old law simply does not meet the needs of a crowded, problem-ridden urbanized society. It does not meet the modern concept that health is a right for all, that health services should be made easily available to more people. It does not meet the needs of victims of crime and misfortune. It does not meet the concepts of expanding rights for women and a woman's right to govern her own body. And it does not fit modern concepts of humaneness.

Other states -- Colorado and Maryland to name a few -- have already modernized their abortion laws, and many others are in the process of doing so.

Reform has already been recommended by national professional societies: the American Law Institute, the American Medical Association, the American College of Obstetrics and Gynecology, the American Nurses Association. In New Jersey, it is recommended by the Medical Society of New Jersey, the New Jersey Obstetrical and Gynecological Society, and the State Nurses Association. These, and thousands of other practitioners

across the country, such as educators and social workers, see the need for reform in the problem cases they handle in their daily practice.

Our State Supreme Court, in its decision in the Gleitman case, points to the need for serious consideration of reform. Justices Jacobs and Schettino in a dissent stated "that in common fairness to the physicians of New Jersey and to those entrusted to their care, the (abortion) law must be clarified."

In New York, a jury recently awarded a \$110,000 judgment against a hospital for failing to provide a therapeutic abortion. A pregnant woman recovered from Rubella and entered a New York hospital for a therapeutic abortion. It was cancelled by the gynecological chief because the New York State law permits abortion only to save a mother's life. A handicapped child was born, and the parents sued the hospital for refusing the abortion and for not advising them where to get one.

These are only the highlights of humane, professional, legal and social needs for reform. Reform is also needed on the grounds that the present New Jersey law is discriminatory. It is naive to think that those who can afford it are not obtaining these services outside the state. This is a discrimination against those who can not afford the search, the transportation, the stay away from home.

This is evidenced by the fact that in low socio-economic hospital populations, as in Newark and Jersey City, the city

Institutions report few or no therapeutic abortions. The only avenue for the underprivileged is either to have the unwanted child, or to have the so-called criminal abortion, done outside the hospital, with all the dangers of non-medically approved procedures and facilities.

This is not only discriminatory but also inhumane. Why should these women be forced to use such means and to suffer the degradation and health complications that accompany them?

The present law is discriminatory in another way. Because it is not clear, it can be interpreted and enforced differently in different counties. In Middlesex County, the prosecutor interprets the law to mean that there will be absolutely no abortions. It is not interpreted that strictly elsewhere. The differences provide a discrimination against those who happen to live in the areas of strict enforcement.

I have pointed out that the century-old New Jersey law is not humane, that it is discriminatory, and that it is not in keeping with modern needs and modern concepts of women's and patients' rights. These, of course, should be paramount. But there are other reasons for reform too. Here are a few.

The present law forces the doctor to practice in fear. He knows what should be done in the patient's best interest; but he is not permitted to do it, either by law or by local interpretation. In this day of physician shortages, forcing physicians to practice in this way can only reduce medical care in this state, the number of people the doctor can serve, or the quality of the medical decisions he must make.

Hospitals can provide therapeutic abortions under conditions controlled by professional standards. Yet they, too, are subject to the vagaries of interpretation, to the frustration of humane considerations, to the agonies of trying to care for patients suffering from nonprofessional abortions.

For the society of the state, the consequences of an antiquated law are great too. The state should be interested in saving its women from the health hazards of nonprofessional abortions and from the consequences of economic and geographic discrimination. If not for those reasons, then the state should be interested because the victims of rape, incest, and mental and physical illness or handicap routinely cost the state a great deal in legal, medical and welfare services. An offspring of such a victim can only add a greater demand for the same services, at a greater cost to the state.

For all these reasons it should be obvious that a new abortion law for New Jersey is long overdue. If we fail to move promptly toward more modern legislation, we may find ourselves having legislation imposed upon us. It could come from the courts. I have mentioned two court cases. There are undoubtedly others. Today's instant communication, coupled with a pervasive readiness to sue, will inevitably produce other cases. As they build up, we may find ourselves beset by a morass of precedent and interpretation that will be even more fearsome and unfair to patient, doctor, and hospital.

We must also consider the ever-growing pattern of federal interest and participation in social concerns. It isn't

too long ago that we were not free to provide family planning information, but this was changed almost overnight by executive recommendations from the White House and the Department of Health, Education and Welfare. If state abortion laws continue too long to be unclear, discriminatory and inhumane, it isn't the least bit unreasonable to expect the federal government to make changes through its many and varied regulatory and funding powers.

For all these reasons, I strongly urge a new abortion law for New Jersey. I urge that it be clear and fair; that it provide safeguards in the form of limiting abortions to the medical profession, in accredited hospitals; that hospitals be allowed to set up abortion committees to review each case on its own merits, without fear of prosecution.

In addition to reforming the law on abortion, we should also do much more on the positive side to reduce the need for abortion. We need a vast expansion in health teaching, in sex education and in family planning services. If these were available to all, without discrimination, abortion could realistically be an emergency procedure only for victims of rape, incest, or debilitating physical or mental disease or handicap.

Practising medicine as I do at the grass roots level, this very afternoon I treated and advised women with problems of the kind I have mentioned. These women were troubled, and afraid to speak out. Many of my fellow practitioners have similar cases. On behalf of these silent patients in our care -- and there are thousands of them -- I urge a more modern law for New Jersey.



Now is the time for us to take a determined, positive step forward. Let New Jersey join the rest of the union in providing modern medical care that will enable our people to meet their ever-changing environment and conditions. This Commission must lead us to the review and reform that is so urgently needed.

I am sure you will. In so doing, you will provide not only hope for thousands of troubled souls but also an enlightened climate for living in the most densely populated and urbanized state in the union. Thank you.

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

SENATOR GUARINI: Doctor, in your concept, at what point does life begin?

DR. BRESLOW: Well, I will have to agree, as we have been taught medically, anywheres from 20 to 22 weeks as far as the viable life goes, but life begins at any time conception takes place naturally. Viability is a different story.

SENATOR GUARINI: For the sake of the criteria that you set forth, you don't differentiate between viable life or embryonic life, biological life.

DR. BRESLOW: Well, I think that sets it up itself.

ASSEMBLYMAN CRANE: On that same question, at the Trenton hearing one of the witnesses represented that life was always present in the sperm cell and the ovum before the union took place. What is your reaction to that?

DR. BRESLOW: Before the union took place?

SENATOR GUARINI: That must have been the gleam in the eye.

DR. BRESLOW: I don't know.- the thought probably. But in the present situation with the discovery of the so-called DNA factors and RNA factors, all of it is growing, whether you call it a separate life - as far as that goes, you can call every cell life because a cancer cell is active, super active and you could call that life also, if you define it that way.

ASSEMBLYMAN CRANE: Thank you, Doctor.

Dr. Frank P. Pignataro, please.

D R. F R A N K P. P I G N A T A R O: I am a physician, practicing psychiatry over the last 30 years. I am a Fellow of the American College of Physicians and of the American Psychiatric Association, the Past President of the New Jersey Neuro-Psychiatric Association, Past President of the New Jersey District Branch of the American Psychiatric Association, Past President of the Board of Managers of the Arthur Brisbane Child Treatment Center.

My views are personal and do not represent that of any society or group.

My remarks will be confined to the psychiatric aspects of abortion, mentioning some of the psychiatric risks that may be involved when pregnancy is interrupted. These risks are seen both in spontaneous and induced abortions. The production of shock, physical, mental and emotional, must be considered. Healthy human growth carries with it the attainment of adult status, that of sexual maturity, including both the capacity to conceive and bear children. Measures that prevent the realization of these aspirations are likely to arouse feelings

of depression, sadness, shame, guilt, inadequacy, envy and hostility. These symptoms would indicate a disturbed psyche that eventually may lead to a variety of psychiatric disturbances including disruption of family life, sexual tension, serious depression and suicidal risk. These are the mainstream symptoms a psychiatrist is called on to treat in his daily work, regardless of cause. Many hours of treatment over extended periods of time may be required. Abortion in my mind is rejection.

It seems paradoxical that as psychiatric knowledge has increased and treatment procedures improved that the so-called "psychiatric indications" for abortion have increased. The proper administration of drugs with the various psychotherapeutic modalities has kept some people out of hospitals and has helped many people live with or resolve their more difficult life problems.

It is interesting to note here a quotation from an article on "Abortion and Psychiatric Disorders" by Doctors Arbuse and Schedtman, appearing in the American Practitioner in 1950, and I quote: "There does not seem to be any one condition which absolutely indicates interruption of pregnancy. The mental state is seldom justification for indication of abortion. Abortion per se is unquestionably a shock. It may be conceivably more detrimental than continuation of pregnancy. If it could be shown that conception may lead to permanent psychosis in certain definite cases, then the termination of pregnancy would clearly be in the best interests of the patient and the operation would conform to the desired standards,

but the contrary appears to be the rule. The psychosis initiated by pregnancy rarely persists but tends to recover after an apparently short period, and in some cases may clear up spontaneously before full term is reached."

It is frequently stated that therapeutic abortion is done to prevent suicide. Calderone, however, states that the rate of suicide among pregnant women is considerably lower than among non-pregnant women of child-bearing age. The problem of suicide should be treated as it is with any other patient.

The ambivalence of the problem of abortion is seen in the action of the House of Delegates of the American Medical Association, putting itself in the somewhat dubious position of condemning abortion in principle and approving it in practice.

In my mind, abortion is an extraordinarily convenient method of sidestepping some of life's more difficult moments - whether they be mental, emotional, sociological or economic. It must be remembered that "symptom treatment" is no solution to basic problems. It should be faced positively that there is nothing more negative than abortion. It is a totally unphysiological and unpsychological procedure to my mind; it is terminal and not remedial. Evidence in Sweden, for example, indicates that liberalization has not materially reduced the number of illegal abortions.

I would like to quote some non-Catholic opinions on the subject by certain authorities.

Nicholson J. Eastman says of abortion, "Of the more debatable 'indications' for 'therapeutic abortion,' the two most frequently encountered are 'psychiatric indications' and 'indications' based on 'potential abnormality of the fetus.' As to the former, all gradations of opinion exist, but the belief is growing that interruption of pregnancy on psychiatric grounds is often a double-edged sword which may aggravate rather than ameliorate psychotic tendencies. Thus, in the opinion of both Pearch and Martin, when the operation is carried out on mentally unstable women, it leaves 25 to 59 per cent of them with remorse and feelings of guilt. Even when performed for non-psychiatric indications, Gebhard and his associates found evidence of prolonged psychiatric trauma in 9 per cent of a sample of American women who had abortion induced therapeutically or criminally."

Gunard A. Nelson states: "Psychiatric indications are often overused. Therapeutic emptying of the uterus may cause great emotional trauma and may even induce psychosis in a patient with a poorly integrated personality."

Harold Rosen says, "On the basis of contact in long-term therapy with patients who have had abortions," and he was talking about patients who were sick who came to have their emotional illnesses alleviated, "we have frequently seen adverse psychiatric sequelae of abortion. Psychiatrists see patients who accuse themselves shortly afterwards or even after the passage of years," such as during the involutinal period, "of being murderesses and who then go into very pronounced depressive reactions. We see patients who deliberately

afterward punish themselves or their husbands by forcing vasectomy upon them, or in other ways, sometimes unconsciously, but very frequently on conscious levels deliberately castrating their husbands, usually emotionally, but occasionally even in actuality."

Iago Galdston says, "Thus far all of us have been talking about abortion, but even more noteworthy than the desire for abortion of the woman who has become impregnated against her will is the tenacity and the perseverance with which a woman, even when all the odds are against her, will persevere in her effort to beget and to bear a child." Doctor Kinsey, I believe, gave support to this in the figures that he reported showing that the incidence of pregnancy among single women had remained more or less unchanged during forty years. There are numerous clinical confirmations of this drive to propagate with which I am sure each of us here is familiar, instances in which the tuberculous, the cardiac, or the nephritic woman, knowing perfectly well that death is staring her in the face, will yet beget herself impregnated and will persist in bringing the child to term. In the light of all this, I think it is fair to argue that abortion must be looked upon as an eventuation that runs counter to the biological stream of life. It is, as the French would say, "against the grain." In the presence of such feelings, can abortion have any but a bad effect on the psychiatrically ill mother?

Therefore, in summary, in my opinion there is no psychiatric justification for a therapeutic abortion. Most attempts at justification are not based on medical reasons, but

on social reasons. It is to be hoped that psychiatrists will not permit themselves to be used for this purpose. Thank you.

ASSEMBLYMAN CRANE: Thank you, Doctor. Are there any questions?

RABBI SCHWARTZ: Doctor, are the psychological symptoms which you mentioned peculiar to the surgical procedures of abortion or could it be true that all operational procedures contain the possibility of negative psychological reactions?

DR. PIGNATARO: Depending upon the individual personality, and most people in coming to any surgical procedure would have fear that would have to be resolved. My contention is that these people are calling for help when they ask for abortion, but they don't need the help of mutilation; they need help for their life problems that have brought on this symptom of pregnancy. Just as you would prepare any person psychiatrically for surgery, major surgery - take, for instance in the heart transplants, there is a great deal of psychiatric work that has to be done with the patient before the procedure is initiated.

SENATOR GUARINI: Well, Doctor, then an abortion in every case worsens the mental health of the patient. There is no such thing in your mind as preserving mental health of a patient by instituting an abortion?

DR. PIGNATARO: In my opinion, in the cases that I have had in my experience, I have seen a worsening of the mental state. If it isn't in the beginning, as it would be with some of our younger people, it then becomes a problem in involution during the time they are going through their menopause and there

is a sudden regression to the earlier experience that this patient has had and all of a sudden it becomes a reliving and a disaster to them almost to the point that many of them attempt suicide and succeed.

SENATOR GUARINI: Simply can an abortion help to preserve the mental health of a woman?

DR. PIGNATARO: Not in my opinion, no.

SENATOR GUARINI: And is there a correlation between --

DR. PIGNATARO: Excuse me. The reason for that is this, that abortion really is rejection of the self. We have many crimes committed where the individual being psychotic feels that you or I, the innocent victims, are an extension of himself or herself and, therefore, they do away with us feeling that they will be cleansed, but it is rejection. You see it is rejection of self.

SENATOR GUARINI: Would you say that there is a correlation in the states which are liberal abortion states or countries and countries that have high suicide rates? For instance, Sweden has both.

DR. PIGNATARO: Sweden has a very high suicidal rate and it also has a high incidence of abortion. But I don't know whether we can say that there is a correlation.

SENATOR GUARINI: From what you have said that the neurosis - emotional disorder, suppressed reaction and other disturbances - can cause permanent injury to the people who become involved with an abortion, is it in very many of the cases that this occurs or is it in only a very few cases?

DR. PIGNATARO: It occurs certainly almost invariably in the unstable woman. It occurs enough in even the so-called stable women that have had it done because again if they have a weak psycho-sexual identity - in other words if they have a very weak concept of themselves as a female - it does hurt them, just like, for instance, later on in life a hysterectomy creates serious depression with suicidal ideas because they feel now that they are asexual, that they are no longer sexual. They don't want more children at that point, but they feel asexual. They feel that they have lost their appeal to their husband or to others.

SENATOR GUARINI: Is it an overstatement then, Doctor, to say that every woman becomes injured psychiatrically from an abortion?

DR. PIGNATARO: Those women that I have seen who have had them, I would say, yes. That has been my experience.

SENATOR GUARINI: And of those women, what percentage in your experience were permanently injured as a result of that?

DR. PIGNATARO: With treatment, fortunately many women are helped, with psychiatric treatment after. But the damage had been done and this required psychiatric treatment over an extensive period of time.

MR. RITTENHOUSE: Doctor, given the fact there are abortions committed extra-legally in our State and despite what this Commission recommends to the Legislature or the Legislature does, there will probably continue to be a considerable number of abortions committed - would you agree with that?

DR. PIGNATARO: Yes.

MR. RITTENHOUSE: Now I understand that you feel that in many cases of legitimate surgery there is a need for psychiatric conditioning so as to lessen the impact of that surgery upon the person upon whom it is performed. Is that right?

DR. PIGNATARO: Yes.

MR. RITTENHOUSE: Well then, wouldn't it make sense to you to have that same psychiatric conditioning be made a part of the legalized process of abortion?

DR. PIGNATARO: Why couldn't we avoid abortion and avoid that too?

MR. RITTENHOUSE: Well, let's be practical. Are we going to avoid abortion by continuing our present status?

DR. PIGNATARO: I would put it this way, under no circumstance would I approve of abortion in the conditions that you have mentioned. But should a patient come and require help after this, of course, I would render it and should. If anyone asked me ahead of time, I would not be a party to it.

MR. RITTENHOUSE: Well, apart from your personal views on this, as a psychiatrist, if there were guidelines provided by the Legislature within which legalized abortion could take place, would there not be an area for responsible psychiatric treatment prior to such legalized abortion?

DR. PIGNATARO: If you people liberalize the law, I certainly would urge these people receive help, just like a criminal who has committed a crime needs help.

MR. RITTENHOUSE: At the present time, there is little, if any, such psychiatric preconditioning done for those who

undergo abortions in the State of New Jersey. Is that correct?

DR. PIGNATARO: I don't know of any. We have done a great deal of work with unwed mothers in rehabilitating them successfully.

ASSEMBLYMAN CRANE: Doctor, I have a question along similar lines. You mentioned that you have counselled some patients or treated professionally some patients who have had abortions, legally or illegally, I don't know which, and there have been feelings of guilt and hostility. It is a two-part question really. Is this because of our Judeo-Christian ethic that regards abortion in a very dim light? And, secondly - these patients that you treated, did you counsel them before abortion as well as after abortion so you could know -- maybe you just happened to get the ones that would have gone bad anyway, psychiatrically speaking?

DR. PIGNATARO: Your first question was what?

ASSEMBLYMAN CRANE: The first question is: You said some of your patients who had abortions had feelings of shame, guilt and hostility. Is it possible that this is due to our Judeo-Christian ethics equating abortion with something very bad?

DR. PIGNATARO: We have been brought up that murder is wrong.

ASSEMBLYMAN CRANE: Secondly, did you treat these women professionally before and after abortion?

DR. PIGNATARO: I have never treated anyone before abortion, no, but I have treated many after.

ASSEMBLYMAN CRANE: So you have no way of knowing what their mental condition was?

DR. PIGNATARO: No experience before, no.

ASSEMBLYMAN CRANE: So you have no way of knowing what the mental condition of these patients was before the abortion was performed.

DR. PIGNATARO: Only through a history, getting a history into their past background.

ASSEMBLYMAN CRANE: The history comes from the patient.

DR. PIGNATARO: The history comes from the patient, the family and from the authorities concerned.

ASSEMBLYMAN CRANE: Thank you, Doctor. Any further questions?

REV. SHAW: Doctor, do you know of people who have been treated for abortions psychiatrically?

DR. PIGNATARO: No, I don't.

REV. SHAW: You don't?

DR. PIGNATARO: No.

REV. SHAW: Thank you.

ASSEMBLYMAN CRANE: One last question: Doctor, does your opinion presented here represent a professional group?

DR. PIGNATARO: No, my personal opinion. I do not represent my Psychiatric Society or any other group, no.

SENATOR GUARINI: Do you feel, Doctor, that your opinion is widely shared by your colleagues within your chosen specialty?

DR. PIGNATARO: No, it isn't.

SENATOR GUARINI: In other words, what you have stated

here is personal and you feel it is a minority opinion.

DR. PIGNATARO: But I don't believe in statistics.

SENATOR GUARINI: And it is a minority opinion amongst your colleagues that you have discussed this with?

DR. PIGNATARO: I would think so.

SENATOR GUARINI: Thank you.

ASSEMBLYMAN CRANE: I will call Ruth Russell Gray.

R U T H R U S S E L L G R A Y: I am Mrs. Louis J. Gray and I reside in Watchung, New Jersey, Somerset County. I am a practicing attorney and I practice at 517 Central Avenue in Plainfield. I am also President of the newly-formed organization called The New Jersey Committee on Abortion. There are a number of members of that Committee here this evening and they have authorized me to make a statement before this Commission.

Now some of these matters that I had planned to mention here have really been touched upon and I really don't want to protract things, so I may skip around a little, but I have copies of my statement.

First I wanted to address myself to these problems. And this is it:

Many states have reformed their abortion laws and other States have considered reform. Much of the support for this action arises from a recognition which no informed person denies, that the number of illegal abortions performed in this country has created an underground network of illicit operations with astonishing parallels to the prohibition laws of the 1920's and 1930's. Whenever a law does not have the support of a substantial number of citizens who believe their right of individual choice is suppressed legally, that law will be broken consistently and constantly and widely until legislative bodies recognize that existing legislation is either

wrong or oppressive.

Such I believe to be the case with abortion laws, and I mention again there are astonishing parallels to the Prohibition era. Maybe I should say "error."

Available statistics indicate that 1,200,000 to 1,500,000 abortions are performed in this country in a year. I notice that Dr. Guttmacher and I are not too far apart. He came up with a million figure. Of this number, roughly 8,000 qualify as legal, therapeutic abortions. And Dr. Guttmacher said 7,000 to 9,000. In computing the percentage involved, one can see that approximately 99.4 per cent of all abortions performed in this country are illegal. These figures may be low, as surgical procedures are classified frequently under some other heading when in actuality they are either abortions or repair work performed to rectify a prior illegally-performed abortion.

In this regard I might mention that I had a conversation with an Essex County physician not too long ago who specifically spoke of the fact that if a death occurs in Newark - he practices in Newark - it may be listed as a death due to toxemia, when actually it is precipitated by an abortion, but it would not come into our statistics as a death through abortion.

Recently, and this is the aspect which I call "Civil Rights," a task force of the Presidentially-appointed "Citizens Advisory Council on the Status of Women" went on record "...that the right of a woman to determine her own reproductive life is a basic human right." This same task force recommended repeal of laws making abortion a crime.

I hold up a report which came out last May, I believe it is. Unfortunately I don't have an extra copy of it or I would leave it with the Commission.

The National Medical Advisory Committee of Planned Parenthood- World Population recently published a statement of policy on abortion. The committee believes and I quote "that it is the right and responsibility of every woman to decide whether and when to have a child." It further reaffirmed the fact that "abortion is a medical procedure, the decision for which must rest with the woman and her physician."

Another concerned group, the Unitarian Universalist Women, wrote in their official publication that "the human right of a woman to decide whether she will bear a child is one with which the laws of a government should not legally interfere; that a child has a right to a mother who cherishes him; that a desperately unwanted child may suffer grave psychological, mental and even physical handicaps."

I would like to hold up the official publication of the Unitarian Universalist Women and I will leave this with the Commission. In that regard, I also have two photostats for the Commission which we photostated from the Women Lawyers Journal. It is an article by a woman psychiatrist on abortion laws and it is a most exciting and astonishing article about what happens to unwanted children, when a woman bears an unwanted child and it happens to be a girl child and that child itself begins to reproduce at the age of 13 or 14. It goes into the terrible psychological situation involved and the unbelievable economic cost to our government.

I would like to leave these photostats with the Commission.

We in America live in a society in which the individual's personal, civil and property rights are protected. We do not exist in a totalitarian state where our own personal rights are unimportant and where we must dedicate our lives to some State-defined objective. We here in America believe there is an inner spark in each individual person, and we believe that each of us should be free to kindle that inner spark and to develop our own unique potentialities. The State is here to safeguard our rights and to create an arena of freedom wherein conflicting forces are balanced against each other; and in that arena of freedom, we are encouraged to find our own way toward fulfillment. For a woman to have a child or not to have a child at all is one of these rights of choice which should be safeguarded and which should exist and be permitted to find its own resolution in this arena of freedom. Whether such a woman has conceived because of rape or incest, or whether such a woman is unmarried or for some reason is expected to give birth to a defective child, or whether she is a mother already of several children and wishes to have no more, is not relevant. She should have the right of choice regardless of her situation.

Similarly, a child has a right to a mother who chooses to give birth to him, who will love and cherish him. He should not be brought into this world and into a home where he is unwanted. He has a right too. We have heard so much about the unborn child.

Now I want to mention what I call "The Ethical Problem." America today is characterized by a great variety and

complexity of personal beliefs and social attitudes. There is no one solution to any problem. In a nation where freedom prevails, there are many ways of doing things. There is no monolithic structure and no one way of thinking on any question. In our remarkable federal system of law, wherein each of 50 separate states has its own autonomy, there may be many different ways of resolving issues. But undergirding all this multiplicity are constitutional guarantees which provide a unity in all this diversity. Majorities rule in this country, but minorities are protected.

It is anomalous, therefore, that one minority religious grouping in our midst - and I mention the Roman Catholic Church; I haven't heard anyone speak from there this evening but they are certainly here - is attempting to impose upon this plurality of opinion a monolithic system of thought on the subject of abortion. One hundred years ago, the Roman Catholic Church had an entirely different stand on abortion. Abortions were previously permitted to Roman Catholics until the time the so-called "rational soul" entered the growing fetus. This was 40 days after conception in the case of the male, as someone mentioned before this evening, and 80 days after conception in the case of the female. The fact that the Roman Catholic Church has now changed its position and supports a theory of so-called instantaneous animation, that is, that the soul enters the embryo at the moment of conception (when the sperm fertilizes the ovum) should not abridge my Protestant freedom.

When does life begin? We have heard several speakers address themselves this evening to that question. Some medical opinion

claims that life begins when the embryo can live separately from the mother; that is, 7 months after conception. Others hold, as the Roman Catholic Church presently does, that life begins when the ovum and sperm unite. Others believe that both the ovum and the sperm have separate lives of their own before their joining. Still others believe that life is a sociological matter, and life has really not begun until the child is drawn into the cultural and social stream of the world in which he lives. How does one make such a decision? How does one weigh these values? Our law and courts are here to act as arbiters between opposing forces and interests, to provide a set of ground rules and keep that arena of freedom in which each of us must make his own choice. If a decision must be made between the life or health or happiness of a full-grown woman and a shapeless blob of protoplasm, who shall arrogate to himself that decision? I do not believe that in our country of blessed diversity, any one minority religious group should dictate the answer.

Finally I would like to mention the medical aspect. Although abortion is chiefly a question of a basic human right, it is also a medical problem. A doctor who has undergone arduous study and training and has taken an oath to serve mankind and who, acting with good will and seasoned medical judgment, performs an abortion should not suddenly be subjected to criminal penalties. A doctor should be judged by his peers and for his medical competence, not as a criminal for some alleged felonious intention.

I trust that this Commission is familiar with the

American Law Institute's proposed model penal code relating to abortion. It has been mentioned earlier this evening by Dr. Guttmacher. The basic provisions which it recommends, that abortion be permitted where the medical and physical health of the mother is at stake, when the pregnancy is the result of rape or incest, and when the pregnancy is expected to result in a defective child, are certainly improvements on present New Jersey abortion laws, but they do not go far enough. There is still the case of the 35-year old housewife and mother who has three children and wishes to exercise her basic human right not to have a fourth.

I trust the Commission will take these thoughts into mind when it makes its recommendations to the New Jersey Legislature.

Mr. Chairman, I did want to mention a couple of thoughts that came to me during the course of this evening. On the question of the illicit underground which exists, I have had maids who worked for me who have admitted to having self-adduced abortions. I had a woman in my office just this past week who came to me about a matrimonial problem and in the course of our discussion it came out that she, with a crochet hook, induced an abortion a number of years ago. She since, of course, has had a hysterectomy. As she has five children, on this day she did not want a sixth.

I also wanted to call the Commission's attention to some statistics that I wish could be obtained in the State Of New Jersey. I had occasion to see a letter that came across my desk from the Board of Health of Chicago and it

gave some figures on the number of 15-year-old girls who had conceived in Chicago, unmarried, from 1955 to 1966, and it was something like 1,320, something like that. These 15-year-old girls under their Child Labor Laws cannot work to support those children, and yet they cannot have an abortion.

There is one other matter that I wanted to mention that has come out of my own practice of law. It was just the end of last year that I was involved in a bastardy proceeding, and I was defending a young man who was charged with having been the father of a child. His wife was there with him and he was not the father of the child. But in any event, he went through a proceeding. The proceeding, of course, was brought by the County Welfare Department, and the little girl who was involved, in the time between the filing of the papers for our suit, and it was delayed, she produced another child with another man, and both of these children, of course, are on welfare now. That girl was 16 years old.

These are just a few of these things that have crossed my desk, and I know that that little girl did everything in her power to obtain an abortion somewhere and she could not.

Well, thank you very much. I will be happy to answer any questions.

ASSEMBLYMAN CRANE: You refer to an underground network of illicit abortions, an organization of some kind. Do you infer that this is in some way allied to organized crime in this State or country?

MRS. GRAY: I have no way, Mr. Chairman, to tell. From the knowledge that I have or hearsay evidence, I would

say that doctors in prominent positions have also performed "illegal abortions" but they are not recorded as such. But frequently they are afraid to do this and so apparently it goes by this underground route. Do I make myself clear?

ASSEMBLYMAN CRANE: Yes.

RABBI SCHWARTZ: Approximately how many members on your Committee?

MRS. GRAY: Well, we have a Board of about sixteen, I think, and we are just a newly-organized group and the Committee or the organization is roughly at this stage of the game a mailing list of around a hundred or so people.

RABBI SCHWARTZ: Is it a religious group?

MRS. GRAY: Well, religion has nothing to do with it. We really have never discussed religion but it did not originate as a church group.

SENATOR GUARINI: May I ask, Mrs. Gray, among yourselves do you disagree at times?

MRS. GRAY: Yes.

SENATOR GUARINI: So within the body that you are representing, there is still disagreement?

MRS. GRAY: Oh, yes, and that is why I have not made any specific statement to you about what specifically to do about this law. I have given you our general thinking.

SENATOR GUARINI: Do you all agree on the right of choice or freedom to make choice?

MRS. GRAY: Oh, yes, and as a matter of fact, when I was authorized to come before this body, I photostated a copy of the statement of policy on abortion of the Planned Parenthood - World Population Committee that I referred to, and that is the

one in which the Committee reaffirms that abortion is a medical procedure, the decision for which must rest with the woman and her physician.

SENATOR GUARINI: So that moral issues such as abortion belong to the individual and not to society. Is that right? So the Legislature should not feel free to legislate over an individual's moral convictions.

MRS. GRAY: Well, if you limit your statement as to morals to this particular issue, yes.

SENATOR GUARINI: Do you feel that this moral issue has social repercussions?

MRS. GRAY: Very definitely.

SENATOR GUARINI: Don't you feel that that is rightfully the domain of the Legislature?

MRS. GRAY: Yes, but when I stated it is a social issue I bring up to you the question of these 15-year-old children who are bearing babies in Chicago, and I'm sure this goes on in New Jersey, and in that sense it is a social problem, but I have stated I believe our American legal system establishes an arena in which the individual makes his own choice on a subject like that.

SENATOR GUARINI: I would like to know just when, but I respect your opinion, but nevertheless -

MRS. GRAY: I should say more or less.

SENATOR GUARINI: - it is not one that I hear every day.

MRS. GRAY: Well, you're in the Legislature.

SENATOR GUARINI: Well, we share a mutual concern.

MR. RITTENHOUSE: But you do agree there are areas of legitimate legislative concern where control of the choice of the individual may be regulated by law, I assume.

MRS. GRAY: I didn't hear all of that.

MR. RITTENHOUSE: You do agree that there are areas of legitimate concern of the public where the Legislature may regulate by law?

MRS. GRAY: Oh, absolutely.

MR. RITTENHOUSE: And you disagree that such legislation as the Volstead Act was healthy, because it was unenforceable?

MRS. GRAY: All right. You are talking about Prohibition now?

MR. RITTENHOUSE: Yes.

SENATOR GUARINI: I think Mrs. Gray is much too young to know about that.

MRS. GRAY: You are very flattering. Well, I think there is another matter in here. There is a law in New York State about teachers striking, isn't there? And what would happen if we enforced that?

MR. RITTENHOUSE: What I am asking is those who proposed the law with respect to Prohibition were, I presume, prompted by what they considered to be moral considerations that the use of alcohol was not only physically and mentally debilitating but was morally wrong and that particular view prevailed for a period of time. Was the repeal of that Act in your opinion the result of a change in that view or the recognizing that the law was unenforceable?

MRS. GRAY: Both.

MR. RITTENHOUSE: Would you advocate a repeal of the law with respect to the use of drugs?

MRS. GRAY: Well, Mr. Rittenhouse, I have read material on the fact that marijuana, for instance, is not so dangerous.

MR. RITTENHOUSE: Assuming that to be a drug for the moment -

MRS. GRAY: I have heard officials connected with our law enforcement agencies who think that we will change our laws relating to marijuana. I am not sufficiently informed on things like LSD, etc., which I understand are really physically and psychologically damaging, and I, of course, would not endorse abolishing or repealing any law relating to that.

MR. RITTENHOUSE: But because you feel there is something morally or physically wrong with the use of such drugs, therefore the Legislature has the right to regulate that?

MRS. GRAY: Yes, I do.

MR. RITTENHOUSE: You stated you feel there is an absolute right on the part of a woman to determine whether or not she will have an abortion after conception.

MRS. GRAY: That's right. I would like to state my own case. I have had an abortion; I have had no deleterious effects ever; and I chose not to have children. I am a happy woman and am delighted with the practice of law.

SENATOR GUARINI: And as an attorney, the statute of limitations has expired.

MRS. GRAY: Well, you don't know anything -

ASSEMBLYMAN CRANE: What about legislative immunity -

MR. RITTENHOUSE: I ask these questions because I am seriously concerned because I know all the commissions having to do with the role of law in this particular area - not that the law and the moral issue can or should be separated. - that is a question that can be discussed. But the role of the law - do you feel it has any function as a reminder to the public?

MRS. GRAY: On abortion?

MR. RITTENHOUSE: Yes.

MRS. GRAY: I really don't. But I don't represent a majority here. I feel we will eventually reach my point of view, which a number of women and men share, but I think probably we won't do it yet.

MR. RITTENHOUSE: But you are not relying on the unenforceability of the law with reference to the illicit traffic in abortions; you are relying more upon the fact that you believe that this is a right which you are being deprived of by this law.

MRS. GRAY: Well, I feel that, but I also feel that it is unenforceable, and when a thing is so unenforceable we must take a second look at it, and that is why I also feel we must take a second look at marijuana. Now I don't know enough about it, but I do know that "pot" is being smoked everywhere, in every college campus imaginable.

MR. RITTENHOUSE: If I understand you correctly, you are stating then that you feel the Legislature has no role in this area and there should be no prohibitory statute

and the model penal code of the American Law Institute, or the recommendations do not go far enough and you would go into it entirely from the regulatory view.

MRS. GRAY: Yes, and I would like to mention the California experience in this regard. California has not cut down its abortion rate because it has not hit at the real problem. Dr. Guttmacher who has had far more experience in these matters than I stated that 70 per cent of the abortions are performed on women who are impregnated by their husbands. It is a step in the right direction by permitting abortions in the case of Sherri Finkbein, for instance, in a thalidomide situation. Isn't it horrible to think that she had to go to another country for justice?

MR. RITTENHOUSE: One final question. What about the husband?

MRS. GRAY: You mean, his permission?

MR. RITTENHOUSE: Yes.

MRS. GRAY: Well, I think this is something that the couple should work out together and I think possibly a doctor might not wish to perform an abortion on a married woman unless perhaps the husband comes in and discusses it too. It's a family problem. However, I learned something the other day, where a woman tried to obtain an abortion and the physician would not perform it until she came in with her husband, and she said, "Well, it's not my husband." And please don't take that statement any farther than I have mentioned it, because I'm not condoning anything; I'm only attempting to be realistic.

ASSEMBLYMAN CRANE: Mrs. Gray, one final question, if I may. Throughout the testimony here we have talked about the rights of the husband in the matter of consenting to the abortion if the couple is married. Suppose they are not married, does the father of the child, although not married, have any legal claim to that fetus?

MRS. GRAY: To the fetus?

ASSEMBLYMAN CRANE: Yes.

SENATOR GUARINI: You mean to the child.

MRS. GRAY: Well, that's different, because I don't think it's a child until it has come into the world. He certainly does, legally, once the child is in this world.

ASSEMBLYMAN CRANE: Do you think that would create a serious problem? Suppose a woman were impregnated by a person not married and an abortion was performed. Could he then sue the doctor, the hospital and the woman, etc., for destroying his child?

MRS. GRAY: I don't think our courts have dealt with that. Are you asking my -

ASSEMBLYMAN CRANE: Your professional opinion as an obviously competent attorney.

MRS. GRAY: I can't hear you very well, and you will have to repeat that.

SENATOR GUARINI: I think that problem would work itself out naturally.

MRS. GRAY: I would really have to think. I really would. I don't know what to say.

ASSEMBLYMAN CRANE: You have no opinion on that, Mrs. Gray. Thank you.

SENATOR GUARINI: That is another point that you can go back to your group and discuss and argue about.

ASSEMBLYMAN CRANE: Is Dr. Robert Cosgrove here?

(No response)

I will call Dr. Dorothy Naiman.

D O R O T H Y N. N A I M A N: I am Dr. Dorothy Naiman, Professor of Biological Sciences at Lehman College of the City University of New York and a resident of Teaneck, New Jersey. I appear before you on behalf of the American Civil Liberties Union of New Jersey, as a member of the Board of Trustees. The American Civil Liberties Union is a non-profit organization dedicated to the protection and expansion of the rights provided for by the Bill of Rights; its New Jersey affiliate has nine chapters. I am here to present its position with respect to abortion legislation.

Against a nationwide background of growing discontent with archaic abortion laws, the New Jersey State Legislature has appointed a Commission to review our own 119-year old statute on the subject. While almost any change in the incomprehensively vague language of the existing law would be an improvement, the Union urges the Commission to consider outright repeal of the present statute with no recommendation of substitutionary legislation.

It is the position of the Union that the State should be silent on the subject of abortion, that the desire of the mother and the willingness of the physician alone should govern the several medical procedures collectively referred to as abortion, and that the laws governing the practice of

medicine amply protect the public's interest in this area. In short, the Union asserts that it is the civil right of a woman to seek to terminate her pregnancy by abortion, unfettered by legal restrictions, and, further, that any efforts by the State to qualify that right violate the Constitution in numerous respects, including: invasion of the guarantee of privacy; denial of due process; denial of equal protection; and, most probably an establishment of religion in contravention of the First Amendment.

Before addressing myself to these constitutional questions, I had intended to present the Union's views on some of the historical, moral, and social aspects of legislation which provides criminal sanctions for abortions even when performed by properly qualified medical personnel in a suitable environment. However, in view of the lateness of the hour and the fact that some of these things have already been emphasized considerably, I will try to extract from these notes that I have made.

In 1858, shortly after the passage of the first abortion in New Jersey, the State Supreme Court 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 consequences of abortion attempts." As we have heard, the situation is far different today, and in countries with liberal abortion laws we note an exceedingly low mortality rate. It is, of course, true that illegal abortions entail serious risks because of the speed and secrecy required and the lack of hospital and after-care. This is obviously even more true for self-induced abortions.

The moral and religious aspects of abortion, however expressed, require decision, first, as to whether a fetus of 26 weeks or less is a living infant and, second, whether there is justification for the destruction of even a potential human being. Questions have been raised about the time when human life begins. I would like to say that even if the fetus is considered as a human being, it must be realized that society in general condones the taking of life in certain conditions - those conditions when it is considered that such taking of life is necessary to prevent the occurrence of greater evil. Thus, killing in self-defense and during a "just" war, for example, are both permissible.

Nothing, however, in the Union's position will override the felt religious or ethical convictions of those who oppose abortion. Rather the matter is left entirely to the conscience of those critically involved in the problem - the prospective mother and her physician. What the Union opposes is the imposition on unwilling individuals of the dictates of other people's moral preconceptions.

The question as to whether deleterious psychological effects follow abortion has been raised and there are various conflicting opinions on it. However, I think the real point here is that, as to the medical consequences which may follow, the possible existence of some adverse after-effects does not require that abortion should be legally prohibited. It is felt only that a woman who seeks an abortion should be apprised of all the possible consequences, physical and psychological, and afforded proper pre- and post-operative care, including psychological care when necessary.

From a legal standpoint, the present abortion statute is almost impossible to enforce as we have heard several times already, and it is quite true that contempt for one law can never be isolated but must necessarily reduce respect for all law. When there exists open disregard for the law, not only is there disrespect for it, but a real possibility of police corruption. In addition, imposing criminal sanctions makes criminals of millions, not only the million or so women who either obtain abortions or abort themselves, but of all those who are in any way connected with the proceeding. Indeed, this may hold almost as much for many of the ostensibly "legal" abortions, for it is commonly believed that most of these, according to the New York Times, are a "hoax."

The constitutional arguments against abortions legislation are from the ACLU standpoint among the most compelling. The first of these is THE RIGHT OF PRIVACY.

In a long line of cases, the United States Supreme Court has recognized that certain specific guarantees in the Bill of Rights have penumbral areas of protection which give these guarantees life and substance. Most recently, the court has held that such a right of privacy in the marital relation is safeguarded against incursion by the State. It is the Union's contention that the extension of that right into so intensely personal an experience as child bearing is a logical necessity.

Insofar as married women are concerned, the Supreme Court has continued to affirm that there is no matter more private or more intimate than the marital relations of a husband and wife,

and that the right "to marry, establish a home and bring up children" is an essential part of the liberty guaranteed by the 14th Amendment. Implicit in these marital rights is a recognition that the decision whether and when to have children belongs to the parents. There is thus no question that the State can neither demand nor deny the use of contraceptives to married persons as a method of family planning. The only question remaining, therefore, is whether there is any compelling interest which would justify the State in restricting the oldest and most certain method of birth control known to man - namely, abortion.

I was speaking just now about married women. The rights of privacy of the unwed pregnant woman must also be considered. The Union denies that the State may intrude upon the intimacy of prospective parenthood, regardless of whether it is the product of marriage. For the State to compel the unwilling mother to bear an unwanted child is an act of cruelty to both, unqualified by any redeeming State interest. The law cannot constitutionally disregard the stigma which society attaches to both unwed mother and her child. It is the Union's contention that absent the most compelling State interest in restricting abortions, laws which reap a harvest of human suffering and which intrude upon a deeply personal domain cannot withstand the test of constitutionality. This brings us to the "due process" argument against abortion legislation.

It is a fundamental tenet of our system of government that no one may be deprived of personal liberty without due process of law. That abstraction is given meaning in the constitutional requirement that laws impinging upon personal

liberty must bear more than passing relationship to the effectuation of a proper State purpose. As Mr. Justice Goldberg stated in the Griswold v. Connecticut case, the law must be shown to be "necessary and not merely rationally related to the accomplishment of a permissible State policy."

Child-bearing is one of the most uniquely personal and intensely experiences a woman encounters in her lifetime. Consequently, interference by the State with her free choice whether or not to conceive and carry the fetus to term must be justified by the most "compelling" State interest. Interest historically advanced the health of the mother as the justification for penal laws governing abortion. There is no doubt that at the time of the initial legislative enactment in New Jersey, all abortions were considered medically dangerous. However, as stated previously, modern surgical techniques make possible the termination of a pregnancy during the first trimester by a "painless, simple and safe" operation. Contrast with this the human carnage wrought by the present system of unenforceable, inhumane legislation, to say nothing of the humiliation, desperation and fears that are involved in seeking and obtaining even a successful illegal abortion.

The import of all the available data is clear: absent the compelling State interest that the health basis once provided, the existing legislation is unconstitutional.

Another justification of abortion laws rests upon an asserted moral precept that no one's life may be sacrificed to promote the health or happiness of another human being. The argument begs the question since, by interpretation, the New Jersey

statute provides for abortion when it is deemed necessary to preserve the life of the mother. Thus, the principle that the fetus has the same inviolable right to life as a human being has already been rejected.

Next, the Union submits that abortion laws deny to poor citizens equal protection of the laws. Although all normal women, rich and poor, educated and uneducated, have essentially the same sexual drives and capacity for child-bearing, it is generally only the poorer and less educated among us who are forced to bear the unwanted consequences of their sexual relationships. They are likely to be less knowledgeable about methods of contraception and less able to afford contraceptive devices and medication. They more often become pregnant inadvertently and are then, under prevailing abortion laws, unable to remedy the plight they were unable to prevent.

I direct your attention also to the Establishment of Religion Clause of the First Amendment. In the final analysis, it may be that anti-abortion laws were in part the result of an effort to compel adherence to a purely moral principle and to establish in the civil law the tenets of certain religious faiths. It is far from clear, however, that this moral principle is currently upheld by a majority of the population. But, even if it were, it is not the proper function of civil government to enforce the majority's morals on the minority in the absence again of some compelling social need to do so.

Beyond the rights of the pregnant woman, there are other considerations. The sanctions invoked by the abortion laws restrict the constitutional right of physicians to implement

their professional judgment in certain instances where they believe abortion is medically indicated, but in other situations failure to act upon their best professional judgment might be the basis for malpractice suits.

In view of all the foregoing, the Union contends that on moral, sociological and constitutional grounds, the present abortion statute no longer has validity, if indeed it ever had. Partial liberalization of the law will not eliminate all illegal abortions, as the Swedish experience shows. We recognize, of course, that even partial liberalization would avoid the need for illegal abortions for some women.

Therefore, if the choice must be between some liberalization and no liberalization, we would favor a bill which would extend legal abortions to the greatest extent.

Thank you for this opportunity to present our views.

ASSEMBLYMAN CRANE: Thank you, Doctor Naiman. Are there any questions of this witness?

SENATOR GUARINI: Aren't there some questions of health involved?

DR. NAIMAN: What do you mean?

SENATOR GUARINI: In an abortion, you have heard a psychiatrist testify - do you think from your experience that there is any psychological or emotional disturbance that occurs as a result of abortion?

DR. NAIMAN: Well, we heard both the psychiatrist and Dr. Guttmacher comment on that with divergent opinions as to what the data actually show. I haven't read the original data, so I don't know. However, there may also be a physical

involvement, and, as I tried to explain before, the important thing is that adequate safeguards be taken, both pre- and post-abortion, if abortion is desired by the woman - both psychiatric safeguards and medical safeguards.

SENATOR GUARINI: Do you think permanent injury can be incurred by abortion, emotionally and psychologically?

DR. NAIMAN: I feel that it can, given the kind of patient that the psychiatrist was referring to, but I don't think that this is a valid reason, because this could happen--

SENATOR GUARINI: You don't think that the State should take an interest in public health in the instance of abortion, even though the individual's personal health might be involved psychologically or psychiatrically?

DR. NAIMAN: Well, I think this is a case where the medical judgment of the practitioner involved has to be the guiding principle and, as was mentioned before, if the physician or surgeon feels that medically this is undesirable for this patient, then he can say "I will not participate," but not just drop it at that, but go on with the kind of treatment that would be necessary to make that woman able to live with the decision that she didn't wish to make.

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

[R E C E S S]

(After recess)

ASSEMBLYMAN CRANE: The hearing will now come to order. I wish to announce that at this point we are going to set a time limit of five minutes for each witness. Mr. Poley will be in charge of the time.

We will now call Dr. Ann Lucas.

D R. A N N L U C A S: At first I was a little taken aback at one of the statistics which was thrown into the discussion tonight, and this is the statistic on the 1,200,000 illegal abortions which are performed each year.

I know Mrs. Gray said that she was surprised that she and Dr. Guttmacher had come up with the same statistic, but this is not surprising since this is the statistic usually put forth by those in favor of abortion, but it comes from a 41 year old study done by a man named Taussig who relied for his statistics on work done by Freudenberg in post World War I Prussia, and these statistics are terribly suspect. And there is a careful analysis of this study in a pamphlet called The Therapeutic Abortion Bill done by Niatus, who was an attorney, and his brother who was an obstetrician in California.

The more conservative estimates which are put forth by many others show that there are probably about 200,000 illegal abortions performed in this country each year.

I should like to make the point first that recognition of a woman's right to determine her own fertility does not include the right to terminate the life of another.

The United Nation's declaration of rights of the child

grants that the right to life is the most important of an individual's inalienable rights. And I think Father Carroll made the point well that at this time when we are undergoing a crisis of conscience with respect to lives lost in Vietnam, with respect to capital punishment, that there should be a movement afoot in complete opposition to these other nationwide feelings.

As a psychologist I would strongly suspect that those who deny that the unborn child is a human being are rationalizing for their own convenience. In asserting their own rights they are attempting to deny another individual his right to life. They are asserting their rights in refusing to accept the responsibilities that are part of that right.

Again, when law courts are recognizing the legal rights of the unborn to the point of awarding damages for possible prenatal injuries, the abortionists would deny such rights.

I should like to speak briefly about the very controversial Model Penal Code about which we have heard tonight. One of the extensions to the interruption of pregnancy to preserve the right of the mother, as proposed by the American Law Institute, is this question of the mental health of a mother. And I would guess that if only those who were wanted, planned-for babies were in this court room tonight, half of us would be absent. Most babies are not planned for. A good number of women experience a certain amount of self-examination and questioning when they have an affirmation of their pregnancy. We've had studies ad infinitum back since

the 1940's suggesting to us that the period when there is the greatest amount of anxiety, depression and incidence of psychosomatic discomfort is in the first trimester of pregnancy. And we know that this is the time when women are most likely to go to a physician to ask that an abortion be performed.

We know further that in most normally well-adjusted women the incidence of all of these difficulties diminish markedly as the pregnancy progresses and by the time delivery occurs the women have accepted and have, mostly, very positive attitudes toward their children.

Now the truly unstable woman is the one about whom psychiatrists presumably would be making judgment in terms of the pregnancy gravely endangering the mother's health. I say presumably because many physicians have raised the point of the ethics of their own colleagues in using a psychiatric clause to open the door to abortion on demand. The truly unstable woman is most likely to have psychological problems which are precipitated by an abortion. There is wide agreement about this in the field. I have looked at the literature very carefully. I will not cite any of the references previously cited but Noyes and Kolb in their very authoritative book on psychiatry state that a substantial group of women react to therapeutic abortion with a severe and continuing psychopathology. Ekblad found that 20 percent of women who had abortions regretted their decision to be aborted. Now does this mean malpractice suits?

Suppose a woman decides to have an abortion and then feels sorry that she had it and blames her physician for

encouraging or permitting this. Are we opening up a Pandora's box asking our society to cope with problems that we're far from ready to cope with?

The unwed mother does not choose abortion easily. We've heard it mentioned that abortion is no more than an alternative to contraception which has failed.

From my own experience in the last 12 years in dealing with college women and other women, I would say that abortions are never turned to lightly, only after much thought and considerable guilt feelings. And my survey of the literature confirms what Dr. Pignataro said. He humbly says his is a minority opinion. This is not what I have found in reviewing the literature. And at the very least I can say that this is an extremely complex question and we should not jump quickly into liberalization of abortion laws until we know better what we're getting into.

Abortion has never been seen in the United States as just another form of contraception. Those who propose this are seeking to have the law bring about a social change that is opposed to the American concept of basic rights, the right to life.

As a psychologist I know well that when you want to change attitudes, and some of the people who have been at the hearing tonight have been quick to say their ultimate goal is abortion on demand - when you want to change the attitudes of society you never move them drastically by revolution, you move them little by little. And I would say, again as a

psychologist, that those who are attempting to liberalize abortion laws are attempting to create a social climate which would disregard innocent human life, a climate which will make it more possible for society at large to accept abortion on demand.

I would say there has been much emotional appeal tonight to the hardship cases. We know that such cases never make good laws, but there has been much appeal to those children who will be born physically or mentally defective, to those women whose pregnancy is the result of incest or rape. Senator Anthony Beilenson, the man in California who first introduced the liberalization of the California abortion laws, estimates that only 5 percent of the cases which will come under these two categories - I should say it better, I'm trying to hurry because I know I'm under time pressure, - but of the total number of illegal abortions in California only 5 percent would come under these two categories of rape and incest, physical and mental defect on the part of the child.

We've heard in the last two or three months that we now have vaccine for Rubella, for the German measles virus. This is the single, most important, contributing factor to mental and physical defect in the unborn child. It seems ironic that we're moving to liberalize abortion laws at a time when medical discoveries are making the incidence of physical and mental defects much lower.

And finally I would say it would generally appear that liberalization of abortion laws would do little to solve

current problems. Certainly the statistics from countries, such as Sweden and Denmark, with liberal abortion laws suggest that these laws have not markedly decreased the number of illegal abortions in those countries.

Not only will we solve few problems, we are likely to open the door to a whole new set of problems for which we are ill prepared. And as just one of these I would suggest, in relation to a comment Dr. Guttmacher made earlier tonight, - when we talk about the fact that there will be an increase in the number of women who will seek abortions, it is also very likely that as in Sweden and in Denmark we're opening up a whole new market for abortion, women who would not seek illegal abortion but women who would now accept abortion because it is more generally accepted in society.

And I would say too that we are not prepared in our hospitals to deal with thousands of requests, if such be the case, by women who want abortions. And I would further suggest to you that if the argument against current laws concerning abortion is based partly on the fact that there is discrimination against lower socio-economic level women, this discrimination will continue.

Most hospitals are terribly overcrowded. There are beds in utility rooms. How can an Ob-Gyn Department possibly cope with the flood of applications one would expect to be received. One can easily see that requests from lower socio-economic level women would be postponed until beyond the time perhaps even of delivery. So I would just suggest that the

problems are not going to be resolved by liberalizing the abortion laws and we better think first very carefully about all the new problems that are going to be raised.

ASSEMBLYMAN CRANE: Thank you.

DR. LUCAS: I'm sorry I didn't identify myself. I am Dr. Ann Lucas, Chairman of the Department of Psychology, Fairleigh-Dickinson University, and Clinical Psychologist at that University. I'm speaking simply as a professional Psychologist. [Statement submitted by Dr. Lucas appears on page 234.]

ASSEMBLYMAN CRANE: Thank you, Dr. Lucas.

Dr. Luke Mulligan.

D R. L U K E M U L L I G A N: Mr. Chairman and members of the Commission, I would like to present a statement in opposition to radical liberalization of New Jersey's statutes governing therapeutic abortion.

The proposition to liberalize the State statutes governing therapeutic abortion which we are presently considering is of a --

ASSEMBLYMAN CRANE: Is that a printed statement, Doctor.

DR. MULLIGAN: Yes, it is.

ASSEMBLYMAN CRANE: Would it be possible for you to summarize it and it will go into the record in full?

DR. MULLIGAN: Well, there are a few things and it's pretty hard to summarize something that's been prepared and limit it to a few minutes. I think I heard the Chairman say that we have at least five minutes to present it and I think I can read this in five minutes, if you don't mind and I hope

I'm not imposing.

ASSEMBLYMAN CRANE: Proceed, Doctor.

DR. MULLIGAN: It behooves us to weigh well the significance of what we are about to do, because the sanctity of human life, the purpose and character of the profession of medicine, and the fundamental moral and ethical values of human society are all inescapably involved.

The very first of the inalienable rights enumerated in the Declaration of Independence as the natural dower of every human being from his Creator is the right to life. According to this cardinal concept basic to our national philosophy, every human being has a natural and inviolable right to the preservation and continuance of his life. In the service, furtherance, and safeguarding of that right, medicine as a profession came into being, and in all ages has flourished. Because of his dedication to the protection and preservation of life, the physician has, of all members of human society, enjoyed the most exalted position in the minds and hearts of his fellowmen.

Up to now, no consideration has prevailed over the physician's soul-deep conviction that life is better than non-life, and that physical or mental incapacitations or handicaps of all kinds are pre-eminently preferable to be endured in life than to be eliminated by death.

Physicians and surgeons, day in and day out, labor unremittingly, and to the point of exhaustion, to retain the spark of life in people shockingly maimed and devastatingly diseased. A great portion of our national income and energies

is devoted to the support of this endeavor. Radical operations and extreme and heroic measures of all kinds are consistently performed and utilized in order that life may be retained in any person threatened by death. The protection and preservation of life have been and are medicine's ennobling goal. Are we to commit ourselves to the abandonment of that two-fold objective now, in a generation which outlaws suicide, even though the subject himself wishes not to live? now, at a time when capital punishment is almost universally disapproved, even for those who by wanton and cruel acts of murder have placed themselves beyond the pale of human compassion?

Are we to say that two or three physicians shall now be free to decide that a healthy foetal human being must die because he might - just might - be born with a handicap of some kind? If we are to support and adopt the principle that we may with justification kill human beings so that they will not live with physical, mental, or aesthetic impairments that might be handicapping to them or disgusting to other human beings, then who of us will be safe?

The life that is under consideration is the life of an unborn child, defenseless and unable to communicate his own wishes. His will or desire to live, his right to live, it is proposed, will be swept away by the force of self-esteeming professional judgment. The right to life of an unborn child has always been regarded as sacred and sovereign except where its continuance would effect the death of the mother. Only for the purpose of saving the mother from death, only when the

right to life of mother and child are in conflict, has it been agreed that the unborn child may properly be denied continuance of its life. No other grounds have ever prevailed in enlightened society. The convenience of the parents, the probable disadvantages of any kind that the child may be called upon to face after birth, the clamorous wishes of arbitrary individuals - all have been as naught when weighed against the right to life and the worth of life.

We are being asked radically to change all this by empowering three physicians on the basis of "currently established scientific knowledge" and "documented medical evidence" to "prescribe and administer treatment" to their patient, the mother, by destroying her child. In passing, is not the child the physician's patient, too?

The documented medical evidence at the present time indicates that only from 5% to 20% of children in the womb exposed to factors that might produce defects or deformities will be born affected and harmed. Is this to be regarded as sufficient "currently established scientific knowledge" for destroying all the unborn children thus exposed? Shall we deny life to the eight unaffected in order to be sure that the two affected do not survive? Would not logic and justice rather dictate, if the elimination of handicapped offspring is our goal and all other considerations are abandoned, that we snuff out the lives of the impaired after birth, when we know, with scientific accuracy, who they are, rather than to kill indiscriminately within the womb?

What physicians of sound mind and worthy conscience would want to be called upon to make such God-like decisions as are involved in the proposals before us? What would be the ultimate pernicious pressures brought to bear to induce such physicians to capitulate?

If on the mere probability that a child may be deformed or disadvantaged it is to be permissible to destroy its life before birth, how can we ever be sure that any conception will produce an offspring free from defect? Since any child may be born with a deformity or defect, can we, under this new principle, in justice permit any child in the womb to live on to birth?

Again, if it is going to be acceptable to kill in utero because of the likelihood of defect or deformity, what should be our attitude and action toward those who have been born but who show either congenital or acquired defects or deformities?

If life is not the sacred right of an unborn child, it is not the sacred right of one already born. If we are to kill justifiably to eliminate handicapped people and to free from them a life of struggle and pain, why should we continue to keep alive those who are already marked for death or who are manifestly unfit for the fullness of living? Let only the perfectly healthy and normal live, and we shall have little need of planning or using other population controls.

As Doctor Johnson used to say, "Let us have done with cant." Taking the life of an unborn child is invasive

and destructive of his natural right to life. If the exercise of his right to live threatens the life of his mother and is in conflict with her right to life, that is another moral matter. But if his exercise of his right and his retention of that life threatens only his own subsequent ease of living or the convenience or sensibilities of others, then we cannot usurp his right or take his life for specious reasons, however cleverly set forth, without denying universally the sanctity of all human life and placing all human life in jeopardy, and in the hands of collusive sophists whose basic conviction is that the end they seek justifies whatever means they choose to embrace.

Some of the greatest benefactors of mankind have been diseased, disadvantaged, and handicapped --

ASSEMBLYMAN CRANE: Excuse me, Doctor, you have gone far beyond your time, you have had already ten minutes.

DR. MULLIGAN: I'm sorry. Well the remarks that I would like to summarize - we have had many poets and many scientists, such as a man from our State like Edison, Steinmetz, Erlich, and the rest of them. Would this world have been better if their lives had been snuffed out? I don't believe so.

And the other part of the summary and the final word here is that it seems rather unusual, illogical and unsound that men who are dedicated to the principle of preserving life are asked to destroy it.

Thank you very much.

ASSEMBLYMAN CRANE: Thank you, Doctor.

Is Dr. Michael DeVita here?

D R. M I C H A E L R. D E V I T A: I have a written statement also and it will take me about six minutes.

ASSEMBLYMAN CRANE: All right, Doctor, proceed.

DR. DE VITA: My name is Michael DeVita and I am a practicing obstetrician and gynecologist and I am certified by the American Board of Obstetrics and Gynecology. I am a fellow of the American College of Obstetrics and Gynecology and of the New Jersey Society of Obstetricians and Gynecologists. In addition to the active practice of my specialty, I engage in teaching activities with the New Jersey College of Medicine and Dentistry where I am an Assistant Clinical Professor. I am designated by the New Jersey College of Medicine as the Obstetrical Consultant to the Maternity and Infant Care Project for the City of Newark. This project deals with high risk pregnant mothers and their infants, and includes innumerable mothers aged 16 and under. I am on the staff of Pascack Valley Hospital, Westwood; Valley Hospital, Ridgewood; Bergen Pines County Hospital, Paramus; and Beth Israel Hospital, Newark.

I should like to begin by asking, "What is it that we do when we perform an abortion?" Are we killing an innocent human being who has been denied due process, or are we merely disposing of something which has no identity of its own and is somehow a menace? or is the truth somewhere in between?

The Medical Profession does not have an answer to

this question. The law has no answer, and neither, in truth, does Theology.

For my own purposes, I must consider the conceptus to be, at the very least, the raw material of new human life and, as such, it is something that is precious and very important.

In June of 1967, the American Medical Association adopted a policy on therapeutic abortion. In a carefully worded statement they published what was a concensus among physicians on this issue. I should like to refer you not only to this statement but also to the excellent searching report of the Committee on Human Reproduction. It is this Committee report which is the basis of the official statement.

After some qualifying sentences, the statement concludes by saying, The A.M.A. is opposed to induced abortion except when:

1. There is documented medical evidence that continuance of the pregnancy may threaten the health or life of the mother, or
2. There is documented medical evidence that the infant may be born with incapacitating physical deformity or mental deficiency, or
3. There is documented medical evidence that continuance of a pregnancy resulting from legally established statutory or forcible rape or incest may constitute a threat to the mental or physical health of the patient.

And then it goes on to outline other considerations.

I should like to state categorically that every pregnancy is a threat to the health or life of the mother and that proper medical treatment must begin from this premise. It is also true that pregnancy in patients with certain known medical problems presents much greater risks. It is, however, a rare case indeed which cannot be carried to term successfully by the skilled and knowledgeable physician who uses all - and I stress the word "all" - the resources that modern medical science has to offer these gravely ill people.

For those who would seek to make the approach to the medical management of these cases the easy termination of the offending pregnancy, I must ask, "Do they not possess the knowledge and skill? Are the best facilities not available? or is it just not important enough?"

If they don't have the skill, then find someone who does. If they don't have the facilities, get them or get the patient to them. If they don't consider it important enough, I ask them please to re-evaluate the ultimate realities of their own existence.

In instances where the patient herself considers it important enough, we are almost always able to persevere to a successful conclusion of the pregnancy. In cases where we fail, I find it difficult to believe that abortion would really have made an ultimate difference. More often, it is "something the doctor can do that may help." As such, more often than not, the threat to life of a pregnancy is proportional to the tenaciousness of the doctor.

The second exception deals with incapacitating deformity. It is certainly true that there are many known conditions that will unfavorably affect the unborn fetus. These run the gamut from German Measles to sex-linked genetic abnormalities. For the most part, if a disease is actually contracted by the mother at a certain time during pregnancy, there will be predictable fetal deformity in a certain percentage of cases. The percentage varies according to the time of the infection. In the genetic sex-linked problems, such as Hemophilia, or certain known types of mental retardation, we can say in the case of a male fetus that one-half will have the disease and one-half not; or if a girl, one-half will carry the disease to the next generation, and one-half not. In each case, however, we are only dealing with percentages, and not with the actual case as it presents on an individual basis. Therefore, I must say to the Medical Profession, show me that this fetus that you want to abort is abnormal, and do what you must, but leave those that are well alone. If you can't tell the difference, then please lend your greatest efforts in that direction. To the Law, I say, "Protect the innocent who are being deprived of the right to live merely because we doctors don't know they are really normal after all."

In truth, there are great efforts in this direction. Perhaps with the expansion of the field of fetal medicine which is just in its infancy, these questions will be answered. As the efforts of tissue cultures and chromosome analysis of fetal cells more closely define the abnormal from the normal in the genetic problems, we may be able to say that "this

particular product of conception is truly defective." We may be able to actually observe through the amnioscope the physical defects of a fetus. At this point in time, however, we don't know. Is the answer to destroy everything that is questionable? I hope not.

The third exception of the A.M.A. deals with the problem of conception resulting from rape or incest. I have the greatest compassion for a woman or girl who becomes impregnated by an attacker. It is not a difficult task for a physician who has the knowledge and skill, to safely empty the pregnant uterus of its content. I do not, however, believe that this is a medical issue. The procedure which will terminate the pregnancy is a medical one, to be sure, however, I believe that the judgment that this particular uterus needs to be emptied is not a medical one. I think this judgment belongs to society. Let society, through its elected representatives, demand it; let the law, through its courts, so order it; and then let the medical profession perform the task.

I'll skip over the next part and get through this, if I may.

It is the responsibility of the Medical Profession to do the work and to find the data that will crystalize the real medical solution to the problems that confront us in the high risk pregnant woman, and the allegedly abnormal fetus. Meanwhile, in the light of our present state of relative ignorance, I believe the law must protect the important potential of human raw material that is being sacrificed. We must also support and maintain in depth, the unfortunate pregnant women, whatever

her station, who is really the living battleground of this struggle.

ASSEMBLYMAN CRANE: Thank you, Doctor.

Sister Concordia.

S I S T E R M. C O N C O R D I A B Y R N E S: I am Sister Concordia, Administrator of St. Joseph's School for the Multiple Handicapped Blind, and I wish to present a statement of fact with the firm conviction that the multiple handicapped child can be educated.

Progress in medicine has increased the probability that the child with multiple handicaps will live. Not only does the child have a far better chance of survival but also the possibility of a longer life.

In our culture, having a "hurt" child is one of the greatest disappointments in life. There is no typical pattern of reactions, but in most parents whose child is diagnosed as "hurt" the following sequence can be identified:

Denial. Projection, placement of guilt upon someone else; magical expectations and self blame.

Reaction formation often leads to rejection or overprotection.

Handicapped children are first children like all others and only secondarily are they impaired individuals. Every natural urge, desire, pattern of reaction and response which can be observed in an average child is present in most of the handicapped. The inability to respond does not mean that the child is not aware of what is going on.

To get along with his fellow man, the goal of the multiple handicapped is social competence through social experiences. Occupational competence through training; emotional security and independence through a good mental hygiene program.

Special education aims at giving the multiple handicapped student a knowledge of realities around him, the confidence to cope with these realities, and the feeling that he is recognized and accepted as an individual in his own right.

It has been said, "Even with the best of training only a few of the students who suffer from more than one major disability can become capable of self support in a world of normal people." How widespread this view may be is hard to tell, but if it is too prevalent we will need many more institutions for custodial care. My own personal conviction is, given the proper diagnosis, training and care, multiple handicapped students can be helped to achieve more effective living.

It is difficult to estimate the size of the total group of handicapped children in our schools because in most settings the controlling factors are not the educational needs of the children, but rather the availability of classrooms, of teachers and of funds for special education.

If the efforts of the professional staff now available were to focus on primary prevention in the form of education and research, would we indeed be paving the way for a future devoid of the special student?

Let's not go beyond our roles. Educators can ill afford to render medical judgment and vice versa. Vocational Rehabilitation personnel cannot declare a person really employable, only the employer can determine that. Let us not be surer than we are. Let's not sugar coat the facts beyond recognition, nor be so cautious as to induce undue pessimism. Let us remember that each individual has a potential for growth, and it is our responsibility to use all our patience, dedication, and ingenuity in stimulating and guiding this growth.

ASSEMBLYMAN CRANE: Thank you, Sister, and thank you for keeping our time schedule.

Reverend John Seabrook.

R E V. J O H N S E A B R O O K: I am the Reverend John Seabrook. I am an Episcopal Priest, a member of the Department of Christian Social Relations of the Diocese of Newark; a member of the Division of Social Education and Action of the New Jersey Council of Churches; and a full-time faculty member of the Division of Social Sciences at Essex County College.

I am only going to try to extract from this. I apologize the fragmentary nature of it.

It seems to me there are four basic considerations involved in this, that is, law, medicine, society and morality. I would like to speak about law and about society and then give some conclusions.

The New Jersey law on abortion, as you well know, has not been significantly changed since it was passed in 1849. The Rutgers Law Library was kind enough to give me a rundown on

this law which indicates that in the revisions that have taken place the only changes have been to increase the punishment for violation. There is at least one incongruity in the law that I would like to point out.

It is against anyone who "maliciously or without lawful justification" attempts, accomplishes or advises methods for abortion. I have read all the pertinent decisions and interpretations of this law, and none of them explain what "lawful justification" might be. In practice it seems to mean that an abortion is lawful if done to protect the physical health of the mother, but the vagueness of the wording leaves the door open to all kinds of interpretations, subject to the whims of doctors, lawyers, prosecutors and patients. This does not seem to me an acceptable standard for legislation in any state.

Secondly on the subject of law, it seems to me that there is a theory of government involved. Is the law to be responsive to the will of the people, or to the pressure and temper of pressure groups and lobbies. I suggest it should be the former, and that pressure groups should constantly prove that they represent the people and not merely some select group with a special interest. In New York, when this same issue arose, we saw a pressure group quite ably defend its interests and beliefs and defeat abortion law reform. I only hope that New Jersey sets a better example of responsible and responsive legislation.

In the realm of society and sociology. It would be hard to imagine an area where the dominance of male over female

is more blatantly illustrated than in this one of abortion law. Even medieval catholic moral theology makes the point, when it protects the male fetus from abortion some number of weeks earlier than the female fetus. New Jersey laws, along with those of most other states, were passed in the days of absolute and unquestioned male supremacy. Even today this attitude continues and, without in any way criticizing this Commission, I suggest that the lady member of the body who is not present tonight was probably acceptable more because she is a doctor than because she is a woman. So a condition now exists where a woman has absolutely no control over a situation with which she alone is intimately concerned.

Two sociological points are interesting:

1. The present law was, and undoubtedly will be, supported by pressure groups seeking to force their beliefs on all of society. I refer here especially to the Roman Catholic Church. I would only say here that I personally find it unpalatable that the religious beliefs of one group can in such a personal way control the possible behavior of my wife. This reflects a psychological fear on the part of such groups that their beliefs and moral standards would be rejected by most people were the power of the law not brought to bear.

2. If we are realistic, we must recognize that American government is basically run by pressure groups. I would hope that when these groups begin to exert their pressure, legislators will seek to determine how far they reflect the general will of the people and react accordingly.

Finally, by way of some conclusions, I must here

disassociate myself. I was supposed to represent the Department of Christian Social Relations in this matter and I began with that intention but my conclusions will go beyond this so I will have to say these are personal conclusions.

First, effective reform of the New Jersey law is long overdue.

Secondly, the proposal of the American Law Institute with which I imagine you are nauseatingly familiar, does not deal at all with the problem in the majority of abortion cases where, for whatever reason, the child is simply unwanted. In effect, the Institute's proposal is so minor as to be no reform at all. I would expect in fact that opponents of liberalization would favor it, recognizing that such minor reforms generally are successful in blocking any major advance.

Thirdly, I find most acceptable the proposal quoted by Herman Schwartz, in an article "Abortion and the Law." This, he says, is the proposal of the New York Civil Liberties Union: "A person is guilty of abortion if he is not a duly licensed physician and intentionally terminates the pregnancy of another otherwise than by a live birth."

This places the question entirely in the hands of the women concerned, where it properly belongs. It protects women against falling into the hands of incompetent extortioners who offer abortion to those willing to pay their prices. Finally, it eliminates the questions which must often haunt doctors faced with a request for abortion: "Can I do this legally or not? and, if not, shall I violate the law for this patient?"

And I would like to close with this, again quoting from Mr. Schwartz's article:

"Whatever proposal is adopted, one thing is clear: The indications must be sufficiently expanded, and application must be sufficiently liberal, to allow abortions in all cases where serious hardships for the mother or the child is highly likely. We must ensure that no woman, rich or poor, will be driven to shame, humiliation and physical danger in order to avoid having a desperately unwanted child."

Thank you.

ASSEMBLYMAN CRANE: Thank you.

MR. RITTENHOUSE: This will just take a moment.

You then take the same position that Mr. Vann originally did in the beginning when he said if there is any restriction it ought to be put in the Medical Practices Act and not in the Penal Code.

REV. SEABROOK: I'm not a lawyer and I don't know what act this refers to.

MR. RITTENHOUSE: Well it basically goes back to the point you just made that the only person who would be able to perform an abortion would be a duly licensed physician.

REV. SEABROOK: A duly licensed physician, yes.

MR. RITTENHOUSE: It would come under that licensing provision rather than putting it under the penal code, as such.

REV. SEABROOK: Yes.

MR. RITTENHOUSE: All right. Now, in reading all the decisions that you said you read in connection with this and finding the New Jersey statutes, in your opinion, grossly

inadequate, could you come up with any feeling as to what lawful justification meant?

REV. SEABROOK: What lawful justification meant?

MR. RITTENHOUSE: Yes.

REV. SEABROOK: As I stated here, the only interpretation that I have been able to discover, generally accepted, is the danger to the physical health of the mother. I understand that in some cases the mental health is considered but this is a highly debatable point.

MR. RITTENHOUSE: Then you feel, by attempting to enumerate those instances, perhaps along the lines of the American Law Institutes Model Penal Code, or any other, you may end up as a matter of fact with a more restrictive penal code than we presently have.

REV. SEABROOK: Yes. I don't think you've made any advance, really.

MR. RITTENHOUSE: Thank you very much.

ASSEMBLYMAN CRANE: Mrs. Esther Frankel.

M R S. E S T H E R S. F R A N K E L: Mr. Chairman and members of the Commission, because a number of the statements I was going to make have already been covered by the former speakers, I'm going to extract what I have to say.

My name is Esther S. Frankel and I reside in Paterson. I am here as a representative of the New Jersey Branch of the Women's International League for Peace and Freedom, to present our position favoring the liberalization of the current abortion law in this State.

The WILPF was founded in 1915 in the midst of the 1st World War, when women from 12 countries, including 42 from the United States, led by Jane Addams met at the Hague and proposed a Society of Nations and universal disarmament. Our work is directed at removing the causes of conflicts and wars, through peaceful social, political and economic changes; at emphasizing the importance of mediation, arbitration and negotiation; at strengthening the United Nations and by recourse to the International Court of Justice.

We favor self-determination for individuals and nations. The rapidly increasing growth of world population threatens the peace and freedom of humanity, as large parts of the human race will be prevented from achieving a decent living standard, which is a basic human right. Enlightened family planning is an imperative, and is far more humane than recourse to saturation or napalm bombing, to chemical defoliation or to biological and other chemical weapons of warfare.

In 1965, the United States Supreme Court, in the case of Griswold v. Connecticut 381 U.S. 479, held the Connecticut law prohibiting the use of contraceptives to be unconstitutional. Seven justices agreed that the statute operates directly on an intimate relation of husband and wife, and their physician's role in one aspect of that relation. How reasonable are current abortion laws which deny a woman the right to decide whether and when she will bear a child, especially a fetus which is medically determined to be severely defective, or is the product of rape or incest, or poses a serious threat to

the mother's life or health?

What should be a medical problem to be solved between physician and patient has become a legal problem of enormous proportions, complicated by a penumbra of doubtful moral and social alternatives. Some of these legal problems have come to plague the individuals involved. In Zapeda v. Zapeda, 190 N.E. 2nd 849, decided in 1963, cert. den. 379 U.S. 945, we find an illegitimate child who sued his natural father for fraudulently inducing the mother to have sexual relations, without informing her that he was married. The child claimed damages for disadvantages of illegitimacy. The court agreed a tort had been committed but denied relief because of the difficulty in assessing damages and fear that such a decision would unmanageably increase litigation. In a more recent case the New York Court of Claims held that an illegitimate child had a cause of action against the state for negligently allowing the child's mother, an inmate in a state mental hospital to be attacked by a male patient, which resulted in the child's conception. Williams v. State of New York, 46 Misc. 2nd 824, 260 N.Y.S. 2nd 953 (Ct. of Cl. 1965). The child claimed damages for disadvantages of illegitimacy, deprivation of property rights and loss of parental care. Although this decision was later reversed, the developments in this area may suggest two arguments supporting legalized therapeutic abortions.

In our own state, we have the case of Gleitman v. Cosgrove, 49 N. J. 22, 227 A. 2nd (1967), involving two causes of action, where the New Jersey Supreme Court denied

recovery. The parents and the child brought suit against two doctors who had been consulted by the mother. She had had German Measles during her pregnancy and wanted an abortion rather than have the child born deformed. Both doctors assured her the baby would be normal and healthy. The baby was born with substantial defects in his sight, hearing and speech. Surgery was performed to help correct vision. At the time of trial he was in an institution for blind and deaf children. Because the abortion the mother wanted would have been illegal, she was denied damages. The Court also stated: "The right to life is inalienable in our society" and "we firmly believe the right of their child to live is greater than and precludes their (the parents') right not to endure emotional and financial injury." Would that every court --

ASSEMBLYMAN CRANE: Could you summarize your remarks, please?

MRS. FRANKEL: Yes, sir.

Would that every court in our land extended this inalienable right to life to their decisions regarding young men who refuse to go forth and take life when ordered by their government to do so.

Contrast this decision in the Gleitman case with the recent decision in the Stewart case where Mrs. Robert Stewart who had contracted German Measles during her pregnancy was denied an abortion at the Long Island College Hospital in Brooklyn, after three doctors had conferred and approved the therapeutic abortion on the ground the child might suffer permanent brain damage and physical defects. The Chief of

Obstetrics rescinded the order for abortion when Mrs. Stewart was wheeled into the hospital operating room. The child was subsequently born totally deaf, partially blind, spastic and mentally retarded. She sued the hospital and received an award of \$100,000 for the child and \$10,000 for the parents, from an all male jury. Reported in the Paterson Evening News, October 5, 1968.

Now I would just like to summarize. Comparisons with other countries show that Sweden permits abortion where the physical and mental strength of the mother will be seriously reduced by the birth and care of the child; in Norway abortion is permitted "when the birth of a child would be a misfortune, because of serious or chronic illness of husband or children, alcoholism, criminality, lack of housing or other specially unfavorable circumstances;" Russia and Japan permit abortion either on demand or on broadly interpreted social indications. Under present abortion laws in Yugo-Slavia, abortion is automatic if a woman has been raped or made pregnant by a blood relative, or if having a baby would endanger her life. It is interesting to observe that in Czechoslovakia, which has liberal abortion laws, there was not one death from abortion in 140,000 cases, as compared with 17 deaths per 100,000 in the United States for tonsilectomy.

In conclusion, abortion should be permitted in a case of rape, or incest, or where there is a substantial risk that the child would be born with physical or mental defects because of disease, drug or injury; or where the mother has a history of severe postpartum or antecedent mental illness; or

where the mother, in the exercise of her right to self-determination has decided she does not want to bear the child. The better solution to the problem of unwanted pregnancies is broad distribution of effective birth control information.

Thank you.

ASSEMBLYMAN CRANE: Thank you.

Suzanne Schad-Somers.

M R S. S U Z A N N E S C H A D - S O M E R S: I am a Sociologist and teaching at Rutgers University and a member of the Board of Directors of the National Organization for Women.

Now much of what I wanted to say has been covered before. I do think that it is the right of women to control their own reproductive lives by removing from penal code laws limiting access to contraceptive information and devices and laws governing abortion. In other words, I feel that abortion laws should be entirely removed from the penal code because if you just liberalize abortion laws, you are not going to change very much.

Now as far as the legal point is concerned, it has been very well covered before, but I think one point might be added. If in case of a miscarriage of a fetus under five months, no death certificate has to be issued. In other words, the law does not treat the fetus under five months as a person. Consequently, you are in a legal sense taking a human life in the case of abortion.

Now, whether or not the State of New Jersey or all of America is going to change their abortion laws, is not going to change the fact that every year we are going to have at least one million abortions. But if the abortion laws are taken out of the legal code then at least 80 percent of those one million women will be able to go to a hospital instead of a kitchen table. Now who are the women I'm talking about.

These are the poor, these are the black. Eighty percent of the abortions that are being performed legally are performed on white women, but of all deaths resulting from abortion, ninety-four percent occur among non-white women. That is, if a middle-class or upper-class woman is pregnant and wants an abortion, she is going to get it, irrespective of the law. If a poor woman gets an abortion, first of all she has a much harder time to get one and if she gets one she runs a fantastic risk of either death or permanent injury.

So the important thing to recognize is, the amount of abortions is going to remain the same but the health of the women who are going to have the abortions is going to be improved.

Now I am being repeatedly told that I'm living in the richest country in the world. That country ought to be able to provide free medical care for all women who desire an abortion, who need an abortion because they are not in a position to raise the children either because of age or because of financial position.

It could be a question of just medical care. I would quite certainly advocate that some psychological counselling

should go along with it. And this society is rich enough to provide it.

Now if we talk about these children whose lives are so sacred, what are we doing for them? In a nationwide survey of 1.3 million out of 1.8 million illegitimate children did not receive any aid to dependant children. That is, the vast majority. And here I'm talking about non-white children. The proportion is very different for white children which would be almost automatically upper-middle or middle-class, lower-middle class or middle class.

What I am trying to explain, saying these children ought to be born into a country which is unwilling to feed, clothe and house them, is I find a rather immoral thing to ask of either mother or child.

Thank you.

ASSEMBLYMAN CRANE: Thank you, Mrs. Schad-Somers.

Mrs. Ginette Weld.

M R S. G I N E T T E W E L D: My name is Ginette Weld, I am married, the mother of two sons. My family and I have lived in New Jersey for over ten years.

I am a member of the Board of Trustees of the Ethical Culture Society of Bergen County as well as a member of the Society's Public Affairs Committee. I am appearing before you not just on my own behalf but primarily on behalf of our Board and indeed our entire membership.

We are an independent religious fellowship dedicated to the betterment of the human condition. It should, therefore, surprise no one that we favor, not the broadening of the present

abortion law but its abolition.

When there comes a time in a woman's life to decide whether or not to bear a child she has not planned on, we would expect that she would do some or all of the following, depending on the circumstances: examine her emotional outlook, her material position and the number of her children, if any. She would naturally discuss her physical condition with her physician and perhaps the entire picture with the prospective father. And finally she would examine her own conscience. But in the final analysis the decision would be hers and hers alone, with no interference from any source whatsoever, unless she herself invites it. We cannot emphasize too strongly that we feel this to be a woman's basic right.

Gentlemen, we all know the woman who has many small children and very little money. Her house is too small and always untidy. But every one of her children is a healthy, happy individual. And then there is the other woman, she has perhaps only two or three children but she is always tired, edgy and the neighbors frequently hear her voice raised in anger at her children's constant misdemeanors. These children may do badly in school and are usually unhappy and even maladjusted. The first woman was wise and right to have a large family; the second one probably should not have had any. And as for the battered babies we read so much about, I am convinced that most of them were unwanted by women who felt instinctively that they were not emotionally equipped for motherhood. Is it not significant that it is almost always the mother who brutalizes her babies, not the father?

There are as many varied cases as there are women, yet the present law applies the same criteria to all. I submit that this is arbitrary and, yes, undemocratic. It is also discriminatory, for let us face the fact that if a well-to-do woman really desires an abortion, she can secure one but this does not apply to the poor.

Due to the various and highly effective birth control methods, it is possible to prevent most unwanted pregnancies and this is generally considered quite acceptable. Is it not then the height of absurdity to prohibit their termination if a birth control method fails or if the pregnancy occurs as the result of a crime such as rape or incest? Is it right to compel a woman to bear a child who will probably be abnormal due to Rubella or the accidental taking of a dangerous drug such as thalidomide?

Now, we have heard that even therapeutic abortions are dangerous to the health of the mother, yet in countries where abortions are available on demand, the death rate as a result is exceedingly low, sometimes lower than as a result of tonsilectomies. As opposed to this, we know that at least 8,000 to 10,000 women die yearly as a result of illegal abortions in the United States.

Gentlemen, what is more sacred, the life of these women or that of their unborn, unwanted babies? We of the Ethical Culture Society feel we know the answer. We give first priority to the living rather than the unborn.

In conclusion, may I read to you the resolution which, after long and thoughtful discussion, was passed by the Board of Trustees of The Ethical Culture Society of Bergen County at its October meeting:

The right of a woman to seek to terminate her pregnancy and the right of a physician to practice his profession in accordance with his best professional judgment, without the threat of criminal sanctions, is basic.

The death and permanent injury caused by self-induced or unprofessional abortions, the threat to the livelihood of physicians who follow their best professional judgment in conflict with the current law, and the emotional and financial burden to the existing members of the family resulting from unwanted children, all lead to the conclusion that this situation must not continue.

Therefore, it is our firm conviction that the State should have no voice concerning the legality of abortion. The wish of the woman and the professional judgment of the physician, alone, should govern the use of the several medical procedures collectively referred to as abortion.

Thank you very much.

ASSEMBLYMAN CRANE: Thank you, Mrs. Weld.

Dr. Mischel.

D R. E L L I S J. M I S C H E L: My wife, Mrs. Mischel, is at home, so --

Gentlemen, I feel for you. I've been sitting in the audience for several hours and I can very well feel for what you must go through listening to all of us talking over and over, discussing our, frankly, prejudices and what we want to call beliefs and you have a job, a job where you have to separate prejudice from fact, and it's a very difficult one.

I am prejudiced, as I feel we all are, and let's say the idea is to recognize what our prejudices are and to deal with them.

I would like to ask you all a question. I feel that the issues that we are talking about tonight are issues that concern each and every one of us personally, individually, and when a psychiatrist, such as I, or a doctor or someone else gets up here and talks about sick people, disturbed people, mentally ill people or physically ill people, they are in the minority. Let's talk about you and me.

I would like each and every one of you to examine your own consciences. I am sure, as I have been, that each and every one of you who are fathers and mothers have at some time questioned at the time of pregnancy, conception, whether or not you wanted this child. I'm sure that this issue has faced each and every one of us.

Just a few days ago someone came into my office - I'm a Psychiatrist and Psychoanalyst in private practice and I treat children as well as parents - and this was a case of a fifty year old man and a forty-two year old woman who have raised two children, and their children are in their twenties, are now faced with another child. This is quite a major decision to make at a time in life where you have already raised a family and you have to ask yourself, do you want to go through it again.

This couple was very ambivalent about it. By ambivalent I mean they had positive and negative feelings. However, they had no choice. Why? Because the pregnancy

was already three months old and the pregnancy had been discovered three months too late. So the question of whether to have a child or not is immaterial because the life of the mother is at stake. So this couple has to resolve their own problem about, do I want this child? will I love this child? will I make this child feel wanted?

These are problems of every person, every man, and not just people who are disturbed or sick in some way, but every one of us who are in the throes of parenthood have to make this decision at some time or another.

I have news for you. The couple that is involved is me and my wife. So that this is a very personal matter involving myself and this involves every one of us.

Now to me the idea of abortion, legal or illegal, is absurd. I feel that it's a slight and it's insulting to human dignity for us to be sitting here and talking about whether or not Joe, Mr. X, should or should not, or Mrs. X, should have their baby or shouldn't have their baby. This is something for them to decide.

This is my prejudice. But I will talk about something that I do know more about - the tragedy of unwanted children in this world, and the hypocracies that each and every one of us have to live through if we do not want a child and we deliver the child and we are supposed to love the child and we go through life telling the child we love you, we love you, we love you, whereas deep down within ourselves we don't feel the love. And this is murder of the first degree, murder to a living, human soul, far more important than the

human souls that we talked about who are in utero, who are unformed, whom we know nothing about. And the kind of guilt that people have to live with, children who are unwanted and parents who don't want them, is enormous. I see it every day in my practice and it's insufferable, as it must be insufferable for you to listen hour after hour after hour about these kinds of questions that involve hypocrisy and prejudice.

These are just a few of the things that I would like to leave with you. The hour is late and I thank you for your attention.

ASSEMBLYMAN CRANE: Thank you, Doctor.

Miss Kathleen Sidney.

KATHLEEN SIDNEY: I'm Kathleen Sidney. I live in Oakland, New Jersey, and this took me four minutes to read at home.

I am completely opposed to any law which enables the State to control the functions of an individual's body. This is the height of dictatorship.

I have heard many excuses as to why women should allow this crime against their freedom to persist.

One excuse is that the prenatal organism is a person living in the womb, and abortion would be tantamount to murder. Personality is usually defined as the total being, including physical attributes, as well as self concept and experience. If the prenatal organism is a person, it is only to the extent that it is a physical being. Even at its latest stage, it hasn't had the time or the experience necessary to

become an identity. It is as yet a lump of organic matter, with the potential to become an unwanted child or to never have been.

Another excuse is based on religious morality, quite apart from logic or scientific evidence. It is wrong to have an abortion, because God says it is wrong. I don't pretend to know what God does or doesn't say, never having heard Him speak on the subject. I know that most religions are at odds with each other on the word of God. I would only like to remind you that in a free country the individual is allowed to choose his or her own religion. I think it would follow that the individual woman considering abortion should have the right to determine for herself whether or not it is moral according to her own beliefs. What right does the State have to make this decision for her?

Another argument against abortion repeal is that if women know that they can have abortions, they will not take precautions with sexual intercourse. Since any operation is both an unpleasant and expensive experience, it seems highly unlikely that women would take the prospect lightly.

I think that there is an attitude prevalent in our culture that a pregnant woman who does not wish to give birth is insane and immoral. Her request for an abortion is considered a sin against the sacred institution of motherhood.

As a Caseworker, I have had the opportunity to meet young, pregnant women, who felt psychologically and financially unable to cope with motherhood. Deserted by her husband, or by the man who had promised to marry her, a woman is now forced

to undergo the additional trauma of giving birth to an unwanted child. I have also met women who possess a great intellectual and creative capacity, who have felt they had more to offer the world through their own minds than through motherhood, in a world already threatened by overpopulation. And I have met women who wanted children but not until they or their husbands were earning a better salary.

These are only three examples among an infinite number of reasons why a woman may not wish to give birth to a child.

In our day and age it is unrealistic to expect a couple to abstain from sexual intercourse, simply because they don't want a child. There are contraceptive methods, but not everyone is aware of them. The methods aren't always effective and a couple may, on occasion, fail to make use of them.

No matter what the intentions of its parents were, once an unwanted child is born, he or she must suffer the consequences. The child might grow up with only one parent, or in a home which is under the high tension of financial worries. He might be neglected or mistreated by immature parents, or he might feel a more subtle rejection from a mother who had goals other than child rearing, and can't help showing her disappointment.

Some unwed mothers will give their newborn infants over to agencies which exist for this purpose. Many of these children will be adopted, but many others will spend their lives going between institutions and foster homes, without the feeling of belonging anywhere.

In a world seriously threatened by overpopulation, isn't it absurd and cruel that we should force these unhappy lives into existence? Some women, rather than allow this to happen, have gone for illegal abortions. Many doctors willing to give illegal abortions are responsible people, others are butchers.

The prenatal organism is not yet an identity. However, if a woman allows it to be born and grow into a person in the full sense of the word, then she must take the responsibility of either giving it over to an agency, or of raising the child herself. Since the child's birth is her responsibility, why then is it not her own decision?

For too long women have allowed the State to steal from them the right to decide for themselves in this matter which is so basic and so intimate to themselves. For too long the people of our country have allowed a law to exist which is concerned neither with logic nor the welfare of the people.

ASSEMBLYMAN CRANE: Thank you, Miss Sidney.

Do you represent any group?

MISS SIDNEY: No, this is just my opinion.

ASSEMBLYMAN CRANE: All right. Are there any questions of the witness? (No questions)

Mr. Joseph Hayden.

J O S E P H A. H A Y D E N: My name is Joseph A. Hayden. I am a member of the Bar of New Jersey and I have been practicing in this State for over 30 years.

I brought up this pile of material to kind of scare

you, since I am one of the last speakers.

I have to digress from what I intended to say and really address myself to the members of the Study Commission on what has become a very disturbing reaction that I'm having to this whole meeting tonight.

I came here with confusion but as I heard speaker after speaker either give their views or vent their spleen on the Catholic Church or predicate their beliefs on what the Legislature of this State should do, based on personal desires, I am wondering if this Commission leaves here tonight having gained any knowledge.

The first speaker, as I recall it, a doctor, devoted almost his entire allotted time to what I gathered was the use of a favorable or rather euphemistically called liberalized abortion law which would reduce the population explosion in the ghettos.

I didn't think that this Commission was created by the Legislature of this State to reduce the population of the ghettos.

Another speaker. Dr. Guttmacher, made it clear that he is concerned that there is not sufficient use of male sterilization.

Two speakers used this forum for a vitriolic attack on the Catholic Church. And one of them, Mrs. Gray, evinced a complete lack of knowledge of the history of the State of New Jersey, though she be a fellow member of the Bar, because if Mrs. Gray thinks that the Legislature of the State of New Jersey in 1849 was passing legislation at the behest of the Roman Catholic

Church, she has a lot to learn. For her information, officially, a law identical with this abortion law is on the books of almost the fifty states. There was a similar law. Some of them are adopting the Model Penal Code.

With respect to the recommendations that were made by some of the speakers, I direct your attention particularly to those who felt that the Model Penal Code, at least the last draft recommendation, should become the replacement abortion law in this State; and also to Dr. Guttmacher and also Dr. Vann, without exception, every one of them said that the main objective was to protect the life of the pregnant woman.

Now Dr. Guttmacher who made that his first recommendation to this Commission, that that was the real objective, he addressed a group at a symposium at Rutgers in March, and hearing his thoughts that night, as compared with tonight on that subject, he said that the second possibility is to enforce existing statutes rigidly, to permit abortion only to preserve the life of the mother.

Today, in modern medicine, this is almost never necessary. As a matter of fact, the absolute necessity for abortion to preserve a woman's life is so infrequent that little harm would be done by eliminating such permission under the law.

The comparison of what Dr. Guttmacher suggests that this Committee recommend to the Legislature to adopt the Model Penal Code - his first recommendation is to protect the life of the mother, is completely contrary to his feelings at the symposium at Rutgers Law School that

there was no longer any necessity for this. And there isn't.

It seems to me that the medical profession would have to hang its head in shame if it had to liberalize, to use the word most used here tonight, - to liberalize the abortion law of New Jersey to substitute what is its obligation to overcome medical defects, not allow them to be killed.

I sincerely regret that there isn't enough time to devote on this but I would like to make a parting thought that this Commission may take away with it. There has been little or nothing given to this Commission tonight by way of fact. It would be my recommendation that the Legislature conduct an unbiased - and I say that with respect to speakers tonight from any religion - but that they leave religion out of it as a bias approach, and that this Commission hire some proper research experts to find out whether or not the claims made tonight, like a million abortions based on the Kinsey Report, and things of that nature, and see whether there is any substance to them; and based on what you will find out, come to your recommendations to the Legislature.

Thank you.

REV. DENTICI: In your legal experience, what is the legal position in New Jersey relative to the life of the unborn child?

MR. HAYDEN: There is no question, by all of our decided cases, that the court accepts the unborn child's rights to start at conception. There is no question about it.

I think a lot of talk was devoted to the so-called Gleitman case. But behind the Gleitman Case is Raleigh v. Fitkin Memorial Hospital Case, where a woman, a member of Jehovah's Witnesses, is pregnant and Fitkin Memorial advocated that she have blood transfusions which were against the tenets of her belief, and the Supreme Court, in a most unusual procedure, took unto itself for a decision and decided the case on the same day of its argument, June 17, 1964. They held it was the absolute obligation of the Supreme Court of New Jersey to protect the life of this unborn child regardless of the belief of the mother. And that flows right into the Gleitman Case, Smith v. Brennan, it's in the Periconi Case which is a somewhat similar case involving another women who was a member of Jehovah's Witnesses. And, incidentally, the Raleigh Case, certification was applied to the United States Supreme Court and it was denied, so that the law of this State, as it stands tortwise, is that the unborn child's rights commence as of conception.

REV. DENTICI: If this Commission recommended the exceptions, the exceptions that Dr. Guttmacher has given us and the exceptions in the Model Penal Code, would this go against the tradition of the State in its legislative proceedings on the rights to life of an unborn child or be diametrically opposed to it, as it is now?

MR. HAYDEN: Well, you are talking now - when you talk about a statute you're talking about a criminal statute. There are really three categories of an unborn's rights, property law, tort law and criminal law. I would think, regardless

of what is done pertinent to this statute, our courts will never deviate from affording complete rights to unborn children, in the tort field and especially in the property right field. There is no question about it in the probate field.

REV. DENTICI: One last question. Would it be wiser then for us to recommend a legal guardian to protect the rights of the unborn child?

MR. HAYDEN: In the first place, Father, I don't think - I don't know what happened in Trenton, I've been here for four and a half hours tonight and, of course, I don't know what's going to happen at the Camden hearing, but if there were time - I respectfully submit to you that some of the most fantastic unsupported statements were made here tonight that this Commission just can't live with, and I gave a glaring example. Now Dr. Guttmacher, whom I respect, I've heard him a number of times and he generally prefaces his thought by saying he has been interested in this abortion matter for 47 years, and yet Dr. Guttmacher will make such completely contradictory statements before the Rutgers Law School Symposium in March from what he made here tonight. He said at Rutgers that there would be no necessity for changing the law if the only objective was to protect the life of the mother because medically speaking, and that's his field, that necessity no longer exists. Tonight he gives it as his first recommendation of these six or seven. And if my memory serves me right, I think Prosecutor Rittenhouse asked him a question about the placement of his various recommendations and he made that his first recommendation.

So that we have been overcome tonight by emotionalism

but I don't think much is supported by fact or statistics.

REV. DENTICI: Thank you.

ASSEMBLYMAN CRANE: Thank you, Mr. Hayden.

Is Professor Charles Rice here? (No response)

Reverend Charles Straut.

R E V. C H A R L E S H. S T R A U T, JR.: The present abortion laws require over a million women in the United States each year to seek illegal abortions which often cause severe mental anguish, physical suffering and unnecessary death of women. These laws also compel the birth of unwanted, unloved, and often deformed children; yet a truly human society is one in which the birth of a child is an occasion for genuine celebration, not the imposition of a penalty or punishment upon the mother. These laws brand as criminals wives and mothers who are often driven as helpless victims to desperate acts. The largest percentage of abortion deaths are found among the 35 to 39 year old married women who have five or six children. The present abortion law in New Jersey is most oppressive of the poor and minority groups.

The clergymen who have formed the New Jersey Clergy Consultation Service on Abortion, a group who will make an official statement at the Camden hearings, are deeply distressed when attempts to suggest even a conservative change in the New Jersey State abortion laws, affecting only extreme cases of rape, incest, deformity of the child, and the mental and physical health of the mother, have met with such immediate and hostile reaction in some quarters, as we've just heard,

including the charge that all abortion is murder. We affirm that there is a period during gestation when, although there may be embryo life in the fetus there is no living child upon whom the crime of murder can be committed.

While we debate a liberalized abortion law, women are being driven alone and afraid into the underworld of criminality or the dangerous practice of self-induced abortion. Confronted with a difficult decision and the means of implementing it, women today are forced by ignorance, misinformation and desperation into courses of action that require humane concern on the part of religious leaders. Belief in the sanctity of human life certainly demands helpfulness and sympathy to women in trouble and concern for living children, many of whom today, are deprived of their mothers who die following self-induced abortions or those performed under sub-medical standards.

We are mindful that there are duly-licensed and reputable physicians who in their wisdom perform therapeutic abortions which some may regard as illegal. When a doctor performs such an operation, motivated by compassion and concern for the patient, and not simply for monetary gain, we do not regard him as a criminal but as living by the highest standards of religion and the Hippocratic oath.

We believe as clergymen that there are higher laws and moral obligations transcending legal codes. We believe that it is our pastoral responsibility to give aid and assistance to women with problem pregnancies. That is why we have established a clergymen's Consultation Service, just as has been done in New York, Los Angeles and Philadelphia,

which includes referral to the best available medical advice and aid to women in need.

As the Rev. Howard Moody of New York City has stated, concerning the experience of the Consultation Service there, "This one long parade of mental anguish and physical suffering is but symbolic of the immeasurable number of human beings that are in dire need of even the kind of limited help which this service can give. This social problem is like an iceberg. Great chunks of human pain and desperation are all beneath the surface. It can only be met by doctors and psychiatrists who courageously step forward to help reinterpret the law so as to bring light and hope to the thousands of people who suffer - usually in quiet, and sometimes in death - the miseries and heartbreak of backstreet abortions."

Statements on the liberalization of abortion laws have been made by the Northern New Jersey Conference of The United Methodist Church; the General Board of the New Jersey Council of Churches, and the Massachusetts and New Jersey Baptist Convention.

I would like to conclude by saying this. As we can see by all of this accumulated evidence, clergymen and the churches are increasingly concerned about the serious problems presented by our inadequate abortion laws in New Jersey. In unanimously calling for liberalization of these antiquated and ambiguous laws, they are united in their agreement. As an individual, however, it is my sincere hope that the Abortion Law Study Commission will not recommend a new, but more oppressive status quo than what we now have.

Let us not spell out laws which are so rigidly defined that they replace the present ambiguity with a legalism which does not meet the real needs of responsible, mature, and intelligent women in our society. In my opinion, the best theology of the religious tradition from which I come calls for responsible freedom in addition to obedience to law. It is my belief that such helping professions as legal, medical, ecclesiastical, and social services, can best address this problem by helping women come to their own decisions.

I submit that the experience of Sweden, Colorado, and California, to name a few abortion law reform situations, has revealed the inadequacy of legal codes in trying to regulate this particular form of personal morality.

I believe that compassion and understanding must supersede coercion, in this area in which it is so easy to infringe upon the rights of the individual citizen and child of God. I believe that it makes more sense to speak of the abolition of these antiquated laws rather than replacing them with reformed laws.

ASSEMBLYMAN CRANE: Thank you, Reverend Straut.

Mrs. Joseph Wyngaarden.

M R S. J O S E P H W Y N G A A R D E N: My name is Mrs. Joseph Wyngaarden. I am the mother of two teenagers, Vice-President of a local League of Women Voters, and Vice-President of the New Jersey Committee on Abortion. I am here speaking on behalf of neither of these organizations but as a homemaker and concerned citizen.

Although abortion as a word was whispered behind closed doors, abortion as a practice has long been tolerated more or less as a necessary evil. From earliest times, man has known ways of making sure that a pregnant woman will not, unless she wishes, give birth to the child she carries in her womb. Even the most primitive tribes are familiar with incantations recited in order to kill unborn infants. Four and one-half millennia before the birth of Christ, the Chinese recorded a primitive medical procedure for inducing abortion.

Almost as ancient as prescriptions for abortion are the legal and moral proscriptions against their use.

I feel strongly that liberalization of existing laws to the extent suggested by the American Law Institute is not going to solve the problem.

Very few of the women who seek illegal abortions have been exposed to German measles and fear a deformed fetus; few have serious heart or liver conditions; fewer still have been raped by a stranger or by their own father; only a small porportion are unmarried and unwilling to marry the father of the potential child they carry.

The most typical case involves a married woman who does not want to have another child. Abortion, in the majority of cases involving married women, is a birth control measure. Under the revised penal code, a woman who did not want a second, third or fourth child would still have to be rejected by physicians and hospital abortion boards as not meeting the requirements of the law. She will still be faced with the cruel choice between deceitful lying in order to get a legal

abortion, or being honest about her motivation and seeking an illegal one.

The situation of a woman not wanting a child is a fact seldom faced. It goes counter to the expectation that women are nurturable, loving creatures who welcome every new possibility of adding a member to the human race. To come to grips with the central motivation that drives women to abortion, that they do not want the child, requires admitting that the traditional expectation is a gross oversimplification of the nature of women.

If we take 30 years as the fertility span of a woman, there are approximately 360 chances that she may become pregnant. If she wants and has three children there will be some 325 months, or about 90 percent of her potentially fertile menstrual months, in which she does not have joyous anticipation of a pregnancy, but rather an undercurrent of feelings ranging from vague unease to considerable fear that she may be pregnant. These feelings are not completely allayed by confidence in her contraceptive technique. This is true even for women whose contraceptive practices are highly effective. One would think there would be less resistance to the idea that many women have a dread of pregnancy and, when they find themselves with an unwanted one, may seek an abortion.

The woman with money can get an abortion. About ten thousand women go to Puerto Rico every year in search of abortions, which is more than 190 every week. It costs about \$350, plus plane fare, plus hotel, plus food. They may wind

up with a bellboy posing as a doctor, but that's the chance they take. Poor people do not go to Puerto Rico looking for abortions. There are no figures on how many women go to Tijuana, Mexico, but normally there are about 75 abortionists operating there and quite a few fly-by-nighters besides. The cost is about the same. Poor people don't go to Tijuana either.

Sweden is not what it has been rumored to be. It's much more difficult to obtain an abortion there than many people believe. But Japan is easy, completely legal and inexpensive. The Japanese wife is much more subservient to her husband than we and, yet, the Japanese woman has one of the most fundamental freedoms which no woman anywhere in the United States has - the right to decide for herself whether she will bear a child or not.

Poland, too, is easy, completely legal and inexpensive. All you have to do is get there. Poor people, in general, cannot even fly now and pay later. It is the woman without money who carries the unwanted child to full-term and here we encounter the genesis of a long-range social problem.

I, in the eyes of the law of this State, am nothing but a brood mare. In some ways a mare is luckier because her owners, especially if she happens to have a good pedigree, will abort her fetal foal, if the mare is accidentally impregnated by the wrong stallion. I have no such rights.

Existing abortion laws are not only cruel, they are medieval in concept. The philosophy behind them is that abortion involves sin, a subject with which medieval thinking was preoccupied. The thought that there are justifiable reasons for countenancing abortion never occurred to the

framers of these outrageous laws. Abortion was a sin, and it was better to let an unfortunate woman die than to risk her spiritual welfare.

That a man has complete jurisdiction over his body has never been questioned. That a woman should be mistress of hers is out of the question. Men, who make the laws and theological doctrines, have never had to bear a child.

I am of the opinion that the laws concerning abortion should be completely repealed because the sexual relations of human beings and their reproductive consequences should not involve the State but should be a medical matter between patient and physician.

ASSEMBLYMAN CRANE: Thank you, Mrs. Wyngaarden.

Reverend John Wightman.

R E V. J O H N W I G H T M A N: My name is John Wightman. I am a Clergyman of the United Church of Christ serving a church in Woodbridge. I am also a colleague with Reverend Straut in the New Jersey Clergy Consultation Service on Abortion.

Mr. Straut has already said most of the things that I wanted to say, so that I will say in summary that I agree with everything that he said, that we are very concerned about the extent of suffering about the extent of disease and the deaths of the mothers involved in abortion; we are concerned about the fact that poor people cannot receive abortions if they want them; and we are desperately concerned about the problem of unwanted children in our country. And for all of

54

these reasons we feel that the State is desperately in need not only of a liberalization but perhaps, even more than that, and, indeed, speaking personally for myself, at this point, we feel that these laws are best not regulated by the State but by the consciences of the mothers involved. [Rev. Wightman's written statement is on page 242]

Thank you.

ASSEMBLYMAN CRANE: Thank you very much.

Any questions? (No questions)

Mr. and Mrs. Canning.

R I C H A R D C A N N I N G: I am Richard Canning, a former member of the Board of Governors of the New Jersey Association for Brain Injured Children and currently still active in that Association. But tonight I speak to you not on behalf of the Association but as a parent.

On behalf of Mrs. Canning and myself, I want to thank you for the opportunity to appear before you and to give testimony as husband and wife.

My wife and I are not doctors, lawyers and theologians, but we are parents deeply concerned with the vital, ethical question of abortion and the right of life of the unborn child.

As to when life begins, I will leave that to the geneticists and to other scientists to advise you.

My wife and I are deeply concerned as to the importance of a family in our society today. In this day and age of emphasis on the right of the individual and groups of individuals, we presuppose by those favoring abortion an erosion of the civil rights of the fetus. This could be the

beginning of the end. If legalized abortion, why not legal infanticide, and later mercy killing of elderly people.

In life one hopefully faces one's problems squarely and does not run away from them. Let us, therefore, tonight face the fact of the deformed child, the mentally defective child, and the unwanted child. This child presents to us a challenge and there is no easy solution.

I say this to you not as something theoretical but rather from first hand knowledge and experience. For eleven years now my wife and I, and perhaps thousands of other parents, have faced together the challenge of raising a brain injured child. And I might add, we are the better human beings for it.

You too, as Commission members, have a challenge and an opportunity. Society, working through commissions, such as yourselves, could set up programs to come to grips with the underlying conditions that create the desire for abortion, rather than merely treating the symptoms by attempting to revise our current abortion laws.

Some ways for our society to do this, as has been done in other countries, such as Canada, would perhaps be to attempt to devise total family life support programs; perhaps creation of high school courses in parenthood. We see this today in New Jersey as the faint beginning in our courses on sex education in the grade schools; and, thirdly, perhaps counselling, psychiatric counselling for parents seeking abortion.

I say to you, the proponents of abortion are in

effect asking you to legislate the protection of the bright and the strong and legalize destruction of the weak and the retarded.

It is a fact, bluntly stated, that these retarded children are a social nuisance. Taken to the ultimate conclusion, it reminds one of the Nazi theory about unwanted and defective people.

The danger here then is that when convenience is accepted as the criteria for taking one innocent life, it can logically then be accepted for taking any innocent life.

The decision of life and death, up to now, has been reserved to a judge and jury. We have here now a proposal to place this decision in the hands of a selected few physicians. I ask you, what in his medical training and background uniquely qualifies the doctor to act as judge and jury? He would be asked to select, in the darkness of the womb, those human beings who are fit to live and those who are not fit to live. The medical and also the legal profession enjoys public esteem because they are dedicated to the protection of life, not its destruction.

Should we protect the defenseless? In answer to that question, I refer you to Dr. Paul Ramsey the Harrington Spear Payne Professor of Religion at Princeton University and distinguished Protestant ethicist, who has stated that this is not a private decision, that rather society should not give over to the couple or pregnant woman the right to make the decision.

If we are wise we learn from the experiences of

others. The evidence from Sweden, Japan and Denmark, shows that liberalizing abortion merely adds hospital abortions to illegal abortions. Stated another way, if abortion is legalized, then every abortion request which is legally denied creates the potential for one more criminal abortion.

It is said that it is not right to bring a child into the world if it is not going to be happy. I say to you, three-quarters of the world is starving; we teeter on the edge of nuclear war; we hate our brother because of the color of his skin; and we propose that we can judge who will be happy and who will not.

In conclusion then, I say to you that a society can be judged by its attitude toward its handicapped. If we cannot tolerate the potentially disabled, how can we love the presently disabled?

Thank you.

ASSEMBLYMAN CRANE: Thank you, Mr. Canning.

Any questions?

RABBI SCHWARTZ: Do you mind if I ask you a personal question?

MR. CANNING: No.

RABBI SCHWARTZ: Did you know prior to birth that the child would be brain damaged?

MR. CANNING: No, we did not.

RABBI SCHWARTZ: If you had known shortly after conception of the trials and tribulations that the child would have to go through, would you perhaps have a different thought in mind?

MR. CANNING: I can say honestly to you that our opinion would not have changed in the least from what I have stated tonight.

REV. DENTICI: Could you describe, sir, the trials and tribulations?

MR. CANNING: One hates to get personal about these things but they are at times extremely trying, there are the highs and lows with this type of youngster, as you can well imagine. My wife will be referring to that type of thing in her comments to you. But, as I stated at the outset, one meets these challenges and hopefully one becomes a better person. Life is not easy. This is one of the things that we are faced with. Other people have other problems. But one learns to live with them. Why don't we just leave it at that.

RABBI SCHWARTZ: In your association at meetings with parents of these children, would you say that there are a greater number of parents who are unable to cope with the situation as well as you are?

MR. CANNING: Yes, you have varying degrees of response to this type of situation, as you would have with any other problem that parents are confronted with in life. You have similar responses, such as ours, you have, I'm sure, better responses, and you have others perhaps differing in nature.

ASSEMBLYMAN CRANE: Mrs. Canning, did you want to make a statement?

M R S. R I C H A R D C A N N I N G: Mr. Chairman and members of the Commission, I am Eugenie Canning.

As my husband stated in his opening remarks here, we are presenting joint testimony this evening.

Since my frame of reference is that of a wife and a mother and I feel great concern for the stability of a family, I voice strong opposition to the proposed ready availability of abortion.

I see the movement toward easy abortion as a force which would eat away at the deepest foundations of marriage and the family as we know them in our society, causing irreversible erosions to these institutions.

First I wish to draw attention to the fact that the greatest number of abortions are performed on the woman who is married and has become pregnant by her husband, not on the unwed mother nor on the victim of violent and criminal acts. This has been pointed out a number of times tonight and is substantiated in much of the writing on abortion. Dr. Guttmacher mentioned the percentage being 70 percent in his estimation.

So we establish the fact that in most cases abortion is truly a family affair. This leads us to the currently fashionable argument about the civil rights of the woman in the case of a desired abortion.

I repeat, we are speaking now of a conception brought about by a husband and a wife who are then fully responsible for what is an unwanted child.

Several questions come to my mind.

60

How can the decision to obtain an abortion be addressed to women alone, considering that abortion can only occur after a male and female have co-acted, how then can uniquely feminine attitudes be brought to bear on such a situation. And what is the father? What are his rights?

If these are two rational people performing a free act which results in a pregnancy, is it really mommy's little fetus to do with as she pleases, or does daddy too have a voice in the deliberation.

Or, on the other hand, does daddy even know about it, the fetus, and that, the deliberation. An interesting thought I throw out for interested men, potential fathers-to-be.

The final point I wish to make regards the life of the handicapped child. My husband and I are parents of seven children. The oldest is a neurologically impaired girl, 11 years of age.

There are many statements by the experts on the uncertainty and futility of the abortion in the case of a potentially deformed child. Instead of quoting statistics, I will speak from my own heart and experience.

What a family does for and about a handicapped child is the right and responsibility of the family itself. In our case we have found it to be one day a source of frustration, the next day a source of deep and moving satisfaction. Just as our youngster herself in her day to day development vacillates between high points of accomplishment and low points of inefficiency, so our lives are somewhat geared to her. We see the clear-cut challenge that exists

in helping this girl to attain independence in a life and identity of her own. We appreciate more fully than not the freedom and growth of our other children who are spared the pressure of physical and mental limitation. However, we feel that it is the existence of all these children in juxtaposition with each other that has given this family, our family, it's individual character.

For myself, I urge parents who fear the possibility of a handicapped child to consider the positive side of the issue. What a beautiful ingrown situation for teaching children tolerance, understanding, patience, empathy, all qualities sadly lacking in much of our society as a quick glance at today's newspapers will prove. And the brothers and sisters of a handicapped child learn to live with and love this child within the confines of the home. They go out through the doors of that home, into a world full of shortcomings, bigger people who are better able to cope with what is outside because they are mastering what is inside.

These are some of my thoughts on the abortion problem which I present tonight in an effort to urge that the fullest and broadest consideration be brought to bear on this question by our Legislators who have such a grave responsibility regarding this matter.

I close then with this observation, when a society cries for abortion as a solution to its problems perhaps that society needs to be reminded of its real duty to itself.

Thank you.

ASSEMBLYMAN CRANE: Thank you very much, Mrs. Canning.

Mr. Newton J. Burkett.

N E W T O N J. B U R K E T T, JR.: I am Newton J. Burkett, Jr., President of the Board of Christian Social Concerns, Northern New Jersey Conference, the United Methodist Church. I am a layman and reside at 153 Chilton Street, Elizabeth, New Jersey.

The Northern New Jersey Conference of the United Methodist Church consists of 268 local churches having a total membership of approximately 92,000. The Conference covers a geographic area of roughly the northern half of the State of New Jersey and includes several churches in Rockland County, New York, and one church in Pennsylvania.

While no person has the authority to speak officially for the United Methodist Church, I am here to report to you the positions taken by the Northern New Jersey Conference at its 1967 and 1968 Annual Conferences.

The 1967 Annual Conference adopted the following position with respect to abortion:

"We stand for the legalization of abortion under adequate medical supervision. We find no merit in the argument that abortion is a type of murder nor do we feel that permitting adequately supervised medical abortion is an attempt to play God. Quite the contrary, those who would force a pregnant adolescent to become a mother or force parents to give birth to deformed children or force a mother to ruin her health or force unwanted childbirth upon the victims of rape or incest would appear to be the ones playing

God, rather we support these reforms as a way of giving life and freedom."

The 1968 Annual Conference reaffirmed this position and added the following resolution:

"That we request the State of New Jersey to pass a new, more explicit and liberal law on abortion. We further recommend that such law include the section of the Colorado law which reads: 'Section 4. Failure to comply. - Nothing herein shall require a hospital to admit any patient under the provisions of this act for the purpose 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 of moral or religious grounds shall not be required to participate in the medical procedure 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 persons.'"

I urge this Commission to support and work for the legalization of abortion as a medical procedure needing no more regulation than any other medical procedure, for example, properly trained and certified personnel and antiseptic conditions. I also urge that any law allowing abortion exempt from required participation those persons or institutions who for reasons of conscience do not choose to participate in medical termination of pregnancy. Thank you.

D R. P A L M A E. F O R M I C A: Mr. Chairman and members of the Commission, I come tonight as a physician, a full-time career woman, a mother and a sex educator. I might add I am over forty and have had more than three pregnancies.

On a matter as grave as the termination of human life, this Commission must give serious and unbiased attention. We are told that one of the purposes for changing the laws as they exist is to reduce the number of illegal abortions. I brought with me tonight some issues of Time Magazine which I will leave for the Commission members. I know it is not a medical journal but it does give us the experience of other States that have liberalized their laws; for instance, in the State of Colorado, we are told there are 407 cases that were aborted; 226 were unwed mothers. Now in my work as a family physician, I have dealt with hundreds of unwed mothers. Is abortion simply an expedient solution, or must we concern ourselves with the deeper symptom. Very frequently, it is the parent of the pregnant girl who comes in asking for an abortion for her daughter. In private, these girls have said to me, "I know what I did was wrong, but it's not the baby's fault. Don't let them kill my baby."

These kids need supportive help; they need psychiatric help; they don't need rejection and punishment. And if we pass the law where our young people are allowed to be aborted, what is the right of the pregnant minor? I ask this because a young lady approached me in school one day, where I give sex education lectures, and she told me that her parents

forced her into an abortion. They took her to a medical abortionist and she watched the doctor perform the abortion and 12 hours later witnessed the nurse deliver this wiggly fetus, place it in a basin - and she said to me, I saw my son die." This does not leave an emotional scar?

She also said, "I will not forgive my parents for what they have done to me and my child." These kids need psychiatric help. They need the reassurance.

Very frequently we are told about how women can't go through another pregnancy. In the Time article it indicates how frequently a single term like "I'll go out of my mind" in the case of an unwanted pregnancy, is stretched into a psychiatric indication. I have dealt with many women and diagnosed many conditions of pregnancy; I have heard that "I'll go out of my mind" a thousand times. There is never a right time for a pregnancy. There are too many responsibilities. But this attitude happens at a time when a woman is physically exhausted, when she has all the anxiety of the impending pregnancy and frequently the very woman who said she didn't want another child, when she is given supportive help, will within a few days, if she is on any medication, be calling up to find out whether this medication will harm her baby. And many of these so-called unwanted children turn out to be loved and cherished by their parents.

They also tell us there is little or no guilt involved with abortion. I beg to differ with this. Frequently the women that I have seen who have had spontaneous abortion have confided to me that they have felt a tremendous sense

of loss, a frustration of a basic function, and a depression. This depression frequently comes at the time her child would have been born. It may not be great enough for her to seek psychiatric help but she does suffer this sense of loss.

Dr. Theodore Litz, a Yale psychiatrist, was asked whether or not this guilt resulted from religious or moral training. His feeling was that it had to do with the vital feeling that the woman had destroyed something that is properly her goal in life. This is concerning the question of induced abortion.

There are other things I would like to say but I would just like to say two things in conclusion. Mrs. Gray said the physicians are dedicated to the art of healing. I am one of those physicians. I took that oath that she was talking about. That oath said "I will not give to any woman an instrument for abortion." Gentlemen, if we delete this section from the law, how soon will social pressures cause us to delete the phrase in front of it, which says: "nor will I give to anyone a deadly medicine even if asked."

I urge you to follow the example of the Commission for Abortion in Indiana. On every single count they found that the claims were exaggerated and Indiana did not need a change in their abortion laws.

Thank you.

REV. DENTICI: Doctor, are most of your patients women?

DR. FORMICA: The majority of my patients are women.

I would not even say that the majority of my patients are Catholic women, since that has been quite an issue here tonight.

REV. DENTICI: How long have you been in practice?

DR. FORMICA: I have been in practice 15 years and a full-time physician for that time.

REV. DENTICI: Now in your medical experience you have no doubt dealt with women who have had babies and have been happily married and then with others who were unhappily married with problems who have said they felt that they had been used something like brood mares.

DR. FORMICA: For the most part, not the women that I know, none of them considered themselves as brood mares. This is a basic reproductive creative function that a woman has. I certainly wouldn't consider myself one. I'm a very happy woman.

REV. DENTICI: Another question. We heard before about the idea of balancing the rights of the mother against the rights of what is in her womb. Now you are not a gynecologist, are you?

DR. FORMICA: I am not a gynecologist but I would like to make a point here.

REV. DENTICI: Well, let me finish my question.

DR. FORMICA: That's a woman for you. We always want the last word.

REV. DENTICI: In medical parlance or medical experience, can we verify that what is in the womb is merely a glob.

DR. FORMICA: May I state that in my spare time, because of what I have seen with the unwed mothers, I have dedicated myself to sex education and family living programs throughout our school system and our various church groups, I don't think

that any sex educator or any biologist or geneticist would deny that the conceptus is a totally new individual. It is a union of two different cells, making up the conceptus, which is the blueprint of the future man. This is not a glob of tissue. It is cells that are totally different; the blood type may be totally different. It is patterned for the future individual, even down to his fingerprints which will be different. In teaching our children in sex education in the lower grades, we teach them that life begins at conception. If we are to say that this is only a glob, then we must go back and revamp all our ideas as to the beginning of human beings.

We also teach them the various stages of fetal development. In one class of high school seniors, we passed around a four-month fetus, a mummified four-month fetus, and these youngsters said, "It is a human being, isn't it? Look at its fingernails; look at its mouth." This is not a glob. I think that no one--Even Doctor Guttmacher has agreed that life begins at conception. And what kind of life? It has to be human life. It's conceived by two human beings.

REV. DENTICI: One last question. You quoted a case from your experience in which a girl saw an aborted fetus born alive, whole.

DR. FORMICA: Yes.

REV. DENTICI: And so it died. Do you feel there should be a recommendation to the Commission as to what should be done with the whole fetus that is born alive?

DR. FORMICA: This is a weighty problem. What do you do with it? If you condemn the fetus to death, you have

legally declared him dead. Does that then allow experimentation on this living being? And this is being done in some of the places where the fetus has been aborted alive. They use it for experimentation. They inject certain substances into it and after a certain time they kill the fetus to see whether or not the material has been toxic to it, whether it has reached the brain, or what section it has reached. Are we going to allow this? This to me is human life and I'm afraid that despite what the proponents of liberalization say, there are many others who feel as I do. This would be a grave miscarriage; if we start destroying life in utero, where do we go?

MR. RITTENHOUSE: Doctor, I am going to take you perhaps again out of your area a bit. It isn't that of psychiatry. But you have commented on the attitude of the pregnant woman and indicated, it seems to me, that perhaps during this period of early pregnancy she may not be able to make a sound judgment as to whether or not she wishes to be aborted. Is that correct?

DR. FORMICA: Yes.

MR. RITTENHOUSE: I don't know whether you feel qualified to answer this or not, but would you say that the woman, at the period when she learns that she is pregnant, can be psychiatrically analyzed by a trained psychiatrist to the point of knowing whether or not her desires are valid as to whether she wishes the child or doesn't wish the child and whether she will provide an adequate home for the child upon birth.

DR. FORMICA: I understand you. May I say that in Sweden where a woman wants an abortion for an unwanted child, they provide her with psychiatric help to make this unwanted child a wanted child. As far as physically, this is a time of

tremendous emotional drain and a tremendous physical drain. I know it; I've been through it eight times myself. And I might add that seven of those eight times I, too, felt I couldn't go through with another pregnancy. I have empathy for these women but as time passes and with the proper help - it doesn't always have to be a trained psychiatrist's help - when its a fait accompli, when it is known there is a child there - women have tremendous capacity to adapt. I think my sisters proposing liberalization of the abortion laws do not know many of the women that I know and that I see in my practice. Granted there are serious cases, I certainly would like to see all the restraints put in as possible. We should be dedicating ourselves to preventiveness, not destruction. And this is what abortion is. It is destroying the fetus.

MR. RITTENHOUSE: Well, if there is a question as to whether the woman is capable of making the choice, then who is capable of making the choice?

DR. FORMICA: I don't think it belongs in the realm of the woman to decide that this is the choice. She and her husband conceived this child. We have heard that she has no way of preventing this conception. She has eight kids, or seven children, and he doesn't want any more. Let him be sterilized. There are existing laws; let's not concentrate -

MR. RITTENHOUSE: Excuse me, but apart from the problem of contraception and going to the problem of the existing fetus, if you are indicating that the woman is not psychologically in a condition to make a rational choice or decision, then are you suggesting that the choice should be made by a

medical team of psychiatrists or should it be made by some outside force or agency.

DR. FORMICA: I would not recommend abortion under any circumstances like this. I don't think it is the right of the mother or a doctor to decide whether the woman is capable of having a child. Very frequently, in my experience, this has passed.

MR. RITTENHOUSE: What if the woman and the doctor agree for medical reasons?

DR. FORMICA: I think there should be legal sanction. I feel very strongly about this. This is killing a life. We may not see it but there is a great deal of fetology development; we are giving blood transfusions to babies.

MR. RITTENHOUSE: I understand. You are still saying there may be instances medically where it would be valid procedure. Isn't that right?

DR. FORMICA: For a psychological reason.

MR. RITTENHOUSE: Yes, or for a physical reason.

DR. FORMICA: I think there should be laws governing this. I honestly do not feel it is in the realm of the doctor to make this decision nor of the husband and wife. This is a new life and what are its rights?

MR. RITTENHOUSE: If it is not within the realm of the doctors or of the parents, would it be within the realm of the Legislature?

DR. FORMICA: To safeguard the rights of the child, yes.

MR. RITTENHOUSE: What would you define as the time when an abortion might be legitimately performed?

DR. FORMICA: Legitimately performed? You mean, up to the first trimester? I'm sorry -

MR. RITTENHOUSE: I'm not asking the question about the period during pregnancy. I'm talking about whether, if you agree - (I'm not asking if you do) - but if you agree there are times when medically, psychologically or physically an abortion may be necessary - and this would be with the consent of the mother and father at the direction or recommendation of the doctor - should those times be defined by the Legislature? Do you feel that the Commission should make that kind of a recommendation? You say we should be careful. Is that the kind of care you are talking about?

DR. FORMICA: I think we should be extremely careful.

MR. RITTENHOUSE: We should exercise care. Do you feel that it should be recommended that a definition be made by the Legislature?

DR. FORMICA: Well, since this is a legislative commission, yes, the Legislature will have to govern.

MR. RITTENHOUSE: And spell out the times that this would be done by statute-

DR. FORMICA: Yes, there should be -

MR. RITTENHOUSE: - rather than leave it to the judgment of the doctor.

DR. FORMICA: Yes. I think this falls under the law. We must protect life.

MR. RITTENHOUSE: And you feel that such standards are capable of legislative definition?

DR. FORMICA: It would be extremely difficult, as we have seen. So far, we have the mother's life being at stake

ASSEMBLYMAN CRANE: Is Mrs. Valerie Dillon here?

V A L E R I E D I L L O N: My name is Valerie Dillon. I am a "Respect for Life" press secretary and also the author of a book on sex education, and I am a wife and the mother of four children.

If you can stand one more voice tonight speaking for someone's rights, I would like to add my voice. We have heard voices speaking for the rights of the child, and I would like to speak tonight for the rights of the mother. But I would like to speak on behalf of women like myself or any women who feel at some point in their life that abortion represents an answer for them.

I would like to say that it seems to me that much we are considering, that is, abortion, is simply not an adequate answer for most of us women. I think that our society ought to be able to do better than to offer a destructive method, destructive for the child and destructive for the woman, in answer to many of the problems that women are confronted with in our society.

I would like to suggest to this Commission and to the State Legislature that we have many problems facing us which perhaps no other generation of women have had to encounter and had to solve. And perhaps this is the reason why many women today think that abortion is an answer for them.

I don't believe that in their heart of hearts they really think this is true and yet so many women are desperate and so many women are convinced that there are no answers and there are not going to be any answers for them, and so tonight I would like

to ask very sincerely if this Commission would consider some constructive approaches, some positive means of solving the underlying problems that lead to the abortions in our society.

If we might take one thing that has been mentioned very frequently here tonight, the psychiatry case, I ask you, is it an adequate solution to tell a woman who is in psychiatric difficulty that she may get rid of her child? Is this representing the best help that we can give her, and I would suggest to you that any statute that is claimed to be a solution to the problem is an inadequate statute; I would suggest instead that this woman should have mandatory psychiatric counseling, that she should have the support of the community, that if a woman is in psychiatric disorder she should have the help, practical and financial, that she needs in order to see her through the pregnancy, and I think that only in this way are we really giving her what she is asking for. She is asking for help. She is asking to be brought through her emotional difficulty in one piece.

If we take the case of a parent, a mother and a father who are threatened with a defective child, is it enough to pity her and say let's get rid of the child? I don't think that it is. If we in our society, in our affluent, technologically progressive society can't offer something better than simply telling this woman that she has the right to get rid of a child who might be defective, I suggest that this is totally inadequate. Instead let's offer financial, let's offer educational, let's offer institutional, let's offer spiritual help to parents who are faced with this problem.

You heard Sister Concordia from the St. Joseph's School for the Blind speak tonight. I would like to just add something to what she didn't tell you. I spent a day in her institution. In line with research that I am doing in connection with the handicapped child, I spent a day to see what techniques she was using, and I asked her a very naive question. I said, "Sister, do you use the Delman-Delcotta method of patterning to help the children?" She said, "I don't use just that; I use all of them." I said, "What do you mean 'all of them'?" She said, "You have no idea of how many new methods there are today for helping children who are handicapped." And I saw with my own eyes what she was doing with these children. She told me of one youngster who was autistic and who was not capable of response for years, and every day she would go by this child and touch her and pinch her and poke her, and one day the child responded. I would suggest to you that there is no textbook that is going to tell a person to do that, but human compassion and love will do it.

And so to say, "Let's get rid of these children who are defective" to me is not an adequate answer. We need a response which is more compassionate. We need to have our State and our country get behind facilities which will help train these children and we also need them to get behind the medical research which is ultimately going to solve most of the problems of the handicapped child. How much money proportionately do we put into medical research for brain-injured children or for children with physical handicaps or for the

retarded child? There are so many breakthroughs today and we are right on the verge of really solving many of these problems, and yet now we are ready to pull back and say, "Let's get rid of them." To me, this isn't constructive, and if you want to talk about the measles crisis and the fact that this causes retardation, doesn't it make more sense to write a law which makes it mandatory to take a vaccine which has now been approved and make this a requirement just as we do for small pox instead of passing a law to abort children who might be deformed from measles. To me this is more constructive - constructive for the woman, constructive for the family, and certainly more constructive for the child.

I, as a woman, dread the possibility of rape. I dread it for myself and for my own four daughters, but anybody who thinks that merely allowing a woman to get an abortion because she's been raped and has been impregnated and that this will wipe out the experience, totally underestimates the complexity of a woman's sexuality. There is much more that is demanded of our State and our community for a woman who has been the victim of a forcible rape. She needs psychiatric help; she needs counselling; she needs the support of the community. Any law which allows an abortion in case of rape ought also to make mandatory counselling.

So far as statutory rape is concerned, which represents certainly the largest number of cases for abortion - it's not forcible rape, but statutory rape which represents the largest figure for those statistics out of Colorado and California. In this case, what are we teaching our children

about responsibility if we think that by wiping out the mistakes that they have made because they have gotten themselves into difficulty sexually, if we think that by saying "O.K., we'll perform an abortion because you are under age and you didn't know any better," are we teaching responsibility? It seems to me that what we are doing is that we are teaching the law of expediency, we are teaching them the rule of irresponsibility. We can talk until we are blue in the face about the young people of today being irresponsible. If we ourselves as adults are not willing to take the responsibility for our own actions and we don't expect our children to pick up the chips for their actions, then it seems to me we are not training them for their future as responsible adults, as mature people.

What I am calling for here is not just saying that you may have an abortion if you are under age or if it's a case of statutory rape. I'm saying let's institute some sex education programs in our schools. The State Commission on Sex Education presented a tentative curriculum a year ago to all the school districts in this State, and not very much has been done. I know, because I go around and I speak at these schools and you can believe me that what they are doing is minimal and is certainly inadequate for the needs of these children. They don't just need to know the facts. Our children of today know more facts than we ever did when we got married. What they need to know is to understand what sexuality is - not what sex is, but what sexuality is. What it means to be sexual, what it means to be male, what it means to be female, where does sex fit into our total life scheme? This is what our young people

are crying for and we adults are not giving it to them. So if we think we are taking a positive approach by allowing our kids to wipe out their errors, I think something far more is demanded of us. It's about time we did something about it.

And then, if a girl does get pregnant, how do we react to this? If we give her an abortion, we go in one direction; if we don't give her an abortion and we force her to bear this child, how does society treat this youngster? The schools dismiss her; her education in most of the schools and institutions is at an end.

ASSEMBLYMAN CRANE: Mrs. Dillon, will you conclude, please?

MRS. DILLON: I didn't hear the bell, I'm sorry.

ASSEMBLYMAN CRANE: He didn't set it up, unfortunately.

MRS. DILLON: O.K. Let me just conclude by saying that it seems to me that perhaps most of all we adults need a re-education in the values that have made this country a great country. I think immediately of generosity; I think of concern for other people, especially the helpless; I think of respect for life, and I think of responsibility.

You talk about unwanted children. Until we adults accept those values or reaccept those values or reeducate ourselves so that we can educate our children to them, I think this problem of abortion is going to be with us, no matter what kind of legislation we pass.

Thank you very much.

RABBI SCHWARTZ: I just want to make a general comment: Since I have been sitting on this Commission, I haven't heard and I don't think anyone is of the opinion that those criteria you set forth after the fact of birth are disputed.

MRS. DILLON: I'm sorry - what criteria?

RABBI SCHWARTZ: The criteria of sex education, State aid to institutions, developing institutions for carrying on the responsibilities of birth defects, medical advances, encouraging studies in medical advances. No one is denying that. What we are taking at issue here is not the post-natal circumstances which you have addressed yourself to but rather the embryonic stage of abortion.

MRS. DILLON: No, I would say first of all that - you say nobody is disputing them, but nobody is doing anything about them either. These are the underlying conditions.

RABBI SCHWARTZ: That is a matter for a different Commission perhaps to study the aid necessary for those who are born with defects, and I have not heard anyone disputing the necessity of aiding those born with defects since our first hearing.

MRS. DILLON: What I would suggest to you, sir, is that if we think that we have solved the problem of the handicapped child because we have put a law on the books which gives a woman the right to destroy a child before birth, I question very much how far we are going to go, what kind of a goal or motivation we are going to have to continue programs for those children who are born. What I am saying is that the underlying conditions that exist in our society today are

what make people feel that they cannot afford to bring such a child into the world - the fact that there is so much trouble in getting sufficient care and, in the face of a financial crisis, why is it we don't have birth insurance; why is it we don't have support for each child in a family? We are the only major industrial country in the world that doesn't have a family support plan. And I am suggesting to you that these kinds of methods are very basic and perhaps they should be there and perhaps they are the within the province of another commission, but they go right to the heart of the reasons why people think that abortion is an answer.

Thank you.

ASSEMBLYMAN CRANE: Mr. John Berke.

J O H N E. B E R K E: Mr. Chairman, Reverend Gentlemen, and members of the Commission: My name is John Berke. I am the author of the article, "One Roman Catholic says: My church is wrong about abortion," as published in the magazine, The Living Church.

I had a lot of other things I was about to say tonight, but I don't want to repeat anything that was said before me, so I will limit my already very short talk.

A good deal of argumentation against abortion is quite wrong. As a matter of fact, I am going to submit that every one I have ever heard does not hold up under a critical examination. However, one very unfair argument is the one which insists that women who don't want to have babies shouldn't engage in acts which would put babies within their wombs.

Well, it really isn't a fair suggestion and I am glad I haven't heard it made tonight. But the answer here is that not all the women want to engage in any sex relations, remain single and keep their boyfriends away from themselves to protect themselves from the consequence of marital relations. However, rapists don't respect their decisions and force pregnancies upon them in spite of their self-imposed chastity. Right here we see that the opponents of abortion have given us an argument in favor of abortion. Obviously, if they are right in alleging that women who decide in favor of sex relations are obliged to bear babies, it follow that those who decide against marital relations have no such obligation.

The second argument against abortion is one which has long been popular among those who oppose all practical methods of birth control and it is a religious argument and I would like to refute it here. God, say such opponents of abortion, gives a reward to women who bear children for Him and He gives that reward in the tender marital embraces of their husbands and the love of the children they bear.

Well, the truth is when a woman conceives a child as a result of rape, she gets no reward whatever from God or from the man who forces the baby upon her. Instead of a loving embrace, she gets a beating. If she bears a child, he or she will never love her, for she must hate her unwanted burden and wish to give it away.

And what about the baby? Who wants it? The father? Hardly - he doesn't know the baby is alive. An adopting couple? Possibly one might be so generous, but usually if they discover the circumstances by which he came into existence, they never want to adopt him. Then again, what of society? We are already burdened by enough criminal types. If we allow rapists to force innocent women to bear their babies and so pass on their depraved tendencies, we are then promoting the degeneration of the human species.

The only answer here is abortion. Abortion spares a woman nine months or something less of slavery in carrying out a job for which she is not to be paid. It spares a helpless child guaranteed orphanhood from birth, and spares society the trouble of raising him in childhood and later supporting him in a prison, for he may very well follow the footsteps of his

daddy.

I must add here that when pregnancy arises from rape, I suggest that the state and not the woman involved should pay all costs for the abortion necessary to safeguard her rights. After all, the government failed in its obligation to protect her from the crime women most fear and consequently as the responsible party should make good on its nonfeasance.

I would offer a somewhat similar argument for abortion for the victims of drugs such as Thalidomide and diseases such as German measles or Rubella. While it can be alleged that a couple who voluntarily engage in marital relations should accept the child God sends them as He has already rewarded them with the pleasures of marriage, that allegation fails if the child they are to have is seriously deformed or retarded.

If a couple knew beforehand they might conceive a child who would be armless or legless or blind and deaf, it is quite certain they would not engage in marital relations. What a couple expect is a normal child or at least one that will not be a lifetime burden. If they are to have one seriously imperfect, they must take on more problems than they had bargained for. Consequently, the woman who finds that she may have a defective child should be permitted an abortion as a matter of justice.

Needless to say the rights of the unborn are of paramount importance here. If by some miracle we could ask an unborn fetus if he would like to be born armless and legless or permanently

blind and deaf, his answer would be a resounding "no."
Yet, claiming to defend the rights of the unborn, opponents of abortion see themselves as saints when they try to force the most wretched existence on a helpless unborn child in spite of the common sense and compassion of the woman who carries him within her body.

ASSEMBLYMAN CRANE: Your five minutes are up. Would you please summarize the remainder of your testimony.

MR. BERKE: Oh, indeed I shall.

I would like rather than summarize, to refute something that was said about Sweden. If it weren't for abortion, white Protestant Sweden would be as poor as white Catholic Spain and non-pagan Japan as illiterate as non-white pagan India. These countries are often picked as prime examples of the evils of abortion, yet they have profited much from abortion, though we might prefer that they use contraception. They have benefitted from the limitation on population that abortion offers.

That is my testimony and thank you very much for listening to me.

ASSEMBLYMAN CRANE: I am sorry you had to wait so long to testify. Is there anyone else here who wishes to be heard?

R E V. C A R L J. W E S T M A N: I am the Reverend Carl J. Westman, residing at 134 Cooper Avenue, Montclair, New Jersey, where I hope to be shortly in the sack. I speak for myself.

I would not attempt to read all the testimony I have

prepared, as you will have a copy. I would like to read parts of it to reemphasize those things about which I have a profound concern.

Gentlemen of the Commission, I too am sorry, as one of our prior speakers was, that I can't say, ladies and gentlemen of the Commission. I think there is a disproportionate balance to get at a program that most concerns women.

I would remind you too - the question has been raised but there has been much emotionalism displayed tonight. I certainly hope so and I hope this has come through to you because this is an issue that does cut deeply and widely in terms of people's feelings about themselves, about what they want in life, and I would remind you too that religious pluralism in our Nation has always prevailed. The First Amendment to the Constitution guarantees that every person is free to hold his own convictions about religion. And the argument that God created human life in the very instant that the sperm fertilizes the ovum is a theological argument that in this country should not be imposed by law on those who do not believe it.

We have heard arguments tonight of various sorts as to when human life begins. If I happen to believe in one of these definitions of human life that it does not begin - human life does not begin at that moment of conception - but happen to believe that life becomes human through growth after separation from the mother's body - then to impose on me the theology of others, that is, that God creates human life at the instant of conception, is to violate my rights to freedom

under the First Amendment.

Therefore, I too believe that the woman who wants to end an unwanted pregnancy should be able to make this decision herself with the advice of her physician. She should not be prevented from making such a decision about the functioning of her own body by any religious organization or by any majority of religious organizations. The Constitutional freedom guaranteed by the First Amendment is for the protection of minorities, even a minority of one.

We have heard statistics decried that instead of 1,200,000 illegal abortions, there are only 200,000. I say if there are only 200,000, this is a formidable figure, of which you should take account.

Every religious organization has a right to teach and advocate its particular philosophy or theology, of course. But this right should be expressed in persuading, not imposing those doctrines on those who do not hold to them. If convictions are firmly held, are cogent and reasonable, surely no religious group should be reluctant to rely on persuasion.

Let me summarize, I believe a woman has a right to have an abortion when in good conscience she chooses to do so. The fact that religious organizations not only hold differing values generally, but differ specifically in this matter of abortion laws, has been brought before you. I would read a resolution passed by the religious denomination in which I hold credentials as a minister, the Unitarian Universalist Association, at its 1968 General Assembly, by more than

a two-thirds majority, "that efforts be made to abolish existing abortion laws except to prohibit performance of an abortion by a person who is not a duly licensed physician, leaving the decision as to an abortion to the doctor and his patient."

Abortion, the attitudes toward it and convictions about it represent beliefs, not science. A woman has the right to control the functioning of her body. I trust such considerations as you have heard tonight in this area will be seriously studied by you. Thank you.

ASSEMBLYMAN CRANE: Thank you, Rev. Westman, for being so patient. Any questions?

MISS TUSCHAK: I would like to ask - I am speaking in Camden - but I was wondering if I might add one or two sentences to this.

ASSEMBLYMAN CRANE: We have a gentleman back there who wishes to testify first. Sir, would you step up here.

D R. J U L E S R I V K I N D: My name is Jules Rivkind. I am an obstetrician-gynecologist. I am Clinical Chief of Obstetrics at St. Vincent's Medical Center, New York City, and an Assistant Clinical Professor of Obstetrics and Gynecology at our New Jersey State College of Medicine.

I would thank you, gentlemen, for being permitted to appear and express my admiration for your "stick-to-itiveness."

REV. SHAW: It is wearing thin.

DR. RIVKIND: I oppose a drastic change in the abortion laws at the present time. My views are outlined here. I will certainly submit them.

I think what we have basically is a major conflict. I don't think that there is any quick resolution to this conflict. We have on one hand the major cause of women seeking abortion being the fact that they simply don't want that particular pregnancy. No matter what the reason, they simply don't want it. The vast majority don't want that pregnancy for socio-economic reasons.

On the other hand, the vast majority of Americans, male, female, lay, medical, legal, reject this single cause as a legitimate cause for abortion or for performing abortions. Consequently we have areas in which we hope to get some sort of compromise. I believe that the American Law Institute's Model Penal Code is such a compromise. It tries to set forth certain rather rigid criteria under which an abortion may be performed. However, these criteria don't answer the question. They don't solve the problem. If anything, they simply increase by a small number the number of legal abortions and leave the number of illegal abortions untouched.

I would submit to you that since what we have had and what the majority of Commissions have, is a lot of opinion and very little fact, that perhaps the findings of the Indiana Commission might be applicable in this situation. And with your permission I will just introduce very, very briefly their own conclusions.

They stated: "There is insufficient data to indicate whether the State of Indiana," and this was in November of '67, last year, "should liberalize its statutes concerning abortion. The Committee does recognize, however, that problems do

exist concerning the subjects of childbirth, sex, family, mother and father and their relationship to society. For these reasons, the Committee makes recommendations that we feel are important to the health and happiness of the citizens of the State of Indiana."

The recommendations are:

"1. The existing statutes," which are not very much different from those here in the State of New Jersey, "concerning abortion should not be changed at this time. However, further study should be given to changes in the law to reduce the incidence of criminal abortion.

"2. The Indiana Superintendent of Public Instruction is requested to develop a program for sex education in our public schools," such as just was suggested. "The program shall include the rewards and happiness . . . ," etc., etc., etc.

"3. The Department of Public Health is requested to improve its records relative to the subject of pregnancies, termination of pregnancies and reasons for the termination of pregnancies.

"4. The Indiana General Assembly shall recognize and encourage the efforts of those organizations in the independent sector that are trying to promote planned families and counseling for mothers."

My sincere, humble suggestion to the Commission is that in the absence of facts upon which to make a clear, firm judgment, it would certainly be wiser to defer a decision rather than go into a decision which might be irrevocable and

irrevocably harmful. Thank you. [Dr. Jules Rivkind's written statement appears on page 243.]

ASSEMBLYMAN CRANE: Thank you, Doctor. Any questions of this witness? [No response.]

Young lady, do you want to say something?

V I C K I L Y N N T U S C H A K: I will just take a few minutes of your time. I have been listening all night.

ASSEMBLYMAN CRANE: Will you please give your name.

MISS TUSCHAK: I am Vicki Lynn Tuschak and I reside at 925 West 7th Street in Plainfield, New Jersey.

I have been listening all night to the testimony and I just can't stay back and say nothing, although I will be in Camden.

There is one point that has been passed over very lightly and as an ex-unwed mother, I would like to mention the responsibility that one has to herself. When I became pregnant I was in college and subsequently I had to drop out of school not because of the great psychological tension which is supposed to be so great, bearing the child the full nine-month period, but the tension that I found was the difficulty of procuring an abortion which is so difficult. And it is not only me, there were many people whom I was able to help because they found the same problem. It was because of the psychological reasons that I dropped out of college and I solved my own problem.

There haven't been too many people who have been able to speak -- well, they have all spoken from a fairly personal view - but possibly if I and others like me can speak up, you can see that there must be a change in the abortion law because

of the many people who are now going to Porto Rico and Sweden, wherever they go, and in the United States, spending hundreds and hundreds of dollars for something that could be taken care of under very sanitary conditions. You have to see that something must be done. Thank you very much.

ASSEMBLYMAN CRANE: Thank you very much. Does anyone else wish to testify? Seeing none, I think we have come to about the end of the rope.

I want to thank the City of Newark City Council for making these facilities available and thank you, Mr. John Kingland, for your perserverance and, of course, the staff of the Legislature for their help too.

The public hearing is adjourned.

[Hearing Adjourned.]

THE AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS

INTRODUCTION TO STATEMENT ON THERAPEUTIC ABORTION

The American College of Obstetricians and Gynecologists, cognizant of its responsibility for defining the standards of maternity care, believes it has a responsibility to the profession and public to state not only its recommendations with respect to the laws governing therapeutic or medical abortion, but to offer an interpretation of these recommendations. Moreover, the College believes that it also has a duty to state what its membership will or will not condone or support.

First, The American College of Obstetricians and Gynecologists regards therapeutic or medical abortion as primarily a medical responsibility. Secondly, any law concerned with therapeutic abortion should view as relevant that excessive numbers of pregnancies and resultant offspring may cause social and economic erosion of the family. All too often when the anticipated family size has been exceeded, the patient in desperation may resort to dangerous measures in an effort to terminate the pregnancy. In this regard, mention is rarely made of the numbers of intrauterine lives lost through failure to react to this medical problem.

In broadening the law to take into account the patient's entire environment, actual or reasonably foreseeable, in assessing maternal risk, the medical profession must consider and give thoughtful evaluation to each individual request. Experience will support the concept that physicians can convince patients to continue an unplanned pregnancy provided steps will be taken to prevent future unwanted pregnancy; and society should provide the necessary economic support for the patient so that she will continue and complete the pregnancy.

The foregoing leads to the suggestion that clinics be established within existing maternity sources to provide special care and consideration of patients with unplanned pregnancies. With the assistance of special agencies, it is envisioned that the patient will not take those measures that will be detrimental not only to her immediate health, but which may cause physical and psychological sequelae.

It is firmly stated that the College will not condone nor support the concept that an abortion be considered or performed for any unwanted pregnancy or as a means of population control. It is emphasized that the inherent risk of such an abortion is not fully appreciated both by many in the profession and certainly not by the public. Where abortion may be obtained on demand, as in Japan and the Soviet Union, medical authorities of both these nations indicate that the physical and psychological sequelae are still to be determined. Moreover, where abortion is so practiced it can be said that the mortality and morbidity rates are difficult to ascertain. Further, the public should realize that in countries or societies that permit abortion on demand, many, if not the majority, are performed in physicians' offices. Under these circumstances, it is reasonable to conclude that the mortality from this operation may exceed the maternal mortality of the United States and Canada while the incidence of serious complications is substantial.

Approved by the Executive Board
May 9, 1968

THE AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS

STATEMENT ON THERAPEUTIC ABORTION

Termination of pregnancy by therapeutic abortion is a medical procedure. It must be performed only in a hospital accredited by the Joint Commission on Accreditation of Hospitals and by a licensed physician qualified to perform such operations.

Therapeutic abortion is permitted only with the informed consent of the patient and her husband, or herself if unmarried, or of her nearest relative if she is under the age of consent. No patient should be compelled to undergo, or a physician to perform, a therapeutic abortion if either has ethical, religious or any other objections to it.

A consultative opinion must be obtained from at least two licensed physicians other than the one who is to perform the procedure. This opinion should state that the procedure is medically indicated. The consultants may act separately or as a special committee. One consultant should be a qualified obstetrician-gynecologist and one should have special competence in the medical area in which the medical indications for the procedure reside.

Therapeutic abortion may be performed for the following established medical indications:

1. When continuation of the pregnancy may threaten the life of the woman or seriously impair her health. In determining whether or not there is such risk to health, account may be taken of the patient's total environment, actual or reasonably foreseeable.
2. When pregnancy has resulted from rape or incest: in this case the same medical criteria should be employed in the evaluation of the patient.
3. When continuation of the pregnancy is likely to result in the birth of a child with grave physical deformities or mental retardation.

Approved by the Executive Board
May 9, 1968

N.Y. Obs & Gyn Soc.

tion in the Fall. Please send change of address since the last issue (1966-67) to the Secretary, Leopold E. Thron, M.D., 500 Market Street, Paterson, New Jersey 07501, prior to September 1, 1968.

THE NEW JERSEY ABORTION LAW

The following is the full text of the New Jersey Abortion Law:

Chapter 87 - Abortion

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.

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.

Because the language of the law is vague and inadequate, the President appointed a committee to study the question. The committee has reported to the Council and presented a Resolution. A copy of this proposed Resolution was sent to all Fellows together with a return post card on which a member could indicate either a favorable or unfavorable response. Tabulation of the post-card poll is as follows:

Favorable	222
Unfavorable	35
Abstention	1
No reply	55
Total	313

This matter will be discussed and voted upon at the Annual Meeting. In order that the membership be fully informed, the present reading of the law has been quoted above, and the proposed Resolution follows:

Whereas: A committee of this Society has met and studied the abortion problem in New Jersey; and

Whereas: This committee finds the present abortion law in New Jersey is vague, and archaic and mitigates against present day scientific thinking; be it

Resolved, that

1. We individually and collectively urge the Legislature of The State of New Jersey to appoint a Study Commission on Abortion.

2. The Study Commission on Abortion should represent all interested groups and among others should include a representative of The Medical Society of New Jersey and of The New Jersey Obstetrical and Gynecological Society.

3. The New Jersey Obstetrical and Gynecological Society adopt the policy on abortion of the American Medical Association and recommend this policy to a Study Commission on Abortions of the Legislature of The State of New Jersey if such a Commission is appointed. This policy of the American Medical Association states: ". . . Recognizing that there are many physicians who, on moral or religious grounds, oppose therapeutic abortion under any circumstances, the American Medical Association is opposed to induced abortion except when:

"1) There is documented medical evidence that continuance of the pregnancy may threaten the health or life of the mother, or

"2) There is documented medical evidence that the infant may be born with incapacitating physical deformity or mental deficiency, or

"3) There is documented medical evidence that continuance of a pregnancy, resulting from legally established statutory or forcible rape or incest may constitute a threat to the mental or physical health of the patient;

"4) Two other physicians chosen because of their recognized professional competence have examined the patient and have concurred in writing; and

"5) The procedure is performed in a hospital accredited by the Joint Commission on Accreditation of Hospitals.

"It is to be considered consistent with the principles of ethics of the American Medical Association for physicians to provide medical information to state legislatures in their consideration of revision and/or the development of new legislation regarding therapeutic abortion."

— NOTICES —

OBSTETRICIAN-GYNECOLOGIST; Board eligible; will be discharged from Air Force in September 1968; seeks association leading to partnership in New Jersey. Write: J. Fred Katz, Qtrs. 614C 7th St., Maxwell AFB, Alabama 36112.

OBSTETRICIAN-GYNECOLOGIST; Board certified; age 33; married; completing military service; seeks association leading to partnership; Write Leonard Levine, M.D., 1273-B Elm Street, Fort Dix, New Jersey 08640.

AMERICAN MEDICAL ASSOCIATION
COMMITTEE ON HUMAN REPRODUCTION
REPORT ON THERAPEUTIC ABORTION

Introduction

In the latter part of 1965, the Committee on Human Reproduction submitted a report to the Board of Trustees on the legal status of therapeutic abortion. This report included charts, prepared by the AMA Law Department, summarizing the existing state laws on this subject. The Committee, noting a disparity between the law and what it believed to be a reflection of current medical and public opinion, recommended that the American Medical Association adopt a position of support for revision of state laws along certain prescribed lines. The law changes recommended followed the general provision of the 1959 Model Penal Code of the American Law Institute. In essence, this Code provides for the legal termination of pregnancy to preserve the life and health of the mother when either would be seriously jeopardized by continuance of pregnancy, when there is substantial risk of fetal anomalies, and when pregnancy is the result of rape or incest. The Model Penal Code also specifies the conditions under which therapeutic abortions may be performed; i.e., by licensed physicians in accredited hospitals after consultation with medical colleagues.

The 1965 report of the Committee on Human Reproduction was transmitted without comment by the Board of Trustees to the House of Delegates at the Clinical Convention in Philadelphia, November-December, 1965 (Report A, Board of Trustees, C-65).

The foregoing report evoked widespread interest and discussion at the Philadelphia Convention, both among the delegates and in the press. The testimony at the open hearing of the reference committee was characterized by expressions of deep personal conviction. In particular, the morality of abortion was subject to much discussion. Reproduced below are appropriate portions of the report of the Reference Committee on Miscellaneous Business which considered this matter:

"Many witnesses were heard by your Reference Committee. It was abundantly clear that many members of this House have an intense interest in these issues. Most of the discussion centered on problems of abortion. There was a question among

the witnesses and your Reference Committee as to whether the intent of the report was primarily (a) to stimulate uniformity of state laws concerning legally induced abortions, (b) to permit medical judgment and personal conscience to guide each individual physician as to the propriety of performing elective induced abortions, or (c) to arrive at a consensus of medical justification for induced abortion.

"After much discussion it became quite clear that there are several distinct, but related, elements in the problems of legally permissible elective abortions. Among these are (1) the moral-ethical-spiritual-religious element, (2) the legal element, (3) the medical element, and (4) the customs, usage, tradition and orientation of society in each state. It was obvious that the problem could not be totally resolved by consideration of any one of these elements alone. It was also obvious that each element must be separately studied before attempting to integrate it with the others into a definitive policy.

"Conflicting testimony was offered to your Reference Committee as to medical indications for abortion, whether the abortion is done to safeguard the life or physical or mental health of the mother or to prevent birth of a crippled, deformed or abnormal infant.

"The license of a physician to practice medicine in any state is a privilege, extended by the government of that state and presupposes rigid adherence to laws of social conduct created by appropriate legislative bodies of that state. Any state board of medical examiners must base its judgments on whether to grant or revoke medical practice privileges on the laws of the state concerned. It was pointed out that when recommendations from a national association with supposed expert knowledge in the field are more liberal than existing state law, this would tend to weaken the authority of a state board of medical examiners and to compound its problems in administering the medical practice laws of its own state. It was clear that granting of a license to practice medicine does not grant to the physician the right to decide for himself, based solely on his own personal conscience and social judgment, whether to obey or disobey any existing law.

"With these considerations your Reference Committee suggests that it is not appropriate at this time for the American Medical Association to recommend the enactment of legislation in this matter for all states. The problem is

essentially one for resolution by each state through action of its own legislature. It is true that there are medical implications in such legislative decisions; physicians in each state should freely provide information and guidance on these medical implications. However, enacting laws to integrate the medical aspects with the moral, ethical, religious, economic, social tradition, and other aspects of the problem is clearly the exclusive prerogative and the responsibility of the legislature of each separate state.

"Your Reference Committee suggests that the AMA could render a distinct public service in this matter by conferring with other interested groups such as lawyers, clergy, sociologists, legislators, and government administrators. Your Reference Committee suggests that the subject matter could be referred back to the Board of Trustees. It further suggests that the Board could attempt to set up exploratory conferences with representatives of such other interested groups, possibly starting with the American Bar Association.

"Mr. Speaker, I move that the portion of the report of the Committee on Human Reproduction which is concerned with abortion be referred back to the Board of Trustees, with the recommendation that the subject matter be explored in depth with other interested groups."

The foregoing report of the reference committee was adopted by the House of Delegates. Thus, formulation of an AMA policy statement on therapeutic abortion was deferred pending further study by the Board of Trustees. The Board, in turn, requested that the Committee on Human Reproduction explore this matter in depth and report back its findings and recommendation. This report is the result of that study.

The Therapeutic Abortion Dilemma

The laws governing therapeutic abortion in the United States vary somewhat in phraseology. Basically, however, in 45 states the laws permit induced termination of pregnancy only to save or preserve the life of the mother, and in the remaining 5 states and the District of Columbia, to protect the health or safety of the mother. The majority of these laws were enacted about 100 years ago when a host of diseases exacted a high maternal death toll,

when the technique of evacuating the uterus entailed an appreciable morbidity and mortality, when psychiatry was in its infancy, and when the hazards of maternal rubella were unknown. Today, with modern prenatal, obstetrical, and postpartum care, it is an unusual pregnancy which cannot safely be carried to term. Yet, each year in the United States approximately 10,000 pregnancies are terminated by licensed physicians in accredited hospitals with the knowledge and concurrence of consulting colleagues.¹ Few of these are necessary to save the mother's life. American medicine is therefore confronted with a situation whereby conscientious practitioners performing therapeutic abortions for reasons other than those posing a direct threat to the life of the mother are acting contrary to existing laws.

Therapeutic abortion is frequently performed for so-called fetal indications, particularly maternal rubella during the first trimester, which carries a substantial risk of producing a seriously deformed child. Whatever the risk, however, this clearly constitutes no threat to the life of the mother. In California last year, unprofessional conduct charges were preferred against a group of nine prominent physicians who had performed therapeutic abortions because of maternal rubella. This action marks the first instance in which current abortion laws have been invoked against licensed physicians who openly terminated pregnancies in an accredited hospital after consultation. The anticipated judicial review in this case could have a profound effect on the abortion laws throughout the country.

As many as half of all therapeutic abortions in the United States are recommended for psychiatric or mental health reasons by consulting psychiatrists. To comply with laws that limit abortion to life-saving situations, such procedures can be performed only when there is a risk of suicide. Studies show that suicide has been relatively rare in pregnant women, being about only one-tenth as frequent as suicide in nonpregnant women of the same age.² Therefore, the psychiatrist who recommends a therapeutic abortion may be forced to act contrary to the law and trust that no legal action will follow or to exaggerate the circumstances to justify his recommendation. In any event, he may find himself in an uncomfortable position which is not mitigated by the fact that the courts have not yet convicted a physician on such a charge.

1. Hall, R.E.: Therapeutic Abortion, Sterilization, and Contraception, Amer J Obstet Gynec 91: 518-532 (Feb 15) 1965.

2. McLane, C.M., in Abortion in the United States, M.S. Calderone (ed) New York: Paul B. Hoeber, Inc. 1958, p. 140.

Criminal Abortion - Not An Issue In This Report

When its 1965 report was considered at the Philadelphia Convention, the Committee on Human Reproduction sensed that there was misunderstanding that its intention was to "liberalize" the state abortion laws so that a large number of criminal abortions could be afforded the protection of law. This interpretation was completely contrary to the intent of the report.

Criminal abortion (the interruption of pregnancy by either physician or non-M.D. under clandestine circumstances; i.e. outside the hospital without keeping of records and without consultation) is a public health problem of major importance in the United States. The Committee on Human Reproduction is deeply concerned with the large number of abortions performed outside hospitals and believes that all possible avenues should be utilized to reduce the toll of human misery produced by this illicit procedure. These include efforts to intensify sex education programs for all levels of society and to combat what is believed to be a contemporary breakdown in conventional morality. Likewise, contraceptive counseling needs to be stressed since it can be universally agreed that abortion is the worst possible method of birth control.

This report is addressed only to the medical aspects of therapeutic abortion. It is in no way related or intended to cope with the problem of criminal abortion. The Committee believes that the frequency of criminal abortions would not be reduced at all if the recommendations contained in this report were implemented on a national scale. The Committee on Human Reproduction is unequivocally opposed to any relaxation of the criminal abortion statutes.

Liaison Activities

In the eighteen months since the earlier report was referred back to it, the Committee on Human Reproduction has sought to implement the directive of the House of Delegates that "the subject matter be explored in depth with other interested groups." The following is an account of those liaison activities.

A. Psychiatry

Inasmuch as psychiatrists are frequently involved in the consultative procedure prior to therapeutic abortion and since psychiatric indications are the most common reason for interruption of pregnancy, the Committee on Human Reproduction sought

the counsel of this medical specialty. Hence, several joint meetings with psychiatric groups have been held.

1. Council on Mental Health. A presentation on the abortion problem was made to the Council on Mental Health at its May 20, 1966 meeting. As a result, the Council appointed an ad hoc Committee on Abortion which met on October 26, 1966 and agreed to prepare a report to the full Council summarizing the problem of therapeutic abortion for psychiatric reasons. The ad hoc committee's report was received and approved by the Council at its February 23, 1967 meeting. The Council's report revealed no unanimity regarding the psychiatric indication for therapeutic abortion. The Council further stated that there was a paucity of "hard data" in this area and consequently could not arrive at any definite conclusion.

Representatives of the ad hoc Committee on Abortion of the Council on Mental Health met with the Committee on Human Reproduction at its meeting on March 4, 1967. At this time, the essence of the Council's foregoing conclusions were presented.

Finally, the recommendations of this report were reviewed by the members of the Council on Mental Health's ad hoc Committee on Abortion as well as by the Council's Executive Committee. The former group endorsed the recommendations, and the Executive Committee, acting on behalf of the Council, concurred. On May 20, 1967 a delegation of the Committee on Human Reproduction will meet with the full Council to continue discussion.

2. American Psychiatric Association. Following a meeting in June, 1966 between representatives of the Committee on Human Reproduction, the Council on Mental Health, and staff of the American Psychiatric Association, an APA Task Force was appointed to consider the problem of the psychiatric indications for termination of pregnancy. The APA Task Force discussed this matter throughout a two day meeting on October 28-29, 1966. It was generally agreed that social concepts of health as well as individual and physiologic ones must be considered in their most modern context if medicine is to approach this problem with any understanding. In a discussion of the Model Penal Code of the American Law Institute, the majority of the Task Force

seemed to feel that this was a minimum basis for a policy stand in recommending modernization and change of laws to meet present health needs. The English law which is presently in debate in the House of Lords and has the strong backing of the medical and psychiatric professions in England was discussed; some members of the Task Force felt that this was a superior presentation since it takes into account the social as well as the physical health of the family in its consideration of indications for medical intervention in pregnancy.

The Task Force has scheduled additional meetings in the hope of clarifying these issues and perhaps assisting in the development of a position statement on therapeutic abortion by the American Psychiatric Association.

B. The Legal Profession

At its meeting on September 26, 1966 the AMA-ABA Liaison Committee heard a report from representatives of the Committee on Human Reproduction regarding the legal aspects of therapeutic abortion. Subsequently, attorney members of the staff of the American Bar Association as well as members of the ABA Section on Family Law met with the Committee on Human Reproduction at its meeting on March 4, 1967. There appeared to be a clear-cut consensus from these meetings that the majority of the organized legal profession considers the present laws outdated. They suggest that four alternatives are available to help resolve the legal dilemma of therapeutic abortion: (1) leave the laws as they are but, because they are not enforced, allow conscientious physicians to continue to do hospital abortions even though they may be technically illegal, (2) obtain a more liberal interpretation of the existing laws by judicial review after a test case, (3) change the laws, or (4) repeal the laws. The Committee's legal conferees were of the opinion that the third alternative (changing the law) was the wisest course of action.

C. The Clergy

In all of its deliberations on this subject, the Committee on Human Reproduction has had a close liaison relationship with the AMA Department of Medicine and Religion; the director of the Department has been present at all Committee meetings and

has been helpful in obtaining expressions of moral views on the abortion question from leaders of various faiths. These may be summarized as follows:

1. Roman Catholic. Any procedure which has as its primary intent the production of abortion is morally reprehensible according to the doctrine of the Roman Catholic Church. In this connection it should be pointed out that even the present laws, which permit abortion to save or preserve the life of the mother, violate the doctrine of the church.

2. Protestant. Although only a few of the major Protestant churches have taken an official position on therapeutic abortion, a large number of Protestant theologians have made public pronouncements of their personal beliefs. For example, in a communication to the AMA Department of Medicine and Religion, the Rev. Eugene Carson Blake, President of the World Council of Churches, has declared that legislative reform in the area of abortion is appropriate.

3. Jewish. The Jewish position on therapeutic abortion is variable, although it tends to be liberal. Some Orthodox groups adhere to the Talmudic proscription against abortion for any reason except to save the mother's life. Most Conservative and Reform groups support legislative reform. A few rabbinical scholars advocate abolition or major revision of abortion laws so that the procedure would be available for social as well as medical reasons.

In presenting this brief summarization of religious views, the Committee on Human Reproduction wishes to stress that it represents a generalization of official or clerical interpretations and not necessarily the viewpoint of individual members of the various faiths. For example, some Protestants oppose any change in the present laws while, at the same time, a number of Catholics favor legislative revision.

Professional and Public Opinion and Concern

A number of medical, professional, legislative, and lay groups have taken positions on the problem of therapeutic abortion. In almost all instances where specific legislative change is proposed, the recommendations follow the wording or general intent of the Model Penal Code of the American Law Institute. Below is a listing

of such groups which have come to the attention of the Committee on Human Reproduction.

A. Medical Societies.

Besides numerous county medical societies, the following state medical associations have either taken a position on therapeutic abortion, contemplate taking such a position, appointed study commissions, or otherwise taken action indicative of their concern:

Arizona Medical Association, Inc.
California Medical Association
Florida Medical Association
Illinois State Medical Society
Indiana State Medical Association
Iowa Medical Society
New Mexico Medical Society
Medical Society of State of New York
Ohio State Medical Society
Pennsylvania Medical Society
Utah State Medical Association
Wyoming State Medical Society

As an example of the action taken by a state society, the following is excerpted from a position statement entitled "Where We Stand on the Question of Therapeutic Abortion" issued by the California Medical Association:

"California law currently permits therapeutic abortion only to 'preserve' the life of the mother. The law in California is typical of abortion statutes now in effect in 44 other states. In five states the law is slightly more liberal in that it calls for protecting a mother's health as well as her life.

"California's law pertaining to therapeutic abortion was adopted by the Legislature in 1872. It has remained virtually unchanged since that time in spite of significant advances in medical science and changing patterns in social thinking.

"Today's medical science bears little resemblance to that which was practiced in California in 1872. Yet, paradoxically, today's physician still finds himself bound to outdated abortion legislation which perpetuates needless suffering and fosters poor medical practices.

"The California Medical Association has become increasingly concerned about the quality of medical care rendered under California's antiquated abortion statutes. On three separate occasions the CMA House of Delegates has called for modification of the law to provide for therapeutic abortion which is medically justifiable and takes into consideration the product of conception as well as the health of the mother."

Following a description of resolutions by the CMA House of Delegates in 1962, 1963, and 1966 supporting legislative revision, the statement continues:

"The current position of the California Medical Association on therapeutic abortion then is quite clear. We believe:

- (1) That the law should be broadened 'taking into consideration the health of both the mother and the product of conception' and,
- (2) That such legislation should provide for proper medical control through established hospital staffs or component medical society committees."

The California Medical Association then indicates its support for a bill before the California legislature which would modify the state law along the lines of the Model Penal Code. The CMA statement concludes with the following:

"We are fully aware that there is a wide divergence of opinion on the subject of therapeutic abortion. Some physicians and citizens believe the present laws should be retained while others call for the abolition of all abortion laws. The California Medical Association supports Senator Beilenson's moderate position as one that is reasonable, medically justified and in the best interest of the patient and quality medical care."

B. Other Medical Organizations

The following medical organizations have taken, or contemplate taking action on the therapeutic abortion issue:

American College of Obstetricians & Gynecologists
American Medical Women's Association
American Psychiatric Association

American Public Health Association
Chicago Gynecologic Society
New York Academy of Medicine
Women's Medical Association of New York

In addition, a poll of obstetrician-gynecologists in the states of New York and California indicated a large majority favored modification of the therapeutic abortion laws as recommended in the Model Penal Code.³ It might also be noted that in the United Kingdom, the Royal Colleges representing obstetrics-gynecology and psychiatry have supported legislative reform.

C. State Legislatures

In the following states, bills have been introduced to modify the abortion statutes or study commissions have been appointed which might recommend legislative changes:

California
Colorado
Connecticut
Florida
Georgia
Hawaii
Illinois
Indiana
Iowa
Maryland
Michigan
Minnesota

Missouri
Nevada
New Mexico
New York
North Carolina
Ohio
Oklahoma
Oregon
Pennsylvania
Rhode Island
Texas

3. Hall, Robert E.: New York Abortion Law Survey, Am. J. Obstet Gynec 93: 1182-1193 (Dec 15) 1965.

D. Other Professional Groups and the Public

A number of lay and civic action groups have sprung up around the country to mobilize public and professional support for changes in the abortion laws. Legal groups such as the American Law Institute, the California Bar Association, and the Canadian Bar Association have already gone on record as favoring legislative reform; others are now considering such action. As indicated earlier, a number of major faith groups have expressed official concern and recommended remedial action. The press and communications media have given heavy coverage to the therapeutic abortion dilemma and have generally supported action to modify the existing laws. Finally, in a 1966 Gallup poll, about 80% of the public contacted favored therapeutic abortion for reasons of maternal health as well as life, and a majority favored voluntary termination of pregnancy in cases where the child might be born deformed.⁴

Conclusions

The Committee on Human Reproduction is of the opinion that the American Medical Association should have a policy statement on therapeutic abortion in keeping with modern scientific knowledge and medical practice. The Committee realizes, however, that no policy by the AMA on this subject will prove to be acceptable to all physicians. There are some practitioners who honestly believe that there are no circumstances which warrant therapeutic abortion. There are also those equally conscientious physicians who believe that all women should be masters of their own reproductive destinies and that the interruption of an unwanted pregnancy, no matter what the circumstances, should be solely an individual matter between the patient and her doctor.

The policy which the Committee advocates is designed to afford ethical physicians the right to exercise their sound medical judgment concerning therapeutic abortion just as they do in reaching any other medical decision.

4. American Institute of Public Opinion, January 21, 1966.

The Committee on Human Reproduction is aware that one major religious group opposes abortion under any circumstances. The Committee respects the right of this group to express and practice its belief. However, the Committee believes that physicians who hold other views should be legally able to exercise sound medical judgment which they and their colleagues feel to be in the best interest of the patient. In making recommendations on this subject, the Committee does not intend to raise the question of rightness or wrongness of therapeutic abortion. This is a personal and moral consideration which in all cases must be faced according to the dictates of the conscience of the patient and her physician.

The Committee on Human Reproduction recognizes that there are risks inherent in the performance of therapeutic abortion. The procedure carries some morbidity, particularly if performed at a more advanced stage of pregnancy. In addition to the immediate risks, however, the Committee is far more concerned with untoward sequelae, both physical and mental. Physicians who are involved in the decision to abort a pregnancy should weigh and evaluate all possible sequelae.

Except for periodic condemnation of criminal abortionists, the last action of the House of Delegates of the American Medical Association on the subject of physician-induced, therapeutic abortion was in 1871. At that time the House adopted a resolution which recommended that it "be unlawful and unprofessional for any physician to induce abortion or premature labor, without the concurrent opinion of at least one other respectable consulting physician, and then always with a view to the safety of the child - if that be possible."

RECOMMENDATION

The Committee on Human Reproduction is now of the opinion that, rather than recommending changes in state laws, the American Medical Association should adopt its own statement of position which can be used as a guide for component and constituent societies in states contemplating legislative reform. Accordingly, it is recommended that the following statement be adopted as the policy of the AMA:

"The American Medical Association is cognizant of the fact that there is no consensus among physicians regarding the medical indications for therapeutic abortion. However, the majority of physicians believe that, in the light of recent advances in scientific medical knowledge, there may be substantial medical evidence brought forth in the evaluation of an occasional obstetric patient which would warrant the institution of therapeutic abortion either to safeguard the health or life of the patient, or to prevent the birth of a severely crippled, deformed or abnormal infant.

"Under these special circumstances, it is consistent with the policy of the American Medical Association for a licensed physician, in a hospital accredited by the Joint Commission on Accreditation of Hospitals, and in consultation with two other physicians chosen because of their recognized professional competence who have examined the patient and have concurred in writing, to be permitted to prescribe and administer treatment for his patient commensurate with sound medical judgment

and currently established scientific knowledge. Prior to the institution of a therapeutic abortion, the patient and her family should be fully advised of the medical implications and the possible untoward emotional and physical sequelae of the procedure.

"In view of the above, the American Medical Association is opposed to abortion except when:

- (1) There is documented medical evidence that continuance of the pregnancy may threaten the health or life of the mother, or
- (2) There is documented medical evidence that the infant may be born with incapacitating physical deformity or mental deficiency, or
- (3) There is documented medical evidence that continuance of a pregnancy resulting from legally established statutory or forcible rape or incest may constitute a threat to the mental or physical health of the patient.

"It is to be considered consistent with the principles of ethics of the American Medical Association for physicians to provide medical information and guidance to State Legislatures

in their consideration of revision and/or the development
of new legislation regarding therapeutic abortion in
conformance with the above statements."

* * *

STATEMENT OF POLICY ON STERILIZATION

National Medical Advisory Committee
Planned Parenthood-World Population

- (1) The National Medical Advisory Committee of Planned Parenthood-World Population believes that it is the right of every individual to decide whether and when to reproduce.
- (2) Voluntary sterilization of either male or female is a medically accepted means of permanent conception control.
- (3) There are no statutory barriers to the implementation of voluntary sterilization in the United States, except for Connecticut and Utah.
- (4) The Committee recommends that the remaining legal restrictions and the administrative limitations on voluntary sterilization be removed, and that the individual be given the right to decide with his or her physician on the personal indications for sterilization.
- (5) For individuals who request sterilization, Planned Parenthood Centers should offer appropriate information and referral.

STATEMENT OF POLICY ON ABORTION

National Medical Advisory Committee
Planned Parenthood-World Population

- (1) The National Medical Advisory Committee of Planned Parenthood-World Population believes that it is the right and responsibility of every woman to decide whether and when to have a child.
- (2) The Committee re-affirms that abortion is a medical procedure, the decision for which must rest with the woman and her physician.
- (3) This decision should be made with full knowledge of the woman's personal situation, with consideration of her social, economic, and cultural environment, and with reasonable medical safeguards.
- (4) The Committee therefore recommends the abolition of existing statutes and criminal laws regarding abortion, and the recognition that advice, counseling, and referral with regard to abortion is an integral part of medical care.

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Interpretation of
Legal and Ethical
Requirements
for
Hospital Staff
Performance of
Therapeutic
Abortion

(Effective July 1, 1968)

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INTRODUCTION

The following information is provided for hospital medical staffs in Maryland, under which such medical staffs may permit the performance of therapeutic abortions in accredited hospitals and ensure that such abortions are performed only on the basis of sound medical judgment. This information must be administered within the framework of existing legislation.

PHYSICIAN RESPONSIBILITIES

1. Performance of the Procedure

a. Proper Facilities

A therapeutic abortion may be performed only in hospitals accredited by the Joint Commission on Accreditation of Hospitals and licensed by the State Board of Health and Mental Hygiene. (Law)

b. Operator

A therapeutic abortion may be performed only by licensed physicians who have been granted privileges to perform this type of surgery in accredited hospitals. (As described by item a above.) (Law)

2. The Joint Commission on Accreditation of Hospitals Requires a Consultation Prior to Performance of an Abortion (JCAH)

Such consultation must be with one or more physicians qualified by training and/or experience to give competent opinions in the special phase of the patient's illness. The consultant must concur in writing that the abortion is therapeutic for one or more of the conditions listed in 3 below. (JCAH)

3. Indications for Therapeutic Abortion (Law)

An abortion shall be deemed therapeutic when,

in the opinion of the operator and the consultant:

- a. "Continuation of the pregnancy is likely to result in the death of the mother; (or)
- b. "There is a substantial risk that continuation of the pregnancy would gravely impair the physical or mental health of the mother; (or)
- c. "There is substantial risk of the birth of a child with grave and permanent physical deformity or mental retardation; (or)
- d. "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."

4. Preoperative Evaluation — Report

- a. An evaluation shall include (a) medical history, (b) appropriate examinations and tests, and (c) consultation. The operating surgeon must indicate in the hospital record the reasons for the therapeutic abortion and the date of his request for consultation. The consultant shall independently obtain a medical history and perform any additional examinations and tests considered necessary. A consultation is not complete or satisfactory unless it includes this basic information and a written opinion signed by the consultant and attached to the record. (JCAH)
- b. If it is concluded that an abortion would be therapeutic according to section 3, above, the operating surgeon shall prepare a report of his findings and conclusions, as well as

those of the consultant. The report shall include as a minimum, the medical history, the findings of the examinations, the results of all tests and special studies, and the final conclusions as to the condition or conditions requiring therapeutic abortion. The report shall be submitted to the Hospital Abortion Review Authority. (JCAH and Law)

c. In the case of psychiatric indications, the consultant should make a brief note in the hospital record indicating (a) the name and address of the consultant, (b) the date of the examination, (c) the indications for the abortion, (d) the specific recommendation by the consultant that therapeutic abortion should be performed, and (e) the location of the detailed supporting notes and their availability to medical or hospital authorities. (JCAH)

5. Contraindications for Abortion (Law)

"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 when the continuation of the pregnancy is likely to result in the death of the mother.

"2. Authorization therefor has been granted in writing by a Hospital Abortion Review Authority appointed by the hospital."

6. Performance of Abortion Not Required (Law)

"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 other recriminatory action against him."

HOSPITAL RESPONSIBILITIES (Law)

1. Operative Consent

Written consent for the performance of a therapeutic abortion must be obtained from the patient in every case.

2. Refusal of Consent

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.

3. Hospital Abortion Review Authority

A Hospital Abortion Review Authority must be appointed by the hospital governing body to review all abortions and provide written authorization to the operator before the abortion is performed. The reviewing authority may be (a) a committee of physicians, or (b) the department head in Obstetrics and Gynecology.

4. Annual Report

"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 abor-

tions 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."

5. Abortion Not Required

"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 action against it by the State or any person."

ILLEGAL ABORTION (Law)

"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."

PENALTY (Law)

"The Board of Medical Examiners of this State may, by a vote of five members, revoke or suspend any license which has been issued . . . if a person causes termination of human pregnancy involving any violation", as noted in item 3 under Physician Responsibilities.

mt — 6/68/5M

**THE RIGHT OF THE UNBORN TO HAVE
REPRESENTATION BY WAY OF A LEGAL
GUARDIAN TO PROTECT HIS RIGHT TO
LIFE**

The subject matter of the conference is embodied in N.J.S. 2A:87-1, rendering it "a crime to maliciously commit an abortion without legal justification", with intent to cause or procure the miscarriage of a pregnant woman, by means therein specified.

In the recent case of Gleitman v. Cosgrove, 49 N.J. 22, 227 A. 689, it was pointed out that the abortion was a crime at common law, but guilt was subject to certain exceptions. Under the common law, "the crime was not present unless the child was quick within the mother's womb when the abortion was committed;" the offense "was against the life of the child, and in contemplation of law life commenced 'at the moment of quickening, at that moment when the embryo gives the first physical proof of life.'" Since there "was no quickening, there was no life to be destroyed and consequently the defendant could not be convicted." It was there suggested that "if the good of society required elimination of the evil of prequickening abortion," it was "far better that it should be done by legislative enactments," rather than by judicial extension of the common law

penal code," and the Court there deemed it "unwise upon this subject to occupy debatable ground," citing State v. Cooper, 22 N.J.L. 52 (Sup. Ct. 1849).

It was observed, Gleitman v. Cosgrove, supra, that the "response of the Legislature, once it foresaw the result in Cooper, was galvanic. xxx The requirement for quickening of the fetus as an indispensable element of the crime was eliminated. Causing 'the miscarriage of a woman then pregnant with child xxx without lawful justification' was established as the criminal offense." In 1872, as pointed out in Gleitman v. Cosgrove, supra, a change was made in the Act. The original statute declared that if the woman died as the consequence of the abortion, one penalty would follow; if she did not die, a lesser penalty was specified. The 1872 supplement provided for a certain penalty if the woman or child died; and a lesser one if neither died. And since that time there has been no change of substance in the description of the offense.

In fine, I concur in Judge Rafferty's conclusion that "the unborn child, in many instances, is already afforded guardianship in matters of property and in matters arising out of tort" and that "this right of the unborn to life is certainly as important as the right of the unborn in the

preservation of his property rights, etc."

As said by William R. Burke, Proceedings...National Meeting of Diocesan Attorneys, April, 1967: "Enactment of liberalized abortion laws would represent a 'legislative determination' that human life does not exist prior to the moment of birth - this in the face of strong evidence that such life does exist. Time Magazine, in its April 30, 1965 edition, states: 'New medical knowledge has led some courts to adopt a stand that xxx a child is a distinct person with rights of his own as soon as he is conceived.'"

"The more we know about a human embryo, the more human it becomes. This knowledge contributes to the serious constitutional questions raised by the proposed laws. Any existing unborn child is recognized as a person entitled to the law's protection for many purposes. Its rights to inheritance are protected; it is counted as a person for eligibility under aid to families with dependent children; a suit may be brought for damages for personal injury; its mother may be required to submit to a blood transfusion contrary to her religious convictions in order to safeguard the life of the unborn child. Recent cases in Wisconsin and New Jersey have further reinforced the right of the unborn child to life. State Supreme Court Justice Hayden Proctor, ruling

that a child, however defective, has a right to live paramount to any presumed right of the parents to destroy him before birth said: 'For the living there is hope, for the dead there is none.' It is patently absurd for the law to tell a mother that she may not injure an unborn child, but that she may kill it with impunity. It defies logic to say that the killing of a child two minutes after birth is murder, but the killing of a child two minutes before birth is a 'therapeutic abortion' and therefore legal.

" xxx If the unborn is not a person, no protections are needed and abortions should be permitted on demand. If it is a person, no safeguards are adequate which permit the taking of an innocent human life without even a show of due process."

In Legal Perspectives of Abortion, by Robert M. Byrn, Professor of Law, Fordham University, the author observed that "simply as lawyers, regardless of who our clients may be, we have a professional interest in preserving fundamental human rights. xxx

"Most of you are aware of what the law is now in your own state. Every state, and the District of Columbia, prohibits abortion. There are exceptions however. In 42 states an abortion is permitted when necessary to preserve the life

of the mother; in addition, five states -- Massachusetts, Colorado, New Mexico, Alabama and Oregon, and the District of Columbia -- either by statute or judicial construction, permit abortion where there is a threat to the health of the mother. In Colorado and New Mexico the exception is limited to physical health. Maryland permits an abortion if the mother's safety is imperiled. The word 'safety,' though undefined, is apparently deemed in practice to include at least the physical health of the mother. Pennsylvania prohibits unlawful abortions, but does not define the term 'unlawful.' Precedents in other states indicate that an abortion to preserve the life of the mother is not 'unlawful'. Louisiana has no exception, but its licensing statute provides that a doctor's license will not be revoked for performing an abortion to preserve the mother's life.

"I think you can see that the prevailing pattern of these statutes is complete prohibition except to preserve life, and the basic attitude is respect for the lives both of the mother and of the child in the womb."

I would suggest legislation sufficient to conform to the foregoing principles, to serve humane demands, including use of the proposed legal guardian.

Respectfully submitted,

Harry Heber

I

New Jersey Statute 2A:87-1 prohibits abortion performed "maliciously or without lawful justification" and makes it a high misdemeanor. "Lawful justification" for an abortion is never spelled out in law. A 1931 case, *State v. Edwards* indicated that even when the abortion is committed with the consent of the subject it is a crime. (1) And in *State v. Brandenburg* in 1948 the court refused to admit the protection of a woman's health or well-being as lawful justification. (2) A 1949 decision written by Justice Burling of the New Jersey Supreme Court, in referring to the woman upon whom an abortion was performed, indicated that "the statute regards her as the victim of crime, not as the criminal; as the object of protection rather than of punishment". (3) But this hardly acknowledges that when a woman, for sufficient emotional, psychiatric or other vital reasons would desire an abortion she is not protected, but rather punished by being refused such surgery.

It is clear that "lawful justification" is open to individualized interpretation. It is also clear that the Common Law in effect before the original statute on abortion in 1849, was more humane and progressive than the one now in effect in the State of New Jersey. The Common Law permitted the destruction of an embryo or fetus before it was "quick". As State Supreme Court Justice John Francis has made clear, the legislature since 1849 has "intended to make criminal all abortions of a pregnant woman, whatever the stage of her pregnancy, except those performed solely to save or to preserve the life of the mother".(4)

This is not the place to discuss how the New Jersey statute ranks with other states, or how it ranks for the latter third of the twentieth

century as we enter the world of cybernetics and awesome overpopulation. But this is the place to examine whether the new statute that New Jersey will live under will be appropriate for our time and will be humane.

The American Law Institute has compiled a draft of a Model Penal Code in which it proposed that a licensed physician be permitted to terminate 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".

The English Parliament now permits abortion when the patient's life or physical or mental health are threatened by the continuance of the pregnancy, or where the unborn child might suffer from such physical or mental abnormalities as to be seriously handicapped. The law also permits society to take account of the reasonably foreseeable environment into which this child will be born and in which it would be required to function.

The English approach to abortion and the previously cited Model Penal Code are at least attempts to deal with a grave problem in a rational manner. There are, according to some estimates, approximately one million illegal abortions in our country each year. It is tragic when state law, like that which also deals with divorce in many states, promotes a national attitude of hypocrisy and expands a cavalier attitude toward the moral requirement to obey law. Neither morality nor respect for law, nor the health and welfare of any society is served with laws that are neither rational nor humane.

There have been suggestions made to go beyond the Model Penal Code and allow for abortion in cases where a woman is so physically or mentally handicapped that she could not properly care for the child, or for unmarried girls of 16 years or less or for women over 40 because of the greater risk of pregnancy for the woman and the higher rate of malformations and mongolian idiocy born to women over 40, and even for any women with four or more children who desire it. There are also strong opposing views to this permissiveness as well as to the more moderate position of the Model Penal Code.

Medical science does not enjoy unanimity as to when "life", in the sense that the organism in the womb may be called a "human being," begins, in which case an abortion is the destruction of a person, and hence allegedly a crime. There are those who argue life begins when two gametes meet and make a zygote. A Wisconsin case upheld the idea that "a two-months' embryo is not a human being in the eye of the law".(5) Some obstetricians appear to consider life as effective when the fetal heart beat is heard. There can be no doubt that in terms of what we now know scientifically the human genetic code is laid down at the moment of fertilization. But this cannot be stretched beyond saying that at this moment the organism in the womb is potentially a human person. An apple seed, if it survives will become an apple tree and not a cucumber. Similarly, the fertilized egg in a woman's ovary, if it is ultimately delivered, will be what we call a human child, not a puppy. That is all that should be determined by the fact that the human genetic code is laid down. The genetic code, however, may also result in what medical science calls an "XX" individual, a abnormality which genetecists believe tend to make the person more aggressive and anti-social. Some consideration would have to be given to aborting the emergence of a creature whose genetic code is questionably human.

By way of recapitulating I would like to stress the following:

1. Scientific opinion differs regarding the decisive questions related to the genetic potential, the hazards of birth defects, the dangers to mothers, children and society when mothers are compelled to carry and deliver unwanted children. Medical science, related to both body and mind possesses varying attitudes, statistics and theories.
2. The legal profession and the courts do not have unanimity on how statutes ought to be framed and then how they should be interpreted in the judicial process.
3. States have varying laws and court decisions, and in different states medical science is forced to live with different definitions of what is a human being or when a person is mentally incapable or by so realizing it is for a malformed child to be born.
4. The varying religious denominations also differ. The Roman Catholic position on this question is not acceptable to Mormonism or to Judaism. And in a truly democratic society where religion and state are separated no religious group should be allowed to restrict the freedom of any others.

In view of the foregoing it would appear to me first of all that no law concerning abortion should be related to the criminal code. Rather, like all other matters of surgery it should be part of the Medical Practice Act that obtains in the State of New Jersey. In this way consultation on this aspect of surgery would be between the patient and her doctor, and should she so desire for her own moral satisfaction, with her clergyman.

Obviously there will be those who will argue that because the fetus is more than a limb since it is potentially a separate entity, this surgery is not quite like any other decision of having or not having surgery. But then we are brought back to the definition of life, and a determination of when this organism becomes a separate human being which must not be destroyed.

To sustain and further expand my previous argument that "no religious group should be allowed to restrict the freedom of any others" I wish now to indicate how, for instance, from the point of view of Jewish tradition, an entirely different conclusion might be reached than that of other churches. We must realize that there is something tragic in the fact that physicians in one state can perform abortions in accord with the highest ethics but be sent to prison and condemned in other states. "Ethics" is not a matter for "States Rights", and bears out the validity of removing abortion to the Medical Practice Act. It is a fact that under the present statute a person who has sufficient funds can even travel elsewhere and receive a legal abortion, or if necessary, for a high fee an illegal one, thus enjoying the advantage of affluence. The poor are therefore being discriminated against. This again is an inequity projected by the statute. And inequities are not ethical. These ethical dilemmas underscore the highly questionable ethical nature of the statute even if it was conceived to sustain some kind of 19th century concept of morality.

II

As a witness before this Commission I purport only to speak as an individual who has carefully perused the relevant Talmudic passages and later codes, and placed them in the context of modern medical science and

society. Some scholars of Jewish law might arrive at more restrictive conclusions. But regardless of one's conclusions, to base an abortion law on religious law is to impair the rights of many women. Ideally, if one's religion is opposed to abortion one may refuse it. On the other hand, if one's conscience inspires one to accept the liberal conclusions I advocate as being inherent in the Jewish religious tradition one's rights would not be impaired by a permissive state arrangement. But in either case, the fact that diametrically opposite conclusions can be reached within the Judeo-Christian tradition would sustain the concept that the question of abortion is a religious, not a moral, question.

Our Judeo-Christian tradition begins with the assumption that God created man in His image. The basic characteristic of this image is the fact that unlike an ordinary animal, man is able to make decisions and act in freedom, to reason, to preserve himself. All of these faculties that distinguish man from the rest of nature or rank him as "divine-like" are aspects related to the mind, the free functioning of a healthy brain, and all come into play only after he is alive.

In Genesis 2:7 we read that God formed man from the dust of the earth and infused him with the breath of life (in the Hebrew: nishmat hayim) and then "man became a living nefesh". The Hebrew word "nefesh" throughout the Bible denotes a "person", an actual being.

This is neither the time nor the place for me to present a comprehensive response on the question of Abortion in Jewish Law. But I do wish to make the following adumbrations to provide a rudimentary belief on the subject.

Man, as seen above, was considered 'nefesh', a person, upon his receiving the "breath of life". For this reason the classical statement that we can refer to in Jewish legal tradition related directly to abortion is that of the scholar R. Solomon b. Isaac of Troyes, regularly

called *erubi*, (10:0-1105) in his commentary on the Mishna. There Rashi wrote that "as long as it (a fetus) has not emerged into the air of our world it is not a *nephesh* - person, and it may therefore be killed to save its mother". The limitation here, "to save its mother", is only determined by the context. The Mishna had been discussing a woman suffering in labor and permitted the dismemberment of the fetus to save her life. Other relevant passages indicate that we no longer abort a fetus once its "head" has emerged. This is all in accordance with Rashi's statement as to what constitutes a "human person". Other medieval commentators and codifiers followed this point of view.

Another haludic point of view maintains explicitly that a fetus is "*yerakh como*", a limb of the mother, and Rashi terms the mother and fetus "one entity", and adds that once delivery has begun they are "separate entities". (7) It is in that passage, as a matter of great interest and import to us, that I believe I have perceived a little-understood haludic passage to serve as a direct reference for permissiveness in aborting a fetus to prevent a malformation, or a retarded child. The Talmud prefers that when a pregnant woman is to be executed her fetus is to be killed first so as to prevent "*nival*" - defacement. This has usually been taken to refer to the woman. But this does not make nearly as much sense as referring it to the fetus. When the mother is executed the flow of oxygen to the brain of the fetus will stop and the post-mortem delivery (8) might be a tragic one.

Medieval Jewish codes also insisted that no capital punishment is meted out for the killing of a fetus, as recorded in Exodus 21:22-23 because an unborn fetus is not a "person".

Neither the Talmud nor the medieval sources dealt with the variety of complexities that have arisen in modern times. Miscarriages and stillbirths were far more frequent, rape and incest minimal, the fear of

malformed or retarded children being born hardly a concern because so little was known. All these factors made the need for abortion far less a social problem than in our times and within the Jewish community it was a rarity and Jewish law is therefore scant on this issue.

It is true that some medieval rabbinical scholars opposed abortion. But they also refused to call it "murder". Their opposition was more the product of the conservative Christian environment in which they lived where it was regarded as a crime. ⁽⁹⁾ But it is evident that Jewish law permitted abortion to save a mother, and perhaps to prevent a tragic post-mortem delivery. Most significant, however, is the underlying philosophy which banned abortion from the roster of crimes, and it is this more liberal conception which may, in the historic tradition related to the evolution of all law, be used in the extension of the permitted cases of abortion. Abortion was not regarded as a crime because Judaism did not regard an unborn fetus as a human person. It also felt that it was preferable not to bring a "nivul", a physically or mentally deformed or deficient being into the world. Had the Talmudic scholars known more about the physical or psychiatric dangers to mothers, children and society when unwanted children are forced into the world, or about birth defects, they would have, in their usual humane fashion, provided for it in the law, and arranged that tragic persons who will endure an agonizing existence or produce an ordeal for others, should not be delivered. They would have had no qualms about aborting a conception since they had already established that the fertilized ovum is not a person, nor is the later embryo or fetus, until delivery. A modern scholar, Ben Zion Uziel did extend the argument of Rashi, that an unborn fetus is not a person and can therefore be destroyed, even if it is not the life of the mother involved but merely her hearing, and permitted abortion to prevent the mother from going deaf! ⁽¹⁰⁾

We must take into account all of the modern problems related to therapeutic and eugenic abortions. We must also take into account the grave social, economic and humane facets of overpopulation, and the increasing institutionalization of malformed and mentally incompetent people. It is not rational to argue that new techniques in mechanics and in plastic surgery will solve many problems. Each person must ask himself whether he would like to be the malformed or retarded person living in the real world, even if he is given a little boost by modern science. It is not rational nor humane to argue that many parents will make every sacrifice to sustain in life even the most tragic child. This is their free choice. The parent who does not possess this capacity of masochism or self-sacrifice should also have his free choice.

The modern problem of abortion must be seen for what it is - a personal medical problem relating to the parents of the potential child and to the physician who must give her the surgical advice. Within the more conservative guidelines of the Jewish halakhic (religio-legal) codes as they have evolved, abortion would definitely be permitted today where it is necessary to save the life of the mother, or an important function such as her hearing. This could most certainly lead to permitting it to save her mental health as well. Abortion in cases of rape, incest and other felonious intercourse could be subsumed under the protection of the mother's mental health if she wishes the abortion lest she hate the child or suffer emotional disintegration over having such a child or for hating it. Jewish law at a minimum, therefore, would be in accord with the recommendations of Model Penal Code.

But I do not favor that the Statute of the State of New Jersey be based upon Jewish law. I cite Jewish law only as an example of a religious system which differs markedly from that of Catholic Canon law

and I include this to stress that a State Statute should be developed in accordance with the highest conception of the separation of Church and State. It should therefore be legislated on the basis of the highest humanitarian considerations as understood by medical science today including the psychosomatic and psychiatric considerations. Therefore I conclude that the best possible decision in this matter can be reached only by the woman who carries the baby after appropriate consultation with a physician or psychiatrist or both. To best institute such a far-reaching change in our attitudes and law no statute on abortion ought to be passed that will be part of the criminal code. The question of abortion should be recognized for what it is, a purely medical matter and left to the Medical Practice Act.

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8. Ibi^d Arakin.
9. Cf. Tosafot, Babylonian Talmud, Babilin 33 a and Sanhedrin 59a.
10. Ben Zion Uziel, Mishpatai Uziel III, 46 and 47.

Before beginning my own testimony, I should like to comment on several statements made here tonight. Two people, Dr. Alan Guttmacher and Mrs. Ruth Gray, have greatly emphasized a statistic, namely that of 1,200,000 illegal abortions in America each year. Mrs. Gray evinced surprise that she and Dr. Guttmacher should have arrived at almost the same figure independently. This is not at all "surprising," since such a figure is the usual one quoted by proponents of liberalizing abortion laws.

The leading source of the misinformation, Taussig (13), relied on highly questionable statistics gathered back in 1927, forty-one-years ago, by a man named Freudenberg. Freudenberg did his research in Prussia, in the abnormally depressed and demoralized Post-World War One Germany. That Dr. Guttmacher would have quoted this statistic, however, is surprising since at a conference sponsored by the Planned Parenthood Federation in 1958, Dr. Guttmacher said of this very statistic:

"Taussig's book pulls out a nice round number, but when you try to analyze the formulae by which the number is derived, you could have substituted other values and gotten quite a different answer " (1,p.50).

Others in the literature have quoted much more conservative figures, as low as 200,000. Actually, we have no accurate way of determining the number of illegal abortions, but to accept the statistic of 1,200,000 as if it were a proven fact, would have us begin our discussion on a fallacious basis.

The second fact which has struck me this evening is the appeal to the emotions made by a considerable number of speakers who have talked about women who have become pregnant as a result

of rape and incest, and the number of babies born with physical and mental defects. Presumably, liberalization of the abortion laws would be an act of mercy, aimed primarily at alleviating such problems. However, in fact, estimates of the percentage of illegal abortions which would not become legal as a result of changing the New Jersey Laws to accommodate such problems is extremely low. Senator Anthony C. Beilenson, the author of the California Therapeutic Abortion Act, has himself estimated that his bill would legalize no more than five per cent of what may now be illegally performed abortions (12).

Father Carroll has also testified tonight that eighty-three per cent of the legal abortions which have been performed in California during the past year have been done for "psychiatric reasons." When one considers that some must have also been done for physical reasons, the actual percentage of legal abortion in California done for reasons of rape and incest, physical and mental defect in the fetus, would seem to be rather small. Obviously, those who seek to liberalize the abortion laws in New Jersey have motives other than a concern for women whose pregnancies fall into the two latter categories.

At a time when we are undergoing a crisis of conscience with respect to loss of human life in Vietnam, at a time when state after state is repealing its laws on capital punishment, it seems strange that those who favor abortion should be moving in an apposing direction, viz., to take away the innocent life of the unborn child. Recognition of the woman's right to determine her own fertility does not include the right to terminate

the life of another. The U. N. Declaration on Rights of the Child grants that the right to life is the most important of an individual's inalienable rights.

Some speakers tonight have tried to deny that life before birth is a human life. Others have stated that "human" life does not begin until it is independent, a highly indefensible argument. As a psychologist I strongly suspect that those who deny that the unborn child is a human being are rationalizing for their own convenience. In asserting the "ultimate human freedom," the freedom to abort, they are attempting to deny another individual his right to life. They are asserting their rights but refusing to accept the responsibility that is part of such rights. Again, when law courts are recognizing the legal rights of the unborn to the point of awarding damages for possible prenatal injury, those who favor abortion deny such rights, especially the most important, the very right to life itself.

The controversial Model Penal Code, which has been alluded to frequently tonight, suggests that pregnancy should be terminated if it gravely impairs the mental health of the mother. Let's examine this position for a moment. Most babies are not planned for, and a number are not especially wanted before birth. As a matter of fact, if only planned for, wanted pregnancies were permitted to continue to term, perhaps half of us would not be in this courtroom tonight. Many women are not necessarily overjoyed at the affirmation of pregnancy. A considerable

number experience psychosomatic discomforts, anxiety, and depression during the first trimester of pregnancy. However, most reasonable well-adjusted women take pregnancy in their stride. Anxiety diminishes rapidly after the first trimester in the normal woman, and most women manifest increasingly accepting attitudes toward the child as birth approaches (2,6).

It is very difficult for a psychologist or a psychiatrist to make a judgment as to whether such symptoms are transient. Dr. Theodore Lidz, Yale Psychiatrist, states: "It is practically impossible for a psychiatrist to predict when an abortion will not be more detrimental to the mental health than the carrying of the child to birth." (7) Russell's study in 1953 revealed that at The Los Angeles County Hospital no abortions because of mental disease had been performed since 1942, and that during this eleven year period there were no alarming psychiatric sequela (10).

There are, of course, some extremely unstable women who may show marked stress at the outset of pregnancy, and request an abortion for this reason. However, the truly unstable women are the most likely to have psychological problems precipitated by an abortion, are more likely to feel guilty and to feel that their bodies have been violated by an abortion. Hoyer and Colb (8), in their authoritative book on psychiatry, stated, "A substantial group of women react to therapeutic abortion with a severe and continuing psychopathology" (p.407). A review of the literature suggests that post-abortive women are prone to

intense guilt feelings, low self esteem, marital maladjustments, painful sexual relations, frigidity, and a variety of other psychiatric symptoms. As abortion may also exact its toll years after it has been performed.

Ekblad (4) has found that twenty per cent of women who had abortions regretted their decision to be aborted. There have been estimates made that two per cent of women who have had legal abortions suffer sterility as a by-product. In view of this, one might wonder whether such women would institute a malpractice suit against a physician who had permitted an abortion, especially one which had resulted in later sterility. Such a woman might feel that in the emotionally heightened situation, which is so often a part of early pregnancy, she was not truly in a position to make a clear-headed decision, and that her physician had permitted an abortion all too easily.

It has been suggested here this evening, and often by those seeking to liberalize abortion laws, that abortion is simply a substitute when contraceptive is not used or fails. But abortion has never been seen in the United States as "just another form of contraception." A December 1965 study by the National Opinion Research Center found that any suggestion of abortion as a last-resort means of birth control is firmly rejected by the majority of American adults (83%). Those who propose this are seeking to have the law bring about a social change that is opposed to the American concept of basic rights, the right to life. Some of the enthusiastic proponents of birth

control are quick to admit that they seek next "abortion on demand," and that liberalizing abortion laws is simply the first step in producing a more liberal climate so that further changes can take place.

Psychologists recognize that attitudes are not usually changed through revolution, but rather slowly, step by step. This manipulation of the law in order to effect a change in the social climate could certainly bring our society closer to the point of accepting abortion for everyone. If this is the direction in which liberalization of abortion laws is taking us, we should be very clear-headed about this from the beginning and make a determination of whether this is what we intend.

It is interesting to observe too, at a time when a movement is a foot to liberalize abortion laws for the alleged purpose of destroying the life of a fetus suspected of possible physical or mental defect, progress in the field of medicine is making possible a marked reduction of such defects. The recent discovery of rubella vaccine effectively removes the possibility of fetal deformity from German measles. And rubella is one of the great culprits responsible for such physical and mental defects.

Finally, it would generally appear that liberalizing abortion laws would do little to solve current problems. Certainly, the statistics in countries such as Sweden and Denmark, with liberal abortion laws, suggest that these laws have not markedly decreased the number of legal abortions in those countries (5). Rather, a more liberal social climate might

open up a whole new market for abortion as many married women consider seriously for the first time the abortion of an inconvenient pregnancy.

Attempts have also been made to justify liberalization of abortion laws on the grounds that illegal abortions discriminate against the poor. With hospitals already terribly overcrowded, with beds set up in utility rooms, how can a large number of requests for legal abortion be handled? Isn't it very likely that the hundreds and even thousands of requests for abortions coming from women at the lowest socioeconomic level could not be handled under existing conditions? Are we prepared to increase taxes in order to expand facilities for this purpose?

Sim (11) has added another sobering thought to the above considerations:

"A doctor who on psychiatric grounds advises or performs an abortion followed by undesirable mental or even physical sequelae could be sued in a civil case for negligence and he would have to satisfy the court why he recommended a procedure which does not avert suicide or psychosis but which can cause a severe psychosis."

Liberalizing abortion laws may be like opening another Pandora's box. Not only will we solve few problems, we are likely to open the doors to a whole new set of problems for which we maybe be ill prepared to cope.

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STATEMENT SUBMITTED BY REV. JOHN G. WIGHTMAN

"Clergy Statement on Abortion Law Reform and Consultation Service on Abortion"

The present abortion laws require perhaps as many as a million women in the United States each year to seek illegal abortions which often cause severe mental anguish, physical suffering and unnecessary death of women. These laws often compel the birth of unwanted, unloved and often deformed children; yet a truly human society is one in which the birth of a child is an occasion for genuine celebration, not the imposition of a penalty or punishment upon the mother.

These laws brand as criminals wives and mothers who are often driven as helpless victims to desperate acts. The largest percentage of abortion deaths has been found to be among the 35-39 year old married group who have five or six children. The present abortion laws in all of our states are most oppressive of the poor and minority groups as the more affluent members of our society can often find illegal abortions which are performed by physicians. A 1965 report shows that 94% of abortion deaths in New York City occurred among Negroes and Puerto Ricans.

We are deeply distressed that recent attempts to suggest even a conservative change in the New York state abortion law, affecting only extreme cases of rape, incest, and deformity of the child have met with immediate and hostile reaction in some quarters, including the charge that all abortion is "murder". We are encouraged by the recent establishment in New Jersey of an Abortion Law Study Commission, and earnestly hope that response to any suggestions for change may be more enlightened here. We affirm that there is a period during gestation when, although there may be an embryo life in the fetus, there is no child upon whom the crime of murder can be committed.

Therefore, we pledge ourselves as clergymen to a continuing effort to educate and inform the public to the end that a more liberal abortion law in this state and throughout the nation be enacted. We believe that the N. J. statutes on abortion (2A: 87-1 and 2A: 170-76) are ambiguous and antiquated, as shown particularly by the conflicting opinions rendered in the Gleitman versus Cosgrove case in March of 1957 which indicated how open to arbitrary interpretation these laws are.

In the meantime women are being driven alone and afraid into the underworld of criminality or the dangerous practice of self-induced abortion. Confronted with a difficult decision and the means of implementing it, women today are forced by ignorance, misinformation and desperation into courses of action that require humane concern on the part of religious leaders. Belief in the sanctity of human life certainly demands helpfulness and sympathy to women in trouble and concern for living children, many of whom today, are deprived of their mothers, who die following self-induced abortions or those performed under sub-medical standards.

We are mindful that there are duly licensed and reputable physicians who in their wisdom perform therapeutic abortions which some may regard as illegal. When a doctor performs such an operation motivated by compassion and concern for the patient, and not simply for monetary gain, we do not regard him as a criminal but as living by the highest standards of religion and of the Hippocratic oath.

Therefore believing as clergymen that there are higher laws and moral obligations transcending legal codes, we believe that it is our pastoral responsibility and religious duty to give aid and assistance to all women with problem pregnancies. To that end we are establishing a New Jersey Clergymen's Consultation Service on Abortion which will include referral to the best available medical advice and aid to women in need.

John G. Wightman, Minister
The First Congregational Church
Woodbridge, N. J.

STATEMENT SUBMITTED BY DR. JULES RIVKIND.

HEARING ON ABORTION, NEWARK, N.J., WEDNESDAY, NOVEMBER 13, 1968

Mr. Chairman; Members of the Commission:

Thank you for permitting me to appear before you this evening.

I think it is reasonable to say that it is futile to attempt a revision of the present abortion law without first fully appreciating the basic problem and its causes.

Alice Rossi came closest to the heart of the problem when she wrote: "The majority of women who seek abortion do so because they find themselves with unwelcome or unwanted pregnancies; abortion is a last resort birth control measure when preventive techniques have failed or have not been used. It is the situation of not wanting a child that covers the main rather than the exceptional abortion situation."

Most authorities agree that the vast majority of women who obtain illegal abortions are married women, pregnant by their husbands, who seek abortion for socio-economic reasons alone.

It should be apparent that none of the revisions based upon the American Law Institute's Model Penal Code offer a remedy for the vast majority of women who seek illegal abortions, contrary to what we are led to expect by the advocates of revision.

I am not alone in this appraisal. Ruth Roemer of California wrote: "If the states enact only the proposals of the model penal code, they will be faced with the same problems that Sweden and Denmark found after enacting similar laws in the 1930's - a persistently high criminal abortion rate."

Dr. Christopher Tietze wrote: "One of the major goals of the liberalization of abortion laws in Scandinavia was to reduce the incidence of illegal abortions. It is doubtful whether this objective has been achieved in any of the countries

concerned." Both Miss Roener and Dr. Tietze are strong supporters of revision.

But their statements are conveniently neglected by the groups and news media which support revision.

The news media which arouse our emotions by announcing in large, black, bold type: "N.J. - abortion every 17 minutes," and which report that an estimated 5,000-10,000 women die as a result of illegal abortions annually in the U.S. make no attempt to report Dr. Tietze's statement that these figures are highly exaggerated and that a figure of 500 deaths is more likely, nor do they bother to report HEW's statistics that in 1965 there were 235 deaths from all abortions in the U.S. and 11 in N.J., not a hundred or more.

The Indiana Legislative Study Committee in 1967 experienced this same degree of exaggeration and commented: "The magnitude of the abortion problem in Indiana is much less than had been previously stated by proponents of liberalizing abortion laws. Testimony...indicated that Indiana has approximately 1650 illegal abortions each year. This is far less than the 30,000 illegal abortions that proponents had advertised before the study began. Also, Indiana has recorded only 23 maternal deaths from all types of abortion in the past 7 years. This, too, is far short of the 125-250 deaths per year that Indiana was supposed to have according to the proponents prior to the study." May I add that the Indiana Committee's experience is not unique.

The news media and groups favoring revision also engage in errors of omission as well as errors of commission. While loudly proclaiming that large majorities of the public and medical profession alike support revision of the existing laws, they neglect to report that similar large majorities of the public and medical profession alike reject socio-economic reasons as legitimate grounds for abortion. Nor do they report that the American College of Obstetricians and Gynecologists,

while supporting revision in general, emphatically state: "...that the College will not condone nor support the concept that an abortion be considered or performed for any unwanted pregnancy or as a means of population control."

Thus we find that:

(1) the enormity of the problem as advertised by the proponents of revision is extremely exaggerated.

(2) the majority of Americans, both lay and medical, reject legalizing abortion for the most common reason for abortion; namely, socio-economic.

(3) The proposed revisions have little if any chance to decrease the number of illegal abortions.

I have reserved for last a consideration of that which is destroyed by abortion: the fetus.

A major television network and a major weekly pictorial magazine have done more to demonstrate the reality of the fetus than I could hope to do. Life before Birth dramatically emphasized the humanness of the fetus many weeks before the cut-off time for abortion, making it obvious to many, for the first time, that it is a human creature which is destroyed, not a glob of tissue or a lump of protoplasm, as maintained by many of the proponents of revision. Dr. Karlis Adamsons of Columbia's P & S has said: "Converting the fetus into a bona fide patient is not a romantic metaphor. All evidence now indicates that prenatal man is not merely a passive target of intrauterine influences. He exerts a surprising amount of control over his environment and probably determines his own period of gestation. Now that we've begun to identify him, the fetus should soon become a candidate for clinical management."

Jules Rivkind, M.D.



PERTH AMBOY GENERAL HOSPITAL

530 New Brunswick Avenue, Perth Amboy, New Jersey 08861

Robert S. Hoyt, F.A.C.H.A.
Director

(201) 442-3700

November 11, 1968

Chairman William Crane

Dear Assemblyman Crane:

I should like to begin by commending the individual and collective efforts of this committee in their attempts to get at the true nature of conditions in our state relative to criminally illegal, emotionally laden abortions. I'm confident these hearings will support the need for a more realistic and practical appraisal of our present statutes affecting this problem.

Unfortunately, the weight of my business commitments have caused me to be unable to deliver this statement in person, and for this I apologize, and request your indulgence.

My name is Harry J. Russell, and I am Director of Social Services and Community Planning at Perth Amboy General Hospital, Chairman of Middlesex County Community Action Program, and Mental Health Consultant. In these various capacities, I have had considerable personal and professional contact with many aspects of the abortion question, and while I am by no means an expert, I do consider my experiences of value to your deliberations. And, I further realize some of this you may already have heard from others. In fact, some of my statements are a result of experiences shared with me by colleagues in settings across our state.

Intelligent opinions regarding the performance of abortions seem to vary sharply from those who feel strongly that it is a private decision arrived at solely between patient and physician, to those who feel this responsibility should be a team one, involving more than one physician. However, there appears to be no question in regard to this being a voluntary, or elective private privilege of primarily medical control.

In any event it appears difficult for any of us to pre-judge the condition of life for another individual so arbitrarily in dictating or denying the patient his voluntary right. We could cite any number of instances in

Page 2

which a woman has been denied the opportunity to terminate her pregnancy and disastrous consequences involving anything from child abuse, to suicide has resulted. In fact, I understand, a study conducted by a group of psychiatrists in the mid west resulted in the finding that while legal abortions did not leave psychological scars, an unwanted pregnancy terminating in delivery of an unwanted child did. (I am in the process of trying to secure a copy of the report for your further use.)

Among some of the things that disturb me in regard to access to therapeutic, or legal abortions, is the obvious discrimination. For instance, "Dr. Alan Guttmacher, President and Director of the Planned Parenthood Federation conducted a survey of New York City Hospitals and found that it was the privileged patient in the private room, not the charity cases in the ward, (with their multi-social problems) who could obtain the medical committee's approval to be aborted". Another survey involving 5,514 respondents, white, non-Catholic United States women with a college degree, were found to be most solidly permissive toward abortion. A factor which should cause us to reflect not only on our double standard morality, but also upon those too frequent statements of "why don't those people -- low income -- help themselves?"

Current available figures disclose upwards of one million abortions are performed in the United States annually, "30,000 of them in New Jersey". Of these, only about ten thousand are hospital, or under apparent appropriate medical supervision. This, to me, is not only highly disturbing, but almost a crime of another sort in that these people are not taking advantage of our advanced medical knowledge and teaching. I am further informed, nearly 80% of all abortions involve married women. "The common assumption that abortion is primarily the problem of unmarried girls" is denied by medical and social workers close to this question.

Lest I be completely misunderstood, allow me to make one point perfectly clear. I don't believe any of us, in our consideration of the liberalization of our abortion law are discounting, or lessening the recognition of individual responsibility whether it be toward the woman, or her mate. However, one fact helps us place this law issue in greater perspective, as stated by a member of Britain's Parliament, Norman St. John Stevas in support of their liberalization abortion law. "We cannot assume that all wrongs are remediable by legislation; in addition any legislation is improper if

November 11, 1968

Page 3

its enforcement causes greater wrongs than those it represses." I think we note some evidence of this in the preceding, almost shocking statistics.

It would seem to me, in light of the above, efforts should be made to legalize therapeutic abortions along the following guidelines, advanced by A.L.I. approved under medical supervision, with some provision for counseling, when indicated, for those related socio-emotional needs.

1. Whenever the health of the pregnant woman is in severe danger.
2. Whenever a pregnancy has resulted from rape, or incest.
3. Whenever there is grave danger the child will be born with serious defects in health or development.

Each of the above cut across the social spectrum of the professional Social Worker's concern and involvement! For it is frequently this practitioner who is called upon to resolve problems created around them which are impossible for the female to cope with in a practical manner. Naturally, an adherence to these principles would be helpful in a more preventative way.

Thank you.

Very truly yours,



Harry J. Russell

HJR:dt

School of Law

F O R D H A M U N I V E R S I T Y

Faculty

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'68 OCT 28 AM 10 18

October 24, 1968

Samuel A. Alito, Esq.
Research Director
Law Revision and Legislative Service Commission
State House
Trenton, New Jersey
08625

Dear Mr. Alito:

Thank you for your invitation to testify before the Abortion Law Study Commission. As I indicated earlier to an associate of Father Dentici, I very much wanted to testify but I was uncertain whether I would be able to arrange my schedule at the Law School to attend the hearing.

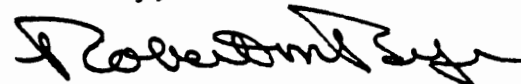
Unfortunately, I find that I have a class scheduled for November 13 and after that, I am due at a rather crucial meeting of a committee of the Mayor's Coordinating Council on Criminal Justice. Under these circumstances, I do not anticipate that I shall be able to attend the hearing.

If it is permitted, I should like to submit to the Commission, in lieu of personal testimony, the enclosed copy of an article which I published in the Summer, 1968 issue of the Catholic Lawyer. The article summarizes my views and, coincidentally, relies heavily on New Jersey law. (A fuller exposition of my views is contained in the Minority Report of the Governor's Commission to Review New York State's Abortion Law).

It would have been a privilege for me to appear before the Commission and I regret my inability to do so.

Thank you again for the invitation.

Sincerely,



Robert M. Byrn
Professor of Law

RMB:ml
Enclosure

TESTIMONY OF

PROFESSOR CHARLES E. RICE

FORDHAM UNIVERSITY SCHOOL OF LAW

(Before the Legislative Commission to Review the New Jersey Statutes Relating to Abortion, Newark, New Jersey, November 13, 1968.)

The governing New Jersey statute provides criminal sanctions for abortions which are performed "without lawful justification". (N.J.S. 2A: 87-1, N.J.S.A.; see also N.J.S. 2A: 170-76, N.J.S.A.) So far the only justification held lawful by the courts of New Jersey is preservation of the mother's life. (State v. Shapiro, 89 N.J.L. 319, 98 Atl. 437 (E. and A., 1916), State v. Brandenburg, 137 N.J.L. 124, 58A. 2d 709 (Sup. ct., 1948); see also discussion in Gleitman v. Cosgrove, 49N.J. 22, 227 A. 2d 689, 693-94 (1967))

The issue here is whether to broaden the New Jersey statute to permit abortions in cases where it is not necessary to preserve the life of the mother. (In 1959, the American Law Institute included in its proposed Model Penal Code a provision that would allow abortion whenever a licensed physician "believes there is a 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 a grave physical or mental defect or that the pregnancy resulted from rape, incest or other felonious intercourse." (Model Penal Code, Proposed Official Draft, Sec. 203.3 (1962)) Several states in this country, including California, Colorado, Georgia, Maryland and North Carolina, have so far adopted laws variously modeled on these general recommendations. The law in Great Britain was recently amended to allow abortion on grounds similar to those recommended by the American Law Institute and also where the birth of the child would cause injury to the physical or mental health of any existing children of the mother's family. (Elizabeth II, 1967, Chapter 87)

In order to evaluate the proposals for liberalization of the abortion laws, it is necessary to recur to first principles.

The critical issue is whether an abortion involves the destruction of a human life. If one concedes that it does, then one can hardly support a proposal to kill existing human beings to suit the convenience or comfort of others (even in the most aggravated circumstances of rape and incest) or because those others consider the victim unfit to live.

More precisely, the critical issue revolves around the benefit of the doubt. Our law and civilization have rested on the premise that the benefit of the doubt should always be accorded to life rather than death. Thus we require proof beyond all reasonable doubt before we execute a criminal or even subject him to fine or imprisonment. I believe that I could prove to the satisfaction of an impartial observer that human life actually begins at the moment of conception. However, I do not have to sustain this burden. Rather, those who support liberalized abortion can do so only if they can say that, beyond any and all reasonable doubt, human life does not begin at the moment of conception. If there is any doubt whatever, or tradition and civilization dictate the resolution of that doubt in favor of innocent life rather than death.

It might be useful here to canvass some of the scientific opinion on this matter. Modern science has established that the life of every human being begins at conception. As Dr. Herbert Ratner, a noted medical authority, observed in an article in the April, 1966 issue of REPORT:

It is now of unquestionable certainty that a human being comes into existence precisely at the moment when the sperm combines with the egg. How do we know this? From everything we know about genetics. When the sperm and egg nuclei unite, all of the characteristics, such as the color of the eyes, hair, skin, that make a unique personality, are laid down determinatively. That's why a physician -- even without any kind of formal ethical education, moral teaching or even philosophical sophistication -- relying solely on medical science, knows, when he performs an abortion, that he is killing another human being. After all, the fetus isn't mineral or vegetable or dog or cat; nor is it part of mama, the way a leg or a tumor is part of mama. (Ratner, A Doctor Talks About Abortion, 2-3)

Dr. Bradley M. Patten of the University of Michigan Medical School described the process by which "a new individual life history" is begun:

"The reproductive cells which unite to initiate the development of a new individual are known as gametes... the small, actively motile gametes from the male being called spermatozoa or spermia, and the larger, food laden gametes formed within the female being termed ova... The growth and maturation of the sex cells, the liberation of the ovum, and the transportation of the sperm are all factors leading toward the actual union of the gametes. It is the penetration of the ovum by a spermatozoon and the resultant mingling of the chromosomal material each brings to the union, that culminates the process of fertilization and initiates the life of a new individual." (emphasis added) Patten, Foundations of Embryology (1964), 35, 82; see Mietus, The Therapeutic Abortion Act; A Statement in Opposition (1967), 12

As the highest court of New Jersey summarized the state of scientific knowledge, "Medical authorities have long recognized that a child is in existence from the moment of conception." (Smith v. Brennan, 31 N.J. 353, 362, 157 A 2d 497, 502 (1960)). These and other authorities bear witness to the scientific facts that the child in the womb is a human being from the moment of conception and that, in the words of a pamphlet issued in 1963 by the Planned Parenthood Association, an abortion "kills the life of a baby after it has begun."

And this finding of modern science, that life begins at conception, has been recognized in the development of the civil law of torts. As the New York Appellate Division said in 1953.

"We ought to be safe in this respect in saying that legal separability should begin where there is biological separability. We know something more of the actual process of conception and fetal development now than when some of the common-law cases were decided; and what we know makes it possible to demonstrate clearly that separability begins at conception.

* * *

"If the child born after an injury sustained at any period of his prenatal life can prove the effect on him of the tort... we hold he makes out a right to recover." (Kelly v. Gregory, 282 App. Div. 542, 544, 545 (3rd Dept., 1953))

Other scientific authorities are analyzed in the District of Columbia case of Bonbrest v. Kotz, where the court noted that, "From the viewpoint of the civil law and the law of property, a child in ventre sa mere is not only regarded as a human being, but as such from the moment of conception - which it is in fact." (Bonbrest v. Kotz, 65 F. Supp. 138, 140 (D.C., Dist. Col., 1946); see the subsequent authorities collected in Byrne, A Critical Look at Legalized Abortion, 41 Los Angeles Bar Bulletin 320 (1966))

Nor is this recognition limited to cases where the child is ultimately born alive. Since 1949 the majority of states that have considered this question have ruled, for example, that a stillborn child may through his representative, maintain a legal action for his wrongful death caused by injuries inflicted on him while he was in the womb. (See Byrne, "A Critical Look at Legalized Abortion," Los Angeles Bar Bulletin, May, 1966, Page 320, 322).

A recent case in this direction was Raleigh Fitkin-Paul Morgan Memorial Hospital v. Anderson 42 N.J., 421, 201 A. 2d 537, cert. denied, 377 U.S. 985 (1956) where the New Jersey Court ruled that a child in the womb has the right to compel his mother to undergo a blood transfusion, to safeguard his life, even though the transfusion is contrary to the mother's religious principles. The New Jersey court in the Raleigh case affirmed "that the unborn child is entitled to the law's protection..." (201 A. 2d at 538).

In 1967, the New Jersey court ruled on a case involving more directly the right of the unborn child not to be aborted. Jeffrey Gleitman was born in Jersey City on November 25, 1959, with substantial defects in sight, hearing and speech. His mother had contracted German measles one month after she became pregnant with Jeffrey. When she was two months pregnant, she routinely consulted Doctors Cosgrove and Dolan, who practiced obstetrics and gynecology together in Jersey

effects of German measles, she "received a reassuring answer" each time. After the birth of Jeffrey, Mr. & Mrs. Gleitman sued the doctors to recover damages for the emotional effects and added financial burden caused to them by the doctors' failure to apprise them of the high risk of birth defects from German measles. The parents' theory was that if the doctors had told them of the risks, they would have procured an abortion and thereby would have avoided their emotional and financial injury. There was no way that the birth defects could have been minimized during the pregnancy; the alternatives, therefore, were birth or abortion. The court rejected the parents' claim and stated, "we firmly believe the right of their child to live is greater than and precluded their right not to endure emotional and financial injury." (227 A 2d at 693) More significantly the parents sued on behalf of the infant Jeffrey. The court majority interpreted this claim as follows:

The infant plaintiff is therefore required to say not that he should have been born without defects but that he should not have been born at all. In the language of tort law, he says: but for the negligence of the defendants, he would not have been born to suffer with an impaired body. In other words, he claims that the conduct of the defendants prevented his mother from obtaining an abortion which would have terminated his existence, and that his very life is "wrongful." (Gleitman v. Cosgrove, 49 N.J. 22, 127 A 2d 689, 693 (1967))

The court rejected by a majority vote of 4-3 all the parents' claims, on their own behalf and on behalf of Jeffrey. The court majority went to the basic issues of the sanctity of life:

It is basic to the human condition to seek life and hold on to it however burdened. 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. "For the living there is hope, but for the dead there is none." Theocritus...

The right of life is inalienable in our society. A court cannot say what defects should prevent an embryo from being allowed life such that denial of the opportunity to terminate the existence of a defective child in embryo can support a cause of action. Examples of famous persons who have had great achievements despite physical defects come readily to mind, and many of us can think of examples close to home. A child need not be perfect to have a worthwhile life.

We are not faced with the necessity of balancing the mother's life against that of her child. The sanctity of the single human life is the decisive factor in this suit in tort. Eugenic considerations are not controlling. We are not talking here about the breeding of prize cattle. It may have been easier for the mother and less expensive for the father to have terminated the life of their child while he was an embryo, but these alleged detriments cannot stand against the preciousness of the single human life to support a remedy in tort. Cf. Jonathan Swift, "A Modest Proposal" in Gulliver's Travels and Other Writings, 488-496 (Modern Library ed. 1958). (227 A. 2d at 693)

The recent determination by the California Supreme Court in O'Beirne v. Kaiser Memorial Hospital (Los Angeles Herald-Examiner, Dec. 8, 1967, p. A-20, Col. 1) did not authoritatively reject the right of the child in the womb to the protection of the law. Presiding Judge George H. Barnett of the Superior Court of Santa Clara County, who rendered the initial decision in the matter, summarized the controversy as follows in a letter to Mrs. Sylvia Bloom, Association for the Study of Abortion, Inc., 120 West 57th Street, New York, N.Y., on December 22, 1967:

Mr. O'Beirne brought an action for divorce against his wife on the grounds of mental cruelty. While the divorce action was pending, they attempted a reconciliation during which time she became pregnant. Thereafter, they again separated. Without his knowledge, Mrs. O'Beirne applied for a therapeutic abortion under California's new Therapeutic Abortion Act. This law provides, insofar as this case is concerned, that Mrs. O'Beirne could apply for an abortion to a duly approved hospital; the matter is

reviewed by a panel of qualified physicians and a determination made to either grant or refuse the request. In this situation, the request was granted after Mrs. O'Beirne had been examined by the Chief of Psychiatry at Kaiser Hospital and also after an independent psychiatrist had recommended it as being necessary to preserve her mental health. Although the court was not concerned with the reasons for the medical determination, it appeared that the O'Beirne's had one child who was born with a club foot and they had experienced a miscarriage almost at full term in which the child was deformed with an enlarged abnormal head. It further appeared that Mrs. O'Beirne, because of this fact and her pending divorce, was possibly suicidal.

* * *

Mr. O'Beirne, who is a Catholic, felt very strongly on both religious and moral grounds that the Therapeutic Abortion Act was unconstitutional as it deprived the unborn child of the right to be born and it also deprived the father of the right to have his child born without any due process by which was meant any proceeding to question the necessity determination.

Mr. O'Beirne sued to prevent the abortion. Presiding Judge Barnett dismissed Mr. O'Beirne's complaint. The California State Supreme Court thereafter granted a peremptory hearing and denied Mr. O'Beirne's petition on a 5-2 decision with no opinion.

The O'Beirne case could have presented clearly the issue of the child's right not to be killed by abortion, since Mr. O'Beirne alleged that the abortion would deprive "the unborn child of the right to be born" as well as alleging his own right as a father. However, Presiding Judge Barnett's decision plainly was based on his belief that the abortion was necessary to save the life of the mother. Although there was no reported opinion by Presiding Judge Barnett, he did state in his letter to Mrs. Bloom that:

It was my decision that there were no constitutional rights as he claimed and even if there were, these were not absolute rights. Most constitutional rights are subject to various conditions and I felt that whatever rights he might have had were inferior to the wife's right not to have her life jeopardized.
(Emphasis added)

Clearly, Presiding Judge Barnett considered the case to involve an abortion required to save the life of the mother. He never squarely decided the issue of whether the abortion should be allowed if not necessary to save the life of the mother. Therefore, neither his decision nor the peremptory decision without opinion by the California State Supreme Court disturbs the proposition that the unborn child has a constitutional right to be born where an abortion is not required to save the life of his mother.

One proposed liberalization of the abortion law would permit an innocent child's life to be terminated on the ground that his continued existence would impair the physical or mental health of his mother even where the mother's life is not endangered. In truth, however, to allow such termination would unjustly subordinate the child's life to lesser utilitarian concerns and would entail a callous disregard for that primacy of human life which has so long underlain our very civilization.

Another proposed liberalization would further ordain that an unborn child can be legally killed where there is a substantial risk that the child would be born with a grave physical or mental defect. This proposal would be nothing less than a sanction for eugenic engineering. It would differ not at all, in principle, from the indefensible ideas and techniques which prevailed in Germany a generation ago. And the logically inescapable step beyond abortion to kill the defective unborn child is infanticide to kill the defective infant after he is born. Indeed, such abortion is even more intolerable than infanticide which is so obviously a regression to primitive and inhuman ways. At least outright infanticide involves no danger to the life of the mother and it has an element of certainty about it -- you need kill only those children whom you know, after birth, to be defective. But when we kill, by abortion, an unborn child because he might turn out to be defective when born, we risk killing an unborn child who would not have turned out to be defective.

being. No argument of convenience or comfort, no matter how compelling, can justify such killing, not even in the most poignant, though few, cases where the pregnancy has resulted from an act of rape or incest. The argument for permitting an innocent mother to abort a child fathered by a rapist is appealing until we consider that the child, too, is innocent. And while the rapist was an attacker, by no stretch of the imagination can the innocent, passive and wholly dependent child in the womb be called an attacker. Although the privilege of self-defense does not require that the assailant be capable of entertaining a malevolent intent --- a woman can use force in defense against an insane rapist -- nevertheless it does require that there be some form of actual attack by the one against whom the force in self-defense is used. The privilege of self-defense is designed for "the protection of one's self, of others and of property against unlawful attack." It "governs the use of defensive force against felonious attack," as is noted in the Comments to the Model Penal Code. (American Law Institute, Model Penal Code (Tentative Draft No. 8 (1958), 1, 16, 17) It is wholly inappropriate to argue self-defense as a justification for killing the child in the womb. The child in the womb is not a mere extension of the rapist. He is a separate human being.

It would be better and more humane in rape and incest cases if we directed our energies and the full resources of society toward helping both the mother and the child rather than revert to the primitive cruelty of killing an innocent human being.

Nor can it be contended that the legalization of "therapeutic abortion" will reduce the number of illegal abortions which are now performed. The experience of Japan and Sweden, where illegal abortions have increased since the liberalization of the abortions laws, argues convincingly to the contrary.

It is deplorable that many people who strove mightily to abolish capital punishment for convicted criminals now propose capital punishment for innocent children in the womb. Many of them also are in the forefront of the drive for equal rights for people of all races. Yet in this matter they strive to deprive the silent, helpless citizens in the womb of their precious civil right to life itself. Perhaps the greatest tragedy of the present controversy is that the intended victims cannot make themselves heard. They cannot picket, demonstrate or even vote. They rely, instead, upon that humane and principled protection which the law and our civilization have long recognized to be their right.

We ought to demand that the civil rights of this helpless minority be protected. We ought to reject the pretensions of those who would claim the right to kill innocent persons whom they determine unfit to live. We ought to bid the proponents of these measures to reflect upon what they are doing. And we ought to urge all citizens to join with us in this campaign to protect the very lives of innocent children.

The reality that an abortion kills an innocent human being is the paramount consideration in this matter. In the face of this reality it is trivial and absurd to argue that any consideration of the mother's mere convenience should authorize the killing of this child. It is similarly indefensible to argue, as some have before this committee, that to forbid such an abortion is to inflict a cruel and unusual punishment on the mother.

It is worth emphasizing again that the child in the womb is entitled to the benefit of the doubt. As the fifth grade sex education text in the New York City school system flatly says, "Human life begins when the sperm cells of the father and the egg cells of the mother unite." This is a simple matter of scientific fact, and the advocates of liberalized abortion ought to ponder it well. But even if they will not agree that the child in the womb is a human being from the moment of his conception, let them at least accord to him the benefit of the doubt. No one can rationally say that, beyond all reasonable doubt, the child in the womb, who could be killed under the proposals up until his twenty fourth week, is not a human being. The prolonged and intense debate in this state and nation show that the subject of abortion is one on which opinions are sharply divided. And the issue is life itself. Clearly the only proper course for a free and humane society is to accord that child in the womb the benefit of the doubt which is so plainly required by the proven concept of due process of law.

*Committee
For The Protection
Of Life*



November 11, 1968

CO-CHAIRMEN

Dr. & Mrs. Louis A. Klos
6 Dobson Road
Old Bridge, N. J. 08857
Phone: 254-7137

Mr. Samuel A. Alito
Secretary, Abortion Law Study Commission

COMMITTEE MEMBERS

Mr. & Mrs. Vincent A. Aboussleman
Mr. & Mrs. Spyro H. Columbus
Mr. & Mrs. Thomas P. Compitello
Mr. & Mrs. Thomas W. Condren
Mr. & Mrs. Carmine Conte
Mr. & Mrs. A. Eugene Crummy
Mr. & Mrs. George L. Foiles
Mr. & Mrs. Edward J. Ford
Mr. & Mrs. Anthony J. Galianese
Mr. & Mrs. John R. Heil
Mr. & Mrs. John J. Hogarty
Mr. & Mrs. Edmund Lawrence
Mr. & Mrs. Lawrence J. Lynch
Mr. & Mrs. Joseph C. Mangine
Mr. & Mrs. Louis F. May, Jr.
Mr. & Mrs. Cornelius J. Murphy
Mr. & Mrs. James J. Nolan
Mr. & Mrs. James P. Ronan
Mr. & Mrs. Edward Sullivan
Mr. & Mrs. Joseph T. Zimmerman
Mr. & Mrs. Casimer W. Zick

Dear Mr. Alito:

On June 3, 1968 the Committee for the Protection of Life sponsored an anti-abortion panel which called for the "infant's right to life" at the moment of conception.

The 200 or more present at this seminar heard three speakers from the medical and legal profession. At least fifteen local communities were represented by those in attendance, sixty of whom expressed in writing the desire to receive more literature or help in fighting the proposed abortion bill.

Newspaper notices and results of the seminar are enclosed.

My wife and I as co-chairmen and representatives of the Committee for the Protection of Life wish to re-iterate our fervent beliefs that:

1. The birth of a human life occurs at the moment of conception.
2. An abortion kills the life of a baby after it has begun.
3. The constitutional rights of the unborn child deserve full protection at the moment of conception.

*Committee
For The Protection
Of Life*

CL

CO-CHAIRMEN

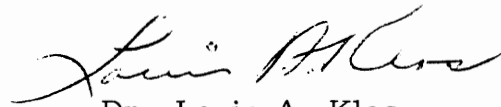
Dr. & Mrs. Louis A. Klos
6 Dobson Road
Old Bridge, N. J. 08857
Phone: 254-7137

COMMITTEE MEMBERS

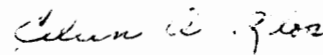
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Mr. & Mrs. Edward Sullivan
Mr. & Mrs. Joseph T. Zimmerman
Mr. & Mrs. Casimer W. Zizk

As parents of a retarded child and seven other children, my wife and I have exchanged many happy experiences with our children and other parents of retarded children.

Respectfully submitted,



Dr. Louis A. Klos
Mrs. Eileen A. Klos



/pw
Enclosures

*Committee
For The Protection
Of Life*



CO-CHAIRMEN

Dr. & Mrs. Louis A. Klos
6 Dobson Road
Old Bridge, N. J. 08857
Phone: 254-7137

ABORTION AND THE RIGHT TO LIFE

THE FACTS THE PAPERS DON'T PRINT... COME AND HEAR

COMMITTEE MEMBERS

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- Mr. & Mrs. Spyro H. Columbus
- Mr. & Mrs. Thomas P. Compitello
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- Mr. & Mrs. James P. Ronan
- Mr. & Mrs. Edward Sullivan
- Mr. & Mrs. Joseph T. Zimmerman
- Mr. & Mrs. Casimer W. Zizk

SPEAKERS

PETER AMENTA, PH. D. -- THE KEY TO LIFE
PROFESSOR OF EMBRYOLOGY -- HAHNEMANN MEDICAL
SCHOOL

THE HON. PATRICK MCGANN -- THE LAW AND ABORTION
JUDGE OF MONMOUTH COUNTY COURTS

JOHN T. SCULLY, M. D. -- ABORTION -- BAD MEDICINE
FELLOW AMERICAN COLLEGE OF OBSTETRICS AND
GYNECOLOGY

PLACE: ST. THOMAS AUDITORIUM
333 HIGHWAY 18
OLD BRIDGE, NEW JERSEY

TIME: MONDAY, JUNE 3
8:30 P. M.

NAME _____
Last First M.

ADDRESS _____
Phone No. _____

Please check: How can I help _____ Please send me literature _____

Note: Fill in above, detach, and return during meeting or to Committee

**OFFICE OF THE COUNTY PROSECUTOR
COUNTY OF MONMOUTH**

VINCENT P. KEUPER
COUNTY PROSECUTOR



FREEHOLD, NEW JERSEY

October 15, 1968

Mr. Samuel A. Alito, Secretary,
Abortion Law Study Commission,
Law Revision and Legislative Services,
State House,
Trenton, New Jersey 08625

Dear Mr. Alito:

I thank you for your invitation to attend and probably testify before the Abortion Law Study Commission at one of its hearings.

During my fourteen years as Prosecutor, I have had to prosecute only three persons for performing illegal abortions.

I do not consider myself an expert on this subject and do not believe I could render any assistance to the Commission.

I suggest, however, that the language used in the present statute "without lawful justification" be more clearly defined if any new or amending legislation is considered.

Very truly yours,

Vincent P. Keuper

VPK:e

STATE OF N.J.
LEGISLATIVE
SERVICES
OCT 16 PM 2 18

**OFFICE OF THE COUNTY PROSECUTOR
COUNTY OF BERGEN**

HACKENSACK, NEW JERSEY 07601

(201) 487-3400

ASSISTANT COUNTY PROSECUTORS

CHARLES J. TYNE
THOMAS J. RYAN
ROBERT DILTS
FRANK WAGNER
RALPH A. POLITO
FRANK P. CARBONETTI
HAROLD N. SPRINGSTEAD
PETER F. BOGGIA
JAMES D. CHECKI, JR.
RICHARD F. ARONSOHN

GUY WM. CALISSI
COUNTY PROSECUTOR

October 21, 1968

Research Director Samuel A. Alito
Law Revision and Legislative Services
State House
Trenton, New Jersey

Dear Mr. Alito:

Thank you for your letter of invitation to testify before the Commission to Study New Jersey Statutes relating to Abortion.

Frankly, I don't believe I would make an objective witness on the subject. I realize the importance of the problem, but I vacillate all over the place in trying to reconcile my religious attitude with the new concepts and the practicality of the matter.

I recognize the serious consequences which are involved in cases of rape or incest where pregnancy ensues and also in cases involving a matter of life or death to the mother or child. But even in the light of my own individual recognition of the consequences involved in such cases, I am deeply bothered by the belief that life begins at the time of conception and that an abortion is the taking of a human life, admittedly in many cases for sound, practical reasons. Since I am bogged down, therefore, between the necessities in certain situations and the broader concepts which I am sure are adhered to by many people today, and on the other hand by religious principles, I feel I would make a terrible witness under the circumstances.

No one should disagree that abortions should be performed only by doctors in recognized hospitals. But even in such case, I pose the question of abortion as strictly personal in nature and one which should be answered by the individual's own conscience.

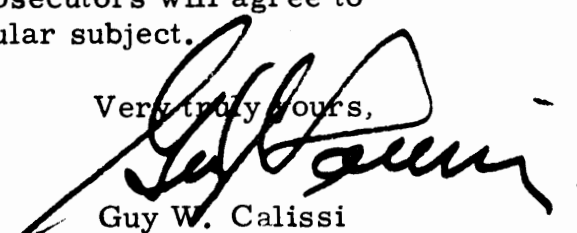
Letter to Samuel A. Alito

October 21, 1968

As you probably know, we have made arrests in this County and obtained convictions in cases where individuals in no way connected with the medical profession have engaged in performing abortions. I believe that this practice should, of course, continue.

I understand that you have written to other Prosecutors in the State, and I am sure that several of the Prosecutors will agree to testify regarding their views on this particular subject.

Very truly yours,


Guy W. Calissi
Bergen County Prosecutor

GWC:rc

STATE OF N.J.
LEGISLATIVE
SERVICES
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OFFICE OF
COUNTY PROSECUTOR OF BURLINGTON COUNTY
MOUNT HOLLY, NEW JERSEY 08060

MARTIN J. QUEENAN
COUNTY PROSECUTOR

MAURICE DENBO
FIRST ASST. PROSECUTOR

JOHN HARRISON
ASST. PROSECUTOR

JOHN O. SITZLER, JR.
ASST. PROSECUTOR



HARRY E. McCONNELL
CHIEF OF COUNTY DETECTIVES
DAY-- 267-3300 EXT. 214

October 18, 1968

Samuel A. Alito, Esq.
Division of Legislative Information and Research
State House
Trenton, New Jersey

Dear Mr. Alito:

This is with regard to your letter of October 11, 1968, advising that the joint legislative Abortion Law Study Commission is to hold hearings in Newark, Camden and Trenton. You have requested me to share with the Commission my thoughts and advise concerning abortion laws of New Jersey.

I am aware of the strong interest in changing of the abortion law so as to allow abortions to be performed in cases other than circumstances as indicated by our present case law.

I have no strong feeling one way or other with regard to allowing abortions where there has been a certification by a competent medical doctor that an abortion is imperative to protect the health of the mother or to allow abortions when there is a reasonable medical certainty that the child will be born deformed.

It is my opinion and my experience, that the bulk of illegal abortions are performed on women, who become pregnant when they are unmarried and upon married women, who do not wish to have any more children. A changing of the present abortion law to cover above-mentioned reasons will not in any way eliminate the problem of illegal abortions.

The question of expanding the law in allowing abortions in cases other than to prevent the loss of the mother's life, is strictly a medical and moral problem. It may be against the teachings of certain religions.

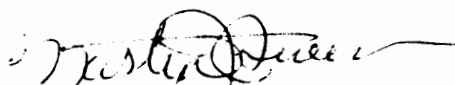
As far as I am personally concerned, the law should be changed to legalize abortions with strict controls for the above-mentioned reasons - danger to mother's life or health and probability of a deformed child, also, to include a further provision that in the event a woman is raped by someone and conceives a child.

Samuel A. Alito, Esq.

October 18, 1968

These are my personal views and I do not feel it is necessary to have anyone from our office attending the hearing, but if you wish a representative from our office, please advise and I will arrange this.

Very truly yours,



Martin J. Queenan
County Prosecutor

MJQ/r

STATE OF N.J.
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