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the freedom  
organizing of  
the 1960's...  
and afterwards.



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BY KNOWING WHAT'S BEEN DONE

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# ABORTION RAP

*by*  
*Diane Schulder and*  
*Florynce Kennedy*

**McGRAW-HILL BOOK COMPANY**

<i>New York</i>	<i>St. Louis</i>	<i>San Francisco</i>
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### *Acknowledgments*

Our thanks to our editor, Joyce Johnson, and her coworker, Margaret Wolf, whose help in putting this book together was invaluable. Also, to Susan Sherman, poet, playwright, and editor of *IKON* magazine, who helped us with typing to earn some bread. And to Dr. Howard Levy for reading the manuscript and commenting on the health establishment.

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Library of Congress Catalog Card Number: 75-139561

FIRST EDITION

07-055712-8

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# Foreword

by Shirley Chisholm, Member of  
Congress

There are many political, legal, social, moral and economic issues involved in government-sponsored birth control programs and policies. I will address myself to some of those issues that surround the most widely used method of birth control in the world today—abortion.

Alice S. Rossi, in an excellent article in the July–August 1969 issue of *Dissent*, made this most cogent comment about the word *abortion*:

"Free association to the word *abortion* would probably yield a fantastic array of emotional responses: pain, relief, murder, crime, fear, freedom, genocide, guilt, sin. Which of these associations people have no doubt reflects their age, marital status, religion or nationality. To a forty-four-year-old Japanese or Hungarian woman, the primary response might be 'freedom' and 'relief'; to an unmarried American college girl, 'fear' and 'pain'; to a Catholic priest, 'murder' and 'sin'; to some black militants, 'genocide.' "

There are many ways to avoid the negative associations and connotations that surround the word. We could, for example,

borrow the term advanced by the British when they recently rewrote their laws—"pregnancy termination."

I believe that that would get us closer to the heart of the issue but it would still not be close enough.

Not close enough because the basic issue—and the only real choice of alternatives for the pregnant woman who does not want the child—is abortion or compulsory pregnancy. If we view the issue in this perspective we are at what one might call "ground zero."

Does our government or any other government have the right by which to force a woman to have a child that she does not want? In Hungary, Gyorgy Peters, the chief government statistician, has answered (presumably with backing from high officials) with an emphatic "No!" He reportedly has said, "The introduction of regulations with which the state would interfere with the freedom of the parents contradicts our political and moral concepts." What then must we, as representatives of a democracy, answer to the question?

The majority of family-planning advocates would be aghast if our government were to suggest laws *requiring* the use of any contraceptive, or, as in a recent case in California, legal sterilization.

Yet it has been government policy in this country that compels pregnant women to carry a full-term pregnancy, often against the wishes of both parents.

Dr. Garrett Hardin has, perhaps rightly, equated this situation with compulsory servitude and has said, "When we recognize that these (abortion or compulsory pregnancy) are the real operational alternatives (for the pregnant woman), the false problems created by the pseudo-alternatives disappear."

What has been the situation in Washington, that showplace of the nation, under the compulsory pregnancy law?

Dr. Milan Vuitch, who was the central figure in Judge Gesel's recent ruling on the District's compulsory pregnancy law,

estimates that more than 20,000 abortions a year are performed in the greater Washington area. He further estimates that only 25 per cent of them are performed in hospitals. That means that there are more than 15,000 illegal abortions performed in or near Washington.

The municipal hospitals in the District have the same anti-black, anti-poor policies in effect that I find in the New York City hospitals. D.C. General, for instance, reports 80 therapeutic abortions for 1968. That is roughly .016 per cent for the legal abortions in the greater Washington area. That figure has even more impact, I believe, when one realizes that it is only .004 per cent of the total abortions performed, both legally and illegally, in this area.

The impact multiplies dramatically when we consider that D.C. General also reports between 800 and 1,000 incomplete abortions. Incomplete means that the abortion was induced, either by drugs, instrument or naturally, but that it did not complete naturally . . . therefore it must be completed by a physician.

In short, they expended 10 to 12 times more effort on repairing botched, non-professional surgery than they did on performing medically safe, professional surgery. That is nothing short of complete absurdity. Botched abortions are the single largest cause of maternal deaths in the United States, and it is evidently going to be government policy to keep it that way.

There are no clear statistics on exactly how many illegal abortions there are each year in this country. Estimates range from as low as 200,000 to 1.5 million. One thing that is clear, however, is that if we repealed our compulsory pregnancy laws the incidents would be reduced.

There are many statistics from other countries that support my contention. But let me quote from an article about the new British law that appeared in the *Washington Post* in June of 1969.

"Some doctors contend the only value of the bill is to prevent the harm done by secret abortionists. They say Hungary allows abortions for anyone who wants one, and illegal operations have reportedly faded away. Czechoslovakia has a 'social clause' similar to Britain's, and clandestine abortions have dropped to 4,000 a year instead of 100,000."

If there are now 1,500,000 illegal abortions in this country, a drop of the same percentage would reduce the number of illegal operations performed to about 30,000; that is only about twice as many as are now performed in the District of Columbia alone.

Let us look briefly at some of the countries where the compulsory pregnancy laws have been weakened or, if you prefer, where abortion laws have been liberalized:

Experience in Sweden and Denmark has shown that as legal abortions increased the death rate associated with it decreased.

In 1967 in Hungary there were 187,000 legal abortions as against 148,000 live births. Similarly Czechoslovakia's birth-rate has been reduced but not as drastically as Hungary's.

Rumania, after substituting a more restrictive law in 1966, discovered that its birth rate almost tripled in one year, the previous rate being 13.7 per 1,000.

It would seem that the absence of compulsory pregnancy laws alone can contribute a great deal to the control of the population growth, especially when one considers that at least the Eastern bloc countries mentioned do not widely practice the more modern methods of contraception.

Of course no discussion of abortion would be complete without discussing the politically volatile issue of religious and moral concepts.

Since we are already outside of the country, let's stay there momentarily to inspect the abortion rates of a few countries with large Catholic populations:

- The illegal abortion rate in Uruguay is almost two and one-half times the number of annual live births.
- In Roman Catholic Chile, 27 per cent of the women reported that they had had abortions at one time or another.
- In Roman Catholic France, the annual number of abortions equals the annual number of live births.

Coming back to this country, we find that in a poll conducted in 1967, no less than 72 per cent of the Catholics polled favored abortion reform, as did 83 per cent of the Protestants and 98 per cent of the Jewish.

No lesser a Catholic luminary than Cardinal Cushing of Boston was quoted as having said, "It does not seem reasonable to me to forbid in civil law a practice that can be considered a matter of private morality."

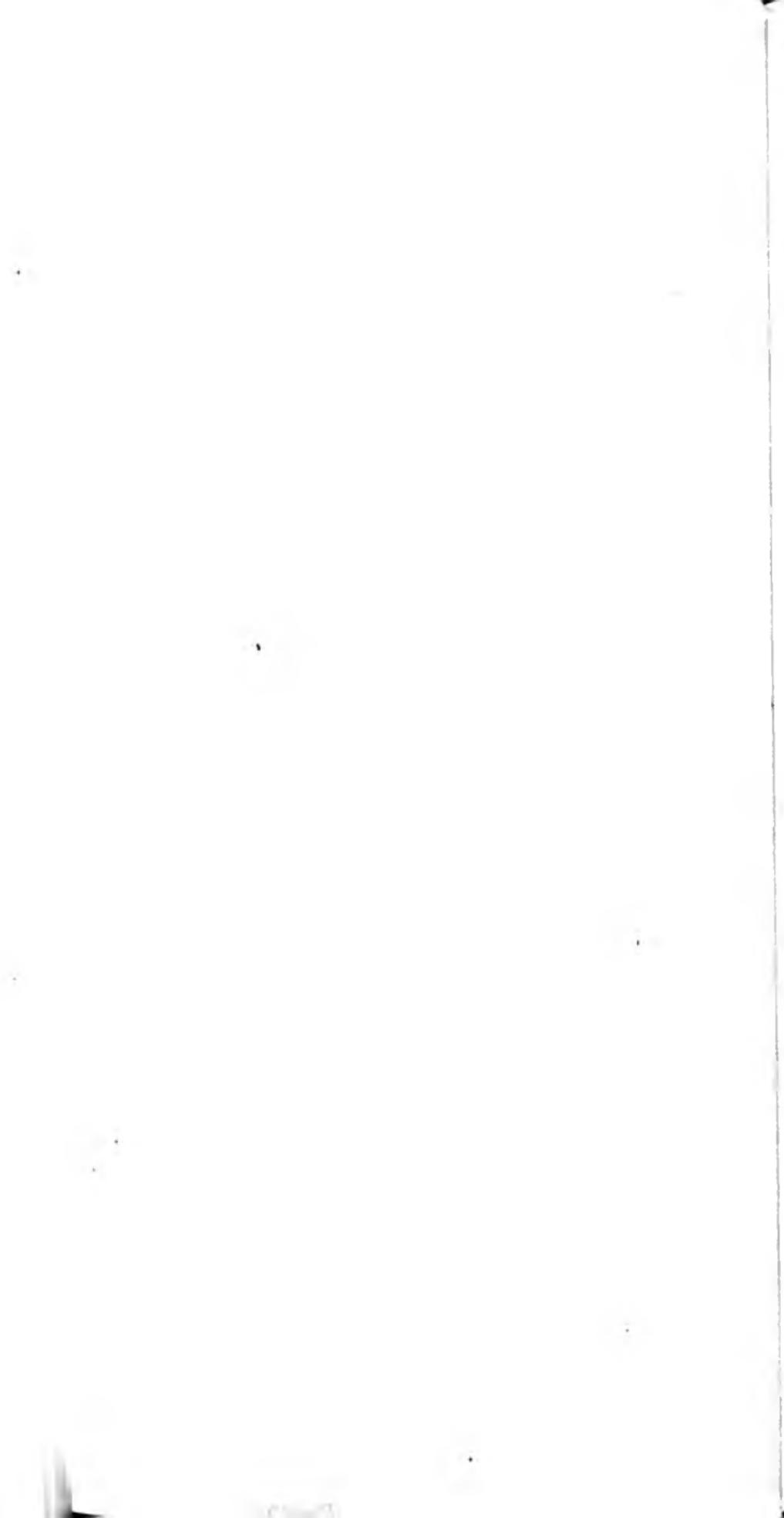
Outlawing compulsory pregnancy laws, which some might still prefer to call legalizing abortion, would not be forcing doctors or hospitals to perform abortions against their beliefs. By outlawing these laws we would instead be honoring the basic and individual right of a woman to terminate an unwanted pregnancy.

The basic underlying question in any discussion of compulsory pregnancy laws (which I choose to use rather than the term *abortion laws*) is what should a woman who is pregnant against *her* will do, and what should the professional and public response toward her be if she chooses to terminate the pregnancy?

If the underlying thesis of family planning is to reduce even the number of wanted pregnancies, is it not illogical then to continue to force women with unwanted pregnancies to have the child? I think that it is!



HONORABLE SHIRLEY CHISHOLM



# Participants

*(in the four cases brought in Federal court  
to abolish New York's abortion laws)*

## PLAINTIFFS

*Abramowicz v. Lefkowitz*  
314 people—mostly women;  
also doctors, lawyers, psychologists, social workers,  
husbands, a minister,  
writers, and others.  
(Referred to as the *women's case*.)

## ATTORNEYS

Nancy Stearns, Esq.  
Carol Lefcourt, Esq.  
Ann Garfinkle, Esq.  
Flo Kennedy, Esq.  
Diane Schulder, Esq.  
Emily Goodman, Esq.

## *Companion Cases*

### PLAINTIFFS

*Hall v. Lefkowitz*  
\* Robert Hall, M.D.  
\* Louis Hellman, M.D.  
\* Alan Guttmacher, M.D.  
Seymour Romney, M.D.  
(Referred to as the *doctors' case*.)

### ATTORNEYS

Roy Lucas, Esq. (James  
Madison Constitutional  
Law Institute)  
Harriet Pilpel, Esq.  
Norman Dorsen, Esq.  
Melvin Wulf, Esq.  
Alan Levine, Esq.

### *Doe v. Lefkowitz*

John and Mary Doe  
Jane Poe  
Sally Roe  
Mary Moe  
(Referred to as the *community case*.)

### Community Action Legal

Services Office: (CALS) by:  
John Gregory, Esq.  
Marcia Lowry, Esq.  
Napoleon B. Williams, Esq.  
Larry Toombs, Esq.  
John C. Gray Jr., Esq.

	Dan Meyers, Esq. Morton B. Cohen, Esq. Oscar Chase, Esq.
<i>Lyons v. Lefkowitz</i> * Reverend Jesse Lyons (Referred to as the <i>minister's case.</i> )	Cyril Means, Esq.
<b>DEFENDANTS</b> Louis J. Lefkowitz, Attorney General, New York. Frank Hogan, District Attorney, New York. Burton Roberts, District Attorney, Bronx. (Additional prosecutors and others, were sued by plain- tiffs in the companion cases.)	<b>ATTORNEYS</b> Joel Lewittes, Esq. Burton H. Lipshie, Esq. Marian Blank Belenky, Esq. Daniel Sullivan, Esq.

	<b>INTERVENORS</b> * Leslie Hughes Tisdall, M.D. * George J. Lawerence, M.D. * Armand DiFrancesco, M.D. A. Malcolm Hetzer, M.D. Francis Dobrzynski, M.D. Richard Romanowski, M.D. Charles A. Bauda, M.D. Thomas Sweeny, M.D.
	<b>ATTORNEYS</b> Thomas J. Ford, Esq. William P. McHale, Esq.

\* Also testified as witnesses at the pretrial hearing

# Introduction

This book is not to be regarded as a dispassionate travelogue through the topography of New York abortion law repeal and reform. It is in no sense an effort to extend the myth of "objectivity." It should rather be viewed as a brief to be presented to a people's tribunal.\*

We were and are advocates of the women's case. Our advocacy position is responsible for our approach to our witnesses as well as the opposing witnesses. We are fully aware that many men and women agree with the position taken by the opposition.

The major portion of this book is a distillation of the more than 2,000 pages of materials, including depositions and legal

\* The preparation of the complaint, injunction application, and brief filed in federal court was done by Nancy Stearns with help from law students, especially Ann-Marie Boylan, Marion Davison, and Jan Goodman. Emily Goodman wrote the *Amicus* brief. Diane Schulder, with Nancy Stearns, attended most of the pretrial examinations and organized the testimony of the witnesses with the additional help of Flo Kennedy and Carol Lefcourt; these two, with Ann Garfinkle, augmented the facilities supplied by the Law Center for Constitutional Rights.

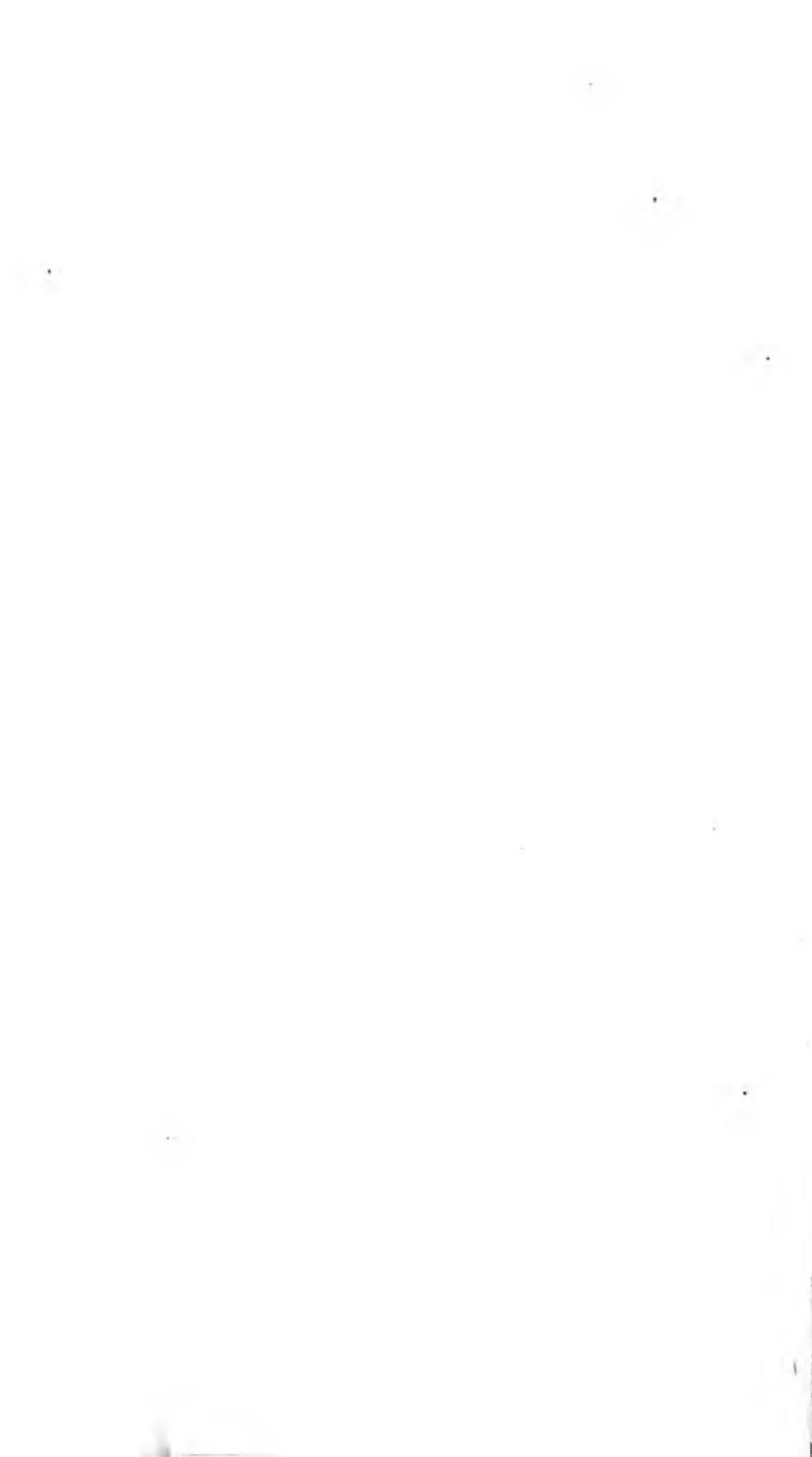
papers, in a case brought in 1969 to declare the New York State abortion laws unconstitutional. The Federal Court for the Southern District of New York never decided the case, having stalled it until after new legislation was enacted. Restrictive abortion laws, however, exist in most states, and have for many years.

Though laws are changed, their heritage remains. Will the same lack of freedom, formerly denied women in one way, soon be visited upon us in a reverse manner—enforced limitation on reproduction? This book examines how the abortion fight is relevant to the fight for freedom for women. Later chapters also direct attention to the Black genocide charge, the population explosion claim, the Friends of the Fetus, the hospital scene, and the church-state conflict.

# *I. The Women*

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- When a woman finds herself pregnant, there are, at that point, three alternatives open to her:
  1. Give birth and raise a child;
  2. Terminate the pregnancy;
  3. Give birth and give the baby up for adoption.

One influencing factor would be whether or not she was married.

In the following pages, women who found themselves pregnant at a time when they could not, or did not want to, assume the 21-year responsibility of raising another human being, tell of their experiences in grappling with these alternatives.

One of the first times that abortion was rapped about publicly was in New York City in March, 1969, in a program organized by Redstockings, a Woman's Liberation group:

Twelve young women faced an audience of more than 300 men and women and with simplicity and calm and occasional emotion and even humor, told of incidents in their personal lives which they formerly had consigned to the very private.

They rapped about their own abortions. (Susan Brownmiller, *Village Voice*, March, 1969).

Thus it was that the women's movement began to reject the pall of guilt which isolates women in crises. It was this that triggered the idea in our minds to have women testify, as women and as experts, in the Federal case to attack the constitutionality of the abortion law.

The same article (entitled "Everywoman's Abortions: The Oppressor Is Man") described an action that had taken place a month earlier, when the Redstockings had stormed a hearing of a New York State legislative committee studying abortion law reform and, predictably, had been rebuffed. The committee, they were told, was interested in the testimony of experts. The "experts" had been fourteen men and one woman, a nun.

These women then fashioned their own public hearing. As one of the younger women said, "We are the true experts, the only experts, we who've had abortions."

The following testimony is from the official transcripts of depositions taken on January 14, 15, and 23, 1970, in the case of *Abramowicz v. Lefkowitz*. It should be noted in reading the following depositions that the more relevant the testimony and the more serious the issue, the more likely there would be an objection to the testimony. The objections were generally interposed by Thomas J. Ford or his co-counsel, representing the intervenors (who became known as the Friends of the Fetus), or by Joel Lewittes, representing Attorney General Louis J. Lefkowitz. Marian Blank Belenky, of Bronx District Attorney Burton Robert's office, frequently provided an echo, once an objection had been raised.

# Going Through with It

## MOTHER'S HELPER (*Kathleen Donovan*)

*There are several professional people of my personal acquaintance—a professor of education, a pediatrician, a registered nurse—who are perfectly willing to accept these girls into their private home without any compensation, except the companionship and doing the little things around the house that make the tedium of housekeeping more tolerable.*

JOSEPH J. RICOTTA, M.D.,  
*medical expert for intervenors.*

It has sometimes been suggested that the proper solution for the woman with an unwanted pregnancy is to slink away into hiding, have the child, and then give the child away for adoption.

Friends of the Fetus, who decry abortion, often seem to prefer the slink-away method.

The following case is not atypical of the ordeal of women who do slink away. It demonstrates that it is the context of

finding a way to deal with the unwanted pregnancy, rather than the medical procedure, which causes much of the trauma.

### Examination by Diane Schulder

**Q:** What is your occupation?

**A:** I am a writer, a free-lance writer.

**Q:** Was there a time in your life when you were confronted with an unwanted pregnancy?

**A:** Yes.

**Q:** Would you please tell us about that?

**A:** Well, I am a former Catholic and I got pregnant when I was twenty and I wasn't married. At that point I had left the church and I was really no longer a practicing Catholic.

I grew up in Westchester and I went to Catholic schools. Then I went to a public high school and I wanted to be a teacher. I went to one year of Teachers College, but I didn't have the money to continue. So I worked for a year and then I went back to college. I didn't like the college and decided to transfer to Sarah Lawrence, where I was accepted, and I was very happy about going there.

Again, I didn't have enough money. It was then when I got pregnant. I was working for an airline and living at home with my family and the guy that I was going with was a year older than I was and he was at Princeton University.

**Q:** A Princeton man?

**A:** Yes, he was a Princeton man. I did not want to accept the fact that I was pregnant. It's one of these things, when it happens to you, you don't . . . you know, you just don't like to think about it. So I kept putting off going to a doctor and having an examination. I was afraid about an examination, I was afraid about a doctor. I couldn't go to the family physician because that frightened me.

So finally, when I decided I really must be pregnant, be-

cause I was vomiting and I had to stand on my feet all day at work and I was very tired and I kept feeling sort of faint, I went to the doctor and . . . I mean, I went . . . I am sorry, I am a little confused. [The witness is close to tears.]

It's ridiculous, seventeen years ago, but it's really hard to talk about it.

**Q:** It is okay, take your time.

**A:** Well, when I finally decided I probably was pregnant, I didn't know where to turn and the only thing I could think of was the Catholic Church, even though I was really no longer a practicing Catholic.

So I went to the local church and I walked into the Parish House and I said, "I'd like to see a priest," and a lady said, "Which priest?" and I said, "Any priest." I didn't know any of them at that particular church.

So a priest came down and I guess you have to be a Catholic to know how difficult it is to talk to priests and nuns about sex and pregnancy.

**MR. LEWITTES:** I object, I am going to object to all of that testimony relating to the Catholic Church.

**THE WITNESS:** It's very important.

**MR. LEWITTES:** Just a minute, your attorney can cross-converse with me if she likes.

**MS.\* KENNEDY:** He has to earn his pay today.

**MR. LEWITTES:** Let's keep that on the record.

**MS. KENNEDY:** By all means, since it's our money.

**MR. LEWITTES:** I still want to object with respect to any discussion and any statements regarding the Catholic Church as being totally irrelevant, immaterial, and incompetent.

\* The attorneys in this case include women in the categories: divorced, widowed, married, single. We do not believe that a woman's identity, any more than a man's, should be determined by her marital status:

*Mr.* is used for men, married or unmarried.

*Ms.* is used for women, married or unmarried.

**A:** I believe that what I am trying to discuss is my experience and how the pregnancy and my experience was a tremendous humiliation to me, how it affected my entire life. It interrupted my education and these are the things I am about to explain.

Well, the priest gave me the name of a nun in a hospital in the city whom I should go to about getting an examination, since I was afraid to go to the family physician.

I went to this nun at this church and I told her I was pregnant and . . . I thought I was pregnant and I wanted an examination from a doctor.

She did give me a lecture on the fact that I had sinned and . . .

**MR. LEWITTES:** Objection.

**MS. KENNEDY:** Your objection to this entire line is noted.

**MR. LEWITTES:** We will make it a continuing objection.

**MS. SCHULDER:** Yes, we will make it a continuing objection, so it will not be necessary for you to interrupt the witness again.

**MR. LEWITTES:** Thank you.

**A:** She said that was a private hospital and I couldn't have an examination there, even though I was a Catholic. I told her I was Catholic, because in a sense, I was in many ways. She gave me the name of a hospital downtown.

So I went downtown and there I finally got an examination from a doctor who told me that I was three months pregnant, and that if I tried to have an abortion it would be dangerous to my health.

I got on the New Haven and went back home. I was very, very frightened. I had a tremendous sense of guilt, shame. I felt like a criminal who had done something and finally been caught, and it was written all over me. I imagined that everyone was going to find out about it.

**MS. SCHULDER:** The Scarlet Letter.

**A:** I imagined people in the train were looking at me as if I were a criminal of some sort. I couldn't possibly turn to my family. They were . . . my father, I was afraid about his health. It would be detrimental to his health, he would have been so upset and so ashamed, and he had a bad heart. So I just didn't know where to turn.

**Q:** Excuse me, what about the Princeton gentleman?

**A:** I asked Peter to marry me and he refused flatly. He said he wanted me to have an abortion. I said that I was afraid to have an abortion and the doctor had told me it would be dangerous.

Furthermore, the Catholic Church had taught me that abortion was murder and even though I had left the church, there were many things about catholicism that still clung to me. I was afraid to eat meat on Friday, and I did believe at that time that abortion was murder and I was afraid to have it.

So since Peter wouldn't marry me and since I wouldn't have an abortion, I literally had no choice but to go ahead and have the baby. Since, again, I couldn't disgrace my family, I was too afraid, I couldn't possibly turn to them.

Nobody I knew, knew anything about homes. Although we all knew they existed, we hadn't the vaguest idea. I mean, they are not carried in the classified pages of the phone book or anything like that. You just have no way of finding out where these homes are that do exist.

So I went back to the priest and I told him, "Yes, I am definitely pregnant and I'll have to go away to have this baby, I'll have to stop work and somehow manage to have this child," and I said I had to go away.

He told me that the Catholic Church does maintain homes for Catholic girls who are pregnant in certain large cities and we settled on Chicago, because I felt I could go there without arousing too much suspicion on the part of my family. He gave me the name of the home and I wrote to them and I

made arrangements to go out to Chicago in my fifth month.

Well, it was a real challenge to not look pregnant for five months, so I didn't eat very much and I continued to work at the airline, standing on my feet all day and vomiting and feeling faint and so forth. But nobody ever suspected I was pregnant.

I managed to look very thin, so that when I finally made the arrangements to fly out to Chicago, no suspicions had been aroused, except I did inform my brother. You know, I had to have some liaison, so to speak.

In Chicago I went to a Catholic agency the day that I arrived. They knew I was coming and they said, "Well, we are going to place you in a home where you will work until the baby is born."

They put me in a home with a rather . . . perhaps middle-aged couple on a sort of a . . . I don't know, I guess a lower middle-class section of Chicago. They had a tiny apartment with a father that was a dentist and they had just had a baby, and it would be my job to take care of this baby until my baby was born. I was to sleep in the same room with the baby, and so forth.

They more or less treated me like a member of the family. They allowed me to sit at the dinner table with them and so forth. But I very quickly noticed that there was something strange about this family. In the middle of dinner, the woman leapt up from the table and rushed to the phone and made a phone call and then rushed out of the apartment, and her husband rushed after her, leaving me alone with the baby.

Their teen-age son, who didn't live at home, came in and he volunteered to take care of the baby that night while I went to bed, because I was very tired from the trip, so I went to bed.

The next day the woman had hysterics. She said she had hired me to take care of her baby and I had no right to let her son . . . make her son take care of the baby. I couldn't really

deal with her, I couldn't discuss this with her, she didn't seem very rational.

Again, she made a telephone call and rushed out, and at this point I didn't know what was happening. A neighbor came in and the neighbor did the cooking and told me that the woman was emotionally unbalanced and that she was unable to cope with anything. She couldn't cook, she couldn't take care of her own baby, and that was why she had to hire me to come and take care of the baby.

That night—it was a Saturday night—at dinner she went through the same act again, made the phone call, and rushed out. At that point the husband turned to me and said, "You'll have to leave," and I didn't know why. I still didn't know what was happening.

I said, "Right now?" and he said, "Immediately."

I said, "I can't stay till morning? This is Chicago and I am not familiar with the area, and I have nowhere to go and the Catholic agency is closed."

He said, "No, you have to leave immediately."

So I packed my bags and I called the YWCA and they had a room. I called a cab and the cab came, and I went to the YWCA where I remained until morning.

When I called the Catholic agency and told them what had happened in this home, I recommended that they send no further girls there. I don't know whether they did or not.

They then told me they had no place at the moment to put me and that I would have to stay where I was until something opened up. So I stayed in this little room in the "Y" and I was becoming more and more frightened every day, because I was alone in the city, and I thought, "Well, if nothing does open up, what will I do, where will I go from here?"

I was looking quite pregnant at that point, and I went out and bought a phony wedding ring and some pregnancy clothes. People wanted me to enter store contests where I bought pregnancy clothes—it was very difficult.

I spent most of the time sitting in this little room waiting

for the phone to ring. I was not eating too well at this time because I was frightened, my money was running out.

Finally, the agency called and said they had a new opening for me, that there was a couple who lived near the lake in a rather wealthy section of Chicago who wanted a girl to act as a maid. A Catholic couple again, these were all Catholic couples.

I went to this home and this was a couple in their sixties, a man that owned his own firm—either insurance or advertising, I don't remember which—and she had broken her leg and couldn't get around. My job was to live there, to clean the house, cook their meals, do the grocery shopping, and everything a maid would do.

**Q:** How much were you paid, by the way?

**A:** \$25 a week. I got up at 7:30 in the morning and cooked their breakfast and served her breakfast in bed.

I was allowed one hour a day to rest, but I had to stay fully dressed in case the doorbell rang downstairs and I had to get down there quick to answer it. Right into my ninth month I scrubbed floors and washed windows and did heavy work. Oh, I was allowed half a day off every few weeks to go to the Catholic hospital to be examined.

Then, when the ninth month came, I thought I had made arrangements. I paid them \$250—this was about seventeen years ago—for prenatal care and having the baby. The examinations were all done by interns who were extremely nervous and who actually started shaking. They got me nervous and I would shake because I had only had one other examination before this, which was by that doctor. You know, the examinations are a little uncomfortable, you're not used to them.

I thought I had made arrangements for the hospital, to move out of the home and go there when the baby was due, because the hospital was a long way away from the home and I knew I'd have to make the trip alone and I was a little afraid I would go into labor late at night.

When the day came that the baby was due, I packed my

bags and said, "Good-by," and headed toward the hospital. They already had another Catholic girl lined up to take my place in this home.

I got to the hospital and the nun said, "Are you in labor?" and I said, "No," and she said, "Well, what are you doing here?"

I said, "Well, I thought I had made arrangements to come here when the baby is due."

She said, "We haven't any beds for people not in labor."

I said, "What will I do? I can't go back, they have another girl, I don't know where to go."

So she said, "Well, we have a home"—it was called, I believe, Misericordia—"where you can go and remain until the baby is born."

So I went to this home which was near the stockyards. It was August, and these were all girls who were pregnant and most of them were from, I would say, poor families. Many of them were very young, fourteen, fifteen years old, and they worked in the home.

Everybody was assigned a task. You either worked in the kitchen, cooking, or you worked in the laundry room. As far as I know, the nuns did not work. They woke us up at 6:30 in the morning and prayed the rest of the time.

They assigned me to the laundry room. Since it was August and I was nine months pregnant and it was very hot and steaming, I began to faint and have trouble, so I told them this and they finally removed me from any work.

So I really had nothing to do but sit in the room. There were no books or very few books in the home. TV was allowed on about two hours a night or something like that. The food was almost all starch and I put on an enormous amount of weight in those two weeks and, in general was exceedingly miserable.

When I went into labor, I went to the hospital. This time I was admitted because I was in labor. I was in labor thirty hours—over thirty hours—and during this time I was given

no pain reliever of any nature whatsoever, although I did ask for it.

**Q:** Do you know why you were given no pain reliever?

**A:** I have no idea why. In fact, I was in mostly . . . I guess what you would call semi-isolation. I did not see the doctor until the baby's head appeared. A few interns came around, examined me, occasionally a nurse would come around, but for the most part I was left alone.

The bed had iron bars in the back of it and I hung onto the iron bars, you know, with the pains, the contractions. By the end of the thirty hours, I had no control over any of my muscles or my body. You know, I was like rubber, I could hardly move, and I was shaking and trembling from so many hours in pain.

When the baby was due to be born, they gave me something called a spinal, which stopped all the pain immediately, and I was wheeled upstairs for delivery. The baby was very large—it was nine pounds—so they had to slash. There was a mirror above, I could see the blood, I could see that they were stitching, they had to stitch. But there was only one doctor for the entire floor which, as far as I was able to determine, had all girls who were not married and there was only this one doctor. He was very, very busy and he had another delivery before he had finished stitching me up. He had to stop on me, and an intern took over and the doctor left to deliver another baby.

Well, then the baby was taken away from me immediately, and thereafter I was never allowed to touch or hold the baby.

We were allowed to view the babies twice a day through a glass panel and I had a very extensive interview with a nun who wanted to know a lot of things about my background. She informed me that they had a long waiting list of Catholic couples who wanted to adopt babies and that babies like mine, where both parents were educated and white Anglo-Saxons, were in particular demand.

Apparently, these couples made large contributions . . .

from what I was able to learn, as much as \$1,000 to the church for adopting such a baby. So I . . . it was very difficult for me. I mean, that is, the most painful, difficult part of the experience was leaving the baby behind.

There was also a nurse, a lay nurse. She was young and blond and she took a special liking to my baby. Every time I'd go to view it, this same nurse would be holding it in what I thought was a rather possessive way, which was rather disturbing. In fact, when I left the hospital, she was standing in the window. She always looked at me quizzically, and she waved good-by and I waved good-by to the baby.

MS. SCHULDER: The record could indicate that you are crying. We can take a five-minute break.

THE WITNESS: No, I'll be okay. Perhaps you'd have some question.

MR. LEWITTES: Before you do that, I am going to renew my objection, but I am going to move to strike all of the testimony as being irrelevant.

I would like the record to read that one of the spectators yelled out "Pig."

MS. KENNEDY: Let the record show that the callous attitude of the representative of the attorney general of New York State, in moving to strike the testimony of a woman who has described in considerable detail the anguish and misery of coping with an unwanted pregnancy, is regarded by the plaintiffs, as I understand their position, as entirely offensive, unnecessarily, and gratuitously insulting and typical of the lack of regard that the state of New York has consistently demonstrated for women.

MR. LEWITTES: I would like the record to show . . .

MS. SCHULDER: I am examining this witness. I would like to continue with our questioning.

MR. LEWITTES: You did not stop that last barrage.

MS. SCHULDER: Let's not get into debates between lawyers. Let our witnesses continue with their testimony.

MR. LEWITTES: I want the record to show that there was —I won't even say burst of applause, it was louder than that—on the part of at least fifty of the spectators here.

MS. SCHULDER: If I had known that was what you were going to say, I wouldn't have objected!

MR. LEWITTES: Thank you, you are anticipating me.

**Q:** Are you currently married?

**A:** Yes, I am.

**Q:** Is your husband here today?

**A:** Yes, he is.

**Q:** Can you tell us whether this experience that you went through has had any aftereffects on you?

**A:** Well, it was a very shattering emotional experience and . . . first of all, on physical terms, because the baby was so large. According to what a gynecologist explained to me, there were some muscles down the center of my stomach which had separated in my case and an outer layer of the skin had broken and I had very ugly scar marks, sort of purplish scar marks. After I gave birth, I still looked six months pregnant.

If I ever wanted to hide the fact that I had a baby from a man that I was to marry in the future—which I wouldn't, of course—but if I had, it would have been impossible.

I also had a dreadful case of hemorrhoids, which can be very, very painful. I went back to college and I can remember the pain of that, plus the fact that I had a tipped uterus, a very tipped uterus, which caused me unusual pains at certain times when I was menstruating. All of this made studying, for example, extremely difficult, because I had all sorts of pain.

The money that I had started to save to go to Sarah Lawrence was all used up. I couldn't go back to the college of my choice, and I had to go to Columbia University which was less expensive. I had wanted to go to Sarah Lawrence.

Emotionally, I was . . . I was just very emotionally upset. I was very afraid of men for various reasons. As of now I have

not had another child and I admit, perhaps, that I am a coward. But, frankly, I panic at the thought of birth and the pain, because of what I went through . . . it was such a terrible experience. I mean, I realize that if I went into a hospital now I would be given more humane treatment, you know, with pain killers, and so forth. Nevertheless, the memory of the experience is so strong and I just . . . I panic at the thought of having . . . of giving birth and the whole problem about bearing a child.

MS. SCHULDER: That is all.

#### Examination by Ms. Kennedy

**Q:** As a former Catholic, have you noted any distinction between the doctrines, tenets, and religious philosophy of that religion, so far as abortions are concerned and unwanted pregnancies are concerned, and philosophies of other religions?

MR. LEWITTES: Objection.

**A:** I would certainly say yes.

**Q:** As a former Catholic, have you had occasion to hear any discussion as to the attitude of that religion regarding anesthesia during deliveries and that of other religions, if, indeed, you have ever heard such?

MR. LEWITTES: I object on the ground of irrelevancy, but it also calls for hearsay testimony.

**A:** I only know I was given no pain killer whatsoever and I don't . . . they must have had a reason. I don't know whether it was because they wanted me to suffer more, and whether married women in the Catholic hospitals got pain killers. I, of course, can't say. All I know is that they gave me none.

Examination by Ms. Belenky

**Q:** I believe that you testified that this experience occurred some seventeen years ago. Is that correct?

**A:** That's right.

Examination by Ms. Schulder

**Q:** Would you ever go to a referral clinic such as that again?

**A:** Absolutely not, I would never go near it. No, I'd never, never . . . I mean, I would do *anything* but go through something like that again.

**Q:** Even go through an abortion?

**A:** Absolutely.

**Q:** An illegal abortion?

**A:** Yes.

**Q:** If there had been no criminal laws on the books of the state of New York making abortion illegal, would that have allayed, in part, some of your fears at the original time, when you were trying to seek alternatives as to how to handle the unwanted pregnancy?

**A:** I would certainly assume so. I would assume that there would be a totally different social attitude. There is a whole social attitude toward it that's frightening when you are young. There is so much shame and so much guilt, not only with getting pregnant but with the sex act, because in the Catholic Church you're taught sex is sin and you feel very guilty about engaging in sex.

But if you are a healthy person physically . . . I mean, they told me it was a sin. But I would go ahead and have sex, and then I would have tremendous guilt and I'd go to the priest and confess it. I was truly determined not to do it again, say my penance but, you know, I was very healthy and I would do it again, and this kept getting repeated.

So when I got pregnant, it was as if . . . like an outward sign that, all right, now everybody can see that I was guilty. You know, up to that point, I was hiding it from the priest, hiding it from everybody, but now it was an outward sign of my guilt . . . like an outward sign that I had been found out.\*

## A "COMMODITY PRODUCING ANOTHER COMMODITY" (*Lucy Wilcox*)

*... it is clear to me that a motion to strike all the testimony relating to the problems of unwed mothers is proper here.*

JOEL LEWITTES,  
assistant attorney general,  
representing Defendant Lefkowitz.

The following deposition illustrates the tendency of opposing counsel to close in on a witness when she reaches a particular emotional point.

Again resorting to technical procedural objection, the intervenors and defendants try to disqualify a witness whose testimony might give the court some insight into a particular aspect of the problem.

Lucy Wilcox, now married, was nursing her baby while she testified. If our assessment of opposing counsel is correct, this had a very unsettling effect upon them. For the first two-thirds of her testimony, there was a deep, embarrassed silence on the part of the opposition, almost a paralysis, that was finally broken by Ford. It was as if these up-tight lawyers, in effect, were freaked out by the emotional context into which this case thrust them. Their technical opposition, on the grounds of

\* Fictitious names have been used, in this book, for the witnesses who testified about their personal experiences. Also, certain editorial changes have been made in the transcript where necessary for clarity.

residency requirements for our witnesses, was contradicted by the fact that intervenors' witnesses testified that their medical judgments regarding abortion were in no way influenced by the New York State statute.\*

This account provides an opportunity to examine the role of the adoption agency.

Lucy Wilcox spent time in a "home" in a reconverted brownstone on the fashionable Upper East Side in New York City. A pall of guilt hung over the place. The women were sworn to secrecy; they were told that if they ever met on the street, they should give no sign of recognition.

Contrast the feelings the witness had about her later abortion.

### Examination by Nancy Stearns

**Q:** Are you a member of any of the Women's Liberation organizations?

**A:** Yes, I have been working in Women's Liberation for about three years now. I began in New Orleans four years ago when I was in graduate school. Later, when I moved to New York, because my husband worked in New York (I had to follow him), I became part of a group that was called New York Radical Women. Then I was part of a group called WITCH, Women's International Terrorist Conspiracy from Hell. I spent most of my time doing Women's Liberation work which included women's rap groups, day care and research groups.

**Q:** Did there come a time when you were confronted with an unwanted pregnancy?

**A:** Yes, when I was. . . . You just want me to talk about it?

**Q:** Yes, would you indicate your age, what your circumstances were? Was this before or after you had finished school?

**A:** I was out of college.

\* See testimony of Drs. Tisdall, Ricotta, and Lawrence, pp. 165-74.

**Q:** What school did you go to?

**A:** I went to Wellesley and I had been abroad for a year. I got pregnant and came back and was going to get married, but really didn't want to get married. I was very . . . didn't know how to go about getting an abortion.

**Q:** Did you see a doctor at the time?

**A:** I saw a gynecologist-type doctor in Spain, yes, and then I saw several doctors in Washington and in Birmingham. Also several psychiatrists, none of whom counseled me to have an abortion. One psychiatrist in Birmingham counseled me to go to a home for unwed mothers and have the baby.

**Q:** Were you living in New York at the time?

**A:** No.

**Q:** Where was the home for unwed mothers?

**A:** In New York.

**Q:** Had you been to New York before?

**A:** I had never lived in New York, no.

**Q:** Did you spend the rest of the pregnancy in the home for unwed mothers?

**A:** Yes.

**Q:** Would you then just indicate briefly the circumstances of the home?

**A:** Well, the home was, I suppose, for anyone who wants to be in a home for unwed mothers. It was supposed to be a very good one.

**Q:** Did you have to pay?

**A:** Yes, you had to pay \$80 a week. It was on the Upper East Side. It was a fairly comfortable place, a reconverted brownstone.

**Q:** How many women were there?

**A:** About sixteen.

**Q:** Did you intend to keep the child?

**A:** Well, I wanted to keep the child, but I was . . . I wasn't strong enough to resist the kinds of pressures that I . . . I felt

very guilty because I kept going back and forth between wanting to keep the child and the pressure that was put on me by this home.

The home had some sort of a relationship with the Spence-Chapin Adoption Agency. The social workers from Spence counseled me about the stigma and how difficult it would be for me to bring up the baby—how bad it would be for the baby—and that I would never be able to, you know, support the child.

I gave the baby up, which is what everybody in the home did.

**Q:** Do you know whether or not the adoption was arranged by the Spence-Chapin Adoption Service?

**A:** Yes, it was. What we were really doing was producing babies for this home to market. They counseled all the white girls to give their babies up for adoption and counseled Black girls to keep their babies, because there was no market for Black babies.

**Q:** How many of the white women gave up the babies?

**A:** All of them. There was one girl who resisted for a long time because she . . . up to the very last day, she was going to keep the baby and even took the baby home. I suppose finally she had to give the baby back and give it up for adoption.

The kind of trauma of giving a baby up for adoption leaves you with the feeling of . . . at least I had my feeling about it as a mother. I was a mother who had abandoned my child. I fought against this self-concept.

I prepared to think of myself as a breeder. I was just breeding babies for someone else to take rather than think of myself as a mother who abandoned her baby.

But the guilt. . . . For months after I left the home, I'd wake up in the night crying and sort of rocking my pillow. And this feeling, sometimes, of deprivation. . . . But then I could never really blame . . . could never really even feel that

I was deprived, because there was . . . The guilt was stronger than the feeling that someone else had deprived me, someone had ripped the baby from my arms.

I would have been more comfortable that way than with what I did, because I actually signed the papers and gave the baby up.

**Q:** Do you know whether or not the adoption service charged a fee for the child?

**A:** I don't know how they . . . I mean, how the adoption agency is able to support this elaborate bureaucracy and home. I don't know. I don't know that parents actually come in . . . potential parents actually come in and write checks for babies, but that's in essence what it works out to be, I mean —contributions, I guess.

**Q:** Did you receive any money from either the agency or the home or the subsequent parents of the baby?

**A:** No.

**Q:** Did you meet the parents of your baby?

**A:** No.

**Q:** Could you have met them had you wanted to?

**A:** No, I was very concerned because there were a lot of things . . . there were a lot of things in my own mind about what I thought was important for a baby to have that I wanted.

I kept asking the social worker, you know, I kept trying to make conditions or say the kind of home that I wanted for the baby. But this wasn't anything I had control over. I was just told that it was better that way.

**Q:** Did you receive any counseling or any assistance from the home in accepting your situation other than the urging to give the child up for adoption?

**A:** No. You mean in terms of being comfortable?

**Q:** A psychiatrist or group therapy?

**A:** No, the major emphasis of the personnel in the home was to let me know that I was very stigmatized. What they

talked about was that nobody would ever know about this.

We weren't allowed on the streets after nine o'clock and we were told not to go anywhere unescorted together, because that would call attention to ourselves. I didn't want to wear a wedding ring, but we were urged to wear wedding rings. No one knew anybody else's last name and there was a big emphasis, when you left, that you need never mention that you were there.

There was one girl whom I was very close to, naturally, because we were going through probably the most—I don't know—psychologically scarring or significant experience of our lives. What we were . . . we were sharing a very deep psychological experience, so we were naturally very close, and yet I remember her saying to me, one day, "If I ever meet you on the street when we're out, you know, don't recognize me, don't even admit you know me."

I had a different value system—or I wanted to have a different value system—where it was all right for women to have babies, whether they were married or not. Of course, that was sort of squashed out of me.

Then I settled on this: Well, at least I'm good because I am producing a good, healthy baby for somebody else. I wanted to have my own identity, not to be ashamed. Because of this, I tried very hard to focus on positive aspects of giving birth, even though I wasn't married.

I read a lot about natural childbirth and even signed up to take natural childbirth classes. This was viewed as sort of scandalous by the home—that anybody who was doing something so simple should view it as a positive experience.

I went to a psychiatrist, which I paid for, the home didn't, and he also never . . . I mean, despite the fact that in this psychiatrist's office much of what I talked about was this ambivalence about wanting the baby and feeling as though I had to give the baby up, he never once counseled me in the direction of keeping the baby.

There was a total lack of support in any way for a decision toward keeping the baby. It was very much that I was like a commodity producing another commodity.

**Q:** Were you working during this period?

**A:** No, no, that was another thing, you know, that I was told you mustn't let yourself be seen, don't let anybody know.

I actually went and applied for a teaching job while I was pregnant, for the following semester. But I was so embarrassed and so awkward and also caught in this trap of both wanting to get the job and the expectations about what happens to an applicant who comes in looking pregnant, that I was ambivalent about whether or not I was married, because I didn't . . . I kind of didn't want to say I was married, either. I remember the director of the school sensing this, and I felt terribly stigmatized and ashamed—guilty.

We weren't allowed . . . we were encouraged not to see. . . . I saw one friend who was a college friend of mine. This was very much discouraged that I should have any contact with anyone who knew me, who would know of this sinful pregnancy.

In fact, I still feel as though I am confessing. Today I was with a friend of mine whose husband is from my home town. When I said that I was coming to testify for the abortion hearing, they both said, "Oh, did you have an abortion?" I said, "Yes, but that's not what I am going to talk about, because an abortion was very easy for me." An abortion is not a sinful thing, I don't feel bad about having an abortion, but to have to say to someone who knew me that I had given a baby up for adoption was . . . I felt it was very important for Women's Liberation even to admit it.

**Q:** Before we come to the question of your later abortion, may I just ask you whether or not there was psychiatric help or psychological assistance for other women who needed it?

**A:** No.

**Q:** Was it obvious to you that some of the women needed psychiatric assistance?

**A:** Yes, there was one woman who was about . . . oh, thirty-five, who was a lawyer. She was a Vassar graduate, a lawyer who had been working as a legal secretary and who was in a catatonic state the whole time she was in the home. She was totally withdrawn, frightened.

**Q:** Did she at any time see a doctor on her own or a psychiatrist?

**A:** Not that I know of. There was another woman, also about thirty-five, who was pregnant with a child of her boss who had tried to get an abortion. Most of the women in the home, except those who were Catholic, had tried to get an abortion. This woman had even been to Puerto Rico to get one and hadn't been able to locate an abortionist. So rather than ever having to go through this experience again, she had herself sterilized. While in the hospital, she asked to have a hysterectomy done on herself.

There were very young girls in the home—they ranged from sixteen to forty—who didn't understand what was happening to them. They tried to deal with it as a matter of convenience, which was impossible, and people tried all different ways to deal with it.

There was . . . there was no way to deal with it at all, and so the primary thing—the primary focus—became one of keeping anyone from knowing. That was what people talked about the most, mostly with the help of the house mother. The focus was on how lucky we were that we were able to do this and no one was ever going to know. There was a great effort to talk about how, in your later life, if you were careful and put cocoa butter on your stretch marks every night, you might even be able to get married without your husband knowing, which is a horrible, horrible thing to feel—that, from the time you are sixteen, there is this thing that you have done which no one would ever know about.

**Q:** After the baby came, did you continue to follow the practice suggested by the home; namely, to avoid any mention of the pregnancy? Did you ever admit that there was this

pregnancy and that there was this situation in your life thereafter?

**A:** Well, I wanted to, because I wanted. . . . Your past . . . I think that a person is her past experiences, so I didn't want such an important experience to be such a negative thing. I wanted it to be something, that's why this desperate need to convert it into a positive experience. I wanted to be able to tell people about it.

Once, right after this had happened, I met a man in New York. We fell in love. I went back to New Orleans, where I was in graduate school, and he was in graduate school too. He came down to visit me, because I cared a whole lot about him and thought he cared a whole lot about me and I didn't want to have this thing that I didn't tell him. Also, I guess, I wanted to find out if I could live despite this horrible thing.

We had talked about getting married before that, but after I told him he didn't want to see me any more. He made me feel that, you know, that I had . . . well, he thought that I was a pretty rotten person because I had abandoned the baby. I knew he would not have felt that way if I had just told him I'd had an abortion, because I knew from things he had said that he didn't have that kind of an attitude toward people who had abortions.

**Q:** Did there come a time when you had an abortion later?

**A:** Yes, several years later, while I was in graduate school in New Orleans, I got pregnant again. By this time, having had sort of a strange kind of negative privilege of having a bad experience—you know, having had to make other decisions—I acted very quickly, and also. . . . Well, do you want to know the circumstances of that?

**Q:** Yes, please.

**A:** I found out I was pregnant and was frightened and didn't know what to do, because I couldn't just go and have an abortion. But I knew immediately that I wanted an abortion and I knew that it was illegal. The only thing I wanted to

do was find a way to do it as quickly and as safely as possible.

So I went to my gynecologist who told me, yes, that I was pregnant, and that I should have an abortion. . . . Well, he agreed that I should have an abortion, but refused to help me acquire one.

So, because I was studying anthropology, which is another strange kind of privilege, I went to the library right away to the section on folklore, folk medicine remedies. I looked up various folk remedies for unwanted pregnancies.

The books were in a cage in which they keep the rare books—books that they are afraid students will steal—and a significant page was torn from the book. But I managed to piece together enough information, so I bought an awful lot of quinine and castor oil which I took.

My parents were in town the following week end. I should mention, I guess, that my parents—I had always thought that my father, especially, was a supportive person and a liberal—sexually liberal, mainly, from his own behavior. I felt that he would be . . . as though he would be understanding about this, but at one point right after I had had this baby, in a moment of anger, he called me a slut. So, you know, I definitely didn't want to ask my family's advice or help.

I broke out in this terrible rash and my father, who is a doctor, a pediatrician, jokingly said it looked like I had measles which I knew wasn't true. I was pretty sure it was a reaction that I had to the drug.

On Monday they left and I went to class. On the way to class I remembered my father saying that it looked as though I had measles and recalled that there was a girl in the class I was going to who was very pregnant.

**MR. FORD:** May I just put on the record that this is all in Louisiana?

**THE WITNESS:** Yes.

**MR. FORD:** Unless this is going to be connected with New

York, I am going to have to say it is outside the scope.

I also want to enter an objection to the entire testimony about the adoptive procedures, which is completely irrelevant to the present issues in this case, and I would ask that a foundation be laid on this present testimony in the interest of time, as to whether we are going to get to New York, and if we are not going to get to New York I don't think the testimony is relevant.

**THE WITNESS:** I would like to say that to me it is most relevant, because the baby was adopted in New York and it's the only alternative I had to abortion.

**MR. FORD:** I am talking about this present abortion. Are you going to get to New York for this present abortion you are talking about?

**MS. KENNEDY:** The relevance of the testimony regarding the ordeal of women, which somehow seems to escape the attorneys for the defendants and intervenors, is that a woman undergoes ordeals that people concerned about the fetus seem inclined to ignore. A part of the rationale of the plaintiffs' case is that those experiences are relevant to whether or not one may be deprived of a simple surgical procedure to avoid such ordeals. Accordingly, the definition and outline of the ordeals is relevant to the issue of whether or not a woman should be forced into these alternative positions, and therefore whether or not it is a New York State episode, in the opinion of the plaintiffs, is not the only question involved.

**MR. LEWITTES:** Ms. Kennedy, just in answer to your few statements, it is clear to me that a motion to strike all the testimony relating to the problems of unwed mothers is proper here....

Clearly, the issue involved here is relatively simple, at least as far as scope, and that has to do with the constitutionality of the New York State abortion statute. That has not been at issue here today, unfortunately, and I think that

all the questions should be restricted to that, if this witness can so testify with regard to the effect of the New York State abortion statute. If she can not so testify as to the effect of this statute, then I would deem all her testimony irrelevant in this hearing.

MS. KENNEDY: A proper motion can be made at an appropriate time and the court shall have an opportunity to rule on it. I am sure the women of this state will be very interested in the court's ruling on that aspect of the case, and whether or not the issue is resolved in favor of the plaintiffs is one very important factor. So that whether or not the plaintiffs prevail on our contention is one of the things that we are interested to learn.

If you're right, of course, we will not prevail. That does not for a moment stop us from building our case and stating our position and finding out how completely irrelevant these courts think women's experiences, ordeals, feelings, are, and we will be very much better informed about the nature and the proceedings of our government and our courts, once this matter has been ruled on, and we shall not be surprised to learn that you are right and that there is no regard for women's ordeals and feelings.

MS. STEARNS: Let me add, with reference to the relevance of testimony with respect to unwed mothers, I believe the attorney for the intervening doctors at various points has raised with witnesses, both with women witnesses and with, I believe, Dr. Lyons,\* whether or not they have considered the option to abortion of having a child and giving it up for adoption; or, in reference to Reverend Lyons, whether or not he ever counseled women to have children and give them up for adoption.

Since we are raising constitutional questions, not only with respect to the vagueness of the law and how it affects

\* Dr. Lyons was the minister plaintiff in one of the companion cases.

the doctor, but more specifically and more importantly, how it directly affects the lives of women, we feel it is quite critical to consider all of these options, as they relate to women's lives, while we are considering the option of having an abortion or having a child.

MR. LEWITTES: But you left out one thing and that is the relevancy of how the statute affects these problems, but what statute are we talking about? We're simply talking about the New York State abortion statute.

Now, this witness is not competent to testify, since the New York State abortion statute obviously was not involved in her decision in this case. She wasn't even in the jurisdiction of the state of New York.

MS. KENNEDY: In the first place, the record has shown, if one wishes to be so hypertechnical, that the first pregnancy was disposed of, in the context of the options presented, in the state of New York. Clearly, based on the presumption of continuity, it could be assumed that the reference to the first experience would have been made on the occasion of the second pregnancy. I personally am not interested in being quite so technical, but even if there were a technical objection, it would not prevail in this instance, inasmuch as the second pregnancy was experienced against the background of a first pregnancy which was disposed of in the context of the New York State situation.

MR. LEWITTES: That's just the problem, because Ms. Kennedy is not bound by relevancy and that's unfortunate, it seems to me, and I think it should be.

MS. KENNEDY: It's quite unfortunate for women that the state of New York is paying people to support a religious doctrine. . . .

MR. LEWITTES: I am going to move to strike that statement. There is no testimony to that effect and you haven't come up with any.

MS. KENNEDY: . . . which has a criminal sanction and

which has caused all this pain and suffering that the women have testified to. Also, that the Attorney General's office and apparently other governmental offices have no concern for women's rights or women's feelings and have so indicated in this record, time and again. And I certainly think it relevant politically, if not legally, that the Attorney General is so quick to show his contempt for women and their experiences and ordeals.

MR. LEWITTES: That statement is just ridiculous.

THE WITNESS: I would like to make it abundantly clear that, but for the laws against abortion in New York, neither of these experiences would have occurred and. . . .

MR. FORD: I object.

MR. LEWITTES: I object.

MR. FORD: Put on the record she can't support that statement with her own testimony, because she received the counseling and the physical examination as to pregnancy in Alabama and she was counseled in Alabama, on her own testimony, to go to the home for unwed mothers in New York. There isn't a shred of testimony that she had to contend with the New York State abortion statute in making that decision. That decision was in Alabama. The pregnancy was in Spain. The second pregnancy is in Louisiana and she is dealing with Louisiana law in the second pregnancy.

THE WITNESS: I know that a man is not held responsible for the pregnancy of the woman, but I wonder if counsel would consider it significant at all that the conceiver on the male part of this second unwanted pregnancy was a resident in New York and the conception occurred there.

MS. BELENKY: Objection, it's not relevant.

MR. FORD: It has nothing to do with the abortion statute and a man is held responsible in paternity suits, so he isn't completely free if he is the conceiver and if the woman can so prove it.

THE WITNESS: Had I been able to get an abortion in New York, I certainly would have.

MS. STEARNS: The attorneys for the plaintiffs are doing their very best to bring to the court information on an issue which has never really been fully heard by courts before and which is a critical one. And it relates squarely to the constitutional rights of women with respect to this statute.

I realize that some of the technicalities that you raise may be somewhat of a problem, but as officers of the courts we are doing our very best to give as broad information and as meaningful information, in depth, as to exactly what the meaning of these statutes is and what their operation is on the lives of women in the state of New York.

We accept the fact you move to strike. I think it's only reasonable to go on and conclude this testimony, see exactly how it continues, see how it's relevant.

MR. FORD: I would like to make one comment, since everybody is making comments for the record here. If the attorneys for the plaintiffs are officers of the court and are interested in showing the problems of the women with the New York State abortion statute, they would attempt to produce witnesses to deal with the New York State statute for that purpose, so we can follow an orderly, legal procedure.

MS. KENNEDY: Lucy Wilcox is a resident of the state of New York and I think everyone's position has been indicated on the record. I certainly agree that the issue of whether or not this hypertechnical approach will prevail will be of very great interest to the plaintiffs.

MR. LEWITTES: The question is not the interest to the plaintiffs. The question here is how we can aid the court in reaching a determination with respect to the constitutionality of the state statute.

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vertise a particular viewpoint of a particular organization. This is a legal case before a court and let us stick to the issues that are framed within the complaint.

MS. KENNEDY: Let me make it absolutely clear for this record that my concern is for the interest of the plaintiffs. I regard this case as a very definite platform for exploring the extent of the legalized oppression of women and I personally don't, for one second, intend to lose sight of my objectives. That the defendants have no concern for those objectives is now quite apparent.

MR. LEWITTES: I didn't say that, I didn't say that at all. Let's not get personal as to what my feelings are here. . . .

MS. KENNEDY: I haven't suggested that you have said it.

MR. LEWITTES: . . . or what the Attorney General's feelings are.

**Q:** Would you continue, please?

**A:** I would like to say, before continuing, that I am incensed at the thought that, whoever is responsible for ruling on this case, would be more concerned about such petty technicalities than about the. . . .

MS. BELENKY: Objection, we are in a court of law.

MS. KENNEDY: Are we, indeed?

MR. LEWITTES: At least I feel we are.

### Examination by Ms. Stearns

**Q:** I think you were indicating that there was a dermatologist in your class?

**A:** Oh, yes . . . no, there was another woman who was pregnant in my class and so, thinking that if I did have German measles, I shouldn't expose her, I got off the streetcar and went to a medical center. I just looked under "pediatricians" and went into the office of one who, fortunately, was a woman.

I told her that I might have German measles, but also that I was pregnant and I had taken a lot of drugs to abort. She was compassionate, and said, "Well, it certainly might be German measles," and gave me a note to a dermatologist.

I then went to the dermatologist who, I suspected, had been contacted by her. He was also compassionate, and said he certainly couldn't say that it was *not* German measles and signed a note to that effect. Afterward, I was able to return to my own gynecologist, who put me in the hospital and then performed a D and C for which I was not charged because my father is a doctor. That method is the least traumatic type of abortion.

It seems I prevailed by pure privilege, up to the fact that I didn't even have to pay. Still, despite this, there were periods of mental anguish and also stigma—not like the stigma of having abandoned the child, but the stigma of having had an illegal abortion.

## SHOTGUN MARRIAGE (*Blanche Seidel*)

*Q: Do women's feelings go through changes during the course of pregnancy?*

*A: They do.*

*Q: What is generally the feeling at the conclusion of the pregnancy?*

*A: The general feeling at the conclusion of pregnancy is one of acceptance of the pregnancy, even in those women who sought abortion or considered abortion.*

DR. JOSEPH J. RICOTTA

The shotgun marriage is a classic sick joke. Here we have a shotgun marriage with the "shotgun" trained on the girl instead of the boy.

**Q:** What then occurred, briefly?

**A:** Well, the first thing that happened was I tried to find an abortionist, but since, in New York State, abortion is illegal and I wasn't a criminal and I didn't know any criminals, I had a hard time finding one. And the man was not extremely helpful, because he thought that having a child would be a wonderful thing and both of us would grow up real quick. But he wasn't very helpful in this, so I figured he probably wouldn't be helpful in taking care of a child.

Now, about the fourth month, I was positive that I was pregnant. I was frantic because none of my friends knew of an abortionist and I also didn't have any money. So I decided the only thing I could do was to go to Puerto Rico, about which I had heard rumors. It's a tragic thing, you go to Puerto Rico, Japan, and you get a legal abortion.

Well, I thought I'd better tell my mother and borrow the money immediately, because it was getting real late. I didn't know at that time that it was too late for this already. I feel that this is particularly relevant because, if I could have gotten an abortion, what's going to follow would never have happened to me.

One morning I told my mother I was pregnant. When I told her, she vomited and got very sick and frantic. I was near hysterical at that time from this unwanted pregnancy and I got a little frantic, too, and I sort of gave up at that moment.

When I realized that the one person I thought I could depend on couldn't help me, I just sort of completely broke down. The next thing I knew was that twenty-four hours later I was married to this guy who I didn't want to marry.

She had sort of somehow put in my head, "At least get married and then you can figure out what to do and you can try it." I was upset, because I knew this guy was pretty young also and that we were both not responsible enough to be parents. He was only about a year older than I was. Well, we got married and I took a full-time job and. . . .

not going to support me and I no longer wanted to stay with him. I no longer thought it was possible. It just didn't seem right that I was five months' pregnant and working full-time and he was sitting around.

So against the wishes of my family, I left him and I moved back into my mother's house. This precipitated a whole situation, because both my mother and the rest of my relatives had been really conditioned by this state's abortion laws and the laws sanctioning marriage to believe that any woman who would give up a child for adoption was sinful.

MR. LEWITTES: I object to that.

A: I got a lot of pressure from my family and from people around me to keep the child. Luckily, I had been seeing a psychologist who was very supportive of a decision I had made at that time to give the child up for adoption. He helped me through this, which was against the wishes of my family.

My mother disowned me, my father was dead, and there was a lot of internal hassling in the family and a lot of pressure on me. My mother said she would take the child and raise it, if this was a child I did not want, and my sister said she would take the child and raise it. I was sane enough at that point to know that would be impossible for me—in terms of emotionally having someone, whose values were not the same as mine, raise the child. Also, I didn't want to see that child around.

I had no feeling for my husband at this point, after the way he had treated me during the time we were living together. So I decided to give the child away and I started to scout around for adoption agencies.

I found one, the Louise Wise Agency, and I visited a social worker there several times. Every time I'd go to visit the social worker—she knew that I had wanted an abortion and that I had decided to give the child away—she would sit there and cry and tell me how sad it was that I had to do this.

I think this is relevant because this is all something I was forced into and I didn't want to do in the first place. If the abortion laws were different, I wouldn't find myself in this situation.

MR. LEWITTES: I object to that. Why don't we let the court decide the relevance of the witness' testimony?

### Examination by Florynce Kennedy

Q: Please proceed and do indicate any such feelings you might have had.

A: So this lady in the adoption agency would cry and I just found I couldn't go back there, because every time she'd cry I'd get even more hysterical, what with fighting off my parents—my mother, rather; my father was dead.

Q: Do I recall your testimony to have been that this was a psychologist who was crying?

A: No, this was a social worker.

Q: A social worker, a crying social worker at the Louise Wise Agency?

A: Yes. She put pressure on me to keep the child.

Q: Between tears?

A: Nobody, except one psychologist, was supporting my decision to give the child away. So I couldn't go back there, after about four or five times with her.

I decided I had to do something else and I found an old friend of the family who was a lawyer. I didn't really know him, but I asked him to help me. I said I had not enough money to deliver the child, the adoption agency would not have helped me pay the hospital expenses, and I asked him what could be done. He said he could find a set of adoptive parents who would take care of my hospital bills, but they wouldn't pay the doctor. They would just pay for my stay in the hospital. I thought that was better than nothing.

So when the time came, I went to the hospital. I did find a doctor who was willing to help me for much less money than his regular fee. He was taking me with delivery and post-partum care for \$400 which, at that time, was an enormous amount for me, since I could not get a job and had no other way of supporting myself.

My mother was paying off debts that my father left and I couldn't really depend on her for money, either. She was paying off a bankrupt store and twenty years of back taxes. So I eventually got into this hospital and, fortunately, had a very fast, easy delivery.

Then I had to meet again with the agency because, even though I was working through a lawyer, it had to be processed through a social agency—I don't know why. When I was allowed to leave the hospital, I went to the agency with the baby. It seemed everybody was late for this meeting where I was supposed to sign some papers.

By the way, in the hospital they put me in a room with mothers who were keeping their children and there was terrible confusion. If I wanted to see the child, they wouldn't let me see the child and then, at other times, they'd bring the child when I didn't ask for it. It seemed as if they were totally inconsiderate of the situation I was in, which I will say again was one that I did not want to be in, that I was forced into.

Everyone, as I said before, was late for this appointment at the agency. I was in a room with the child for about forty-five minutes, with two sets of crying parents and one crying husband, and eventually the social worker showed up and I signed the papers. The child was taken to a foster care home, I think, until the adoptive parents had finished signing their papers.

I went home after that. The hospital bills, thank goodness, were taken care of, but at that point I still had a lawyer's fee to pay and a doctor's fee to pay, because the adoptive parents didn't take care of that. So I found. . . .

**Q:** Did you return to school?

**A:** Yes, I tried to go back to school. I went back four days after the baby was born. The timing of the terms worked out very well. But I had a really bad time, because the people who had been my friends at school no longer would talk to me.

Nobody wanted to know what happened. It was as if I had done this—it was a really weird situation—it was as if I had done this terrible thing, and at the same time I knew it was a thing I didn't want to get into in the first place but had been forced into. Everybody acted as if nothing happened, but nobody would talk to me about it and there was no one I could discuss it with, and I just felt really alone.

I was in school, taking a full program, and I was also working. I was no longer living with my mother, because the pressures in her home were too much, so I was working about twenty-four hours a week and on week ends and in school, in order to pay off these debts which I didn't want in the first place.

After that term, I found it impossible to go back to school, since I had also lost my scholarship. So I left school at that point and I took a full-time job for a while. Since then I have been in and out of school and have not been able to finish school—mostly because of the money situation. I was unable to resume my scholarship status. This was a New York State Regent's scholarship, and after a leave of absence from the school the scholarship was automatically terminated.

# Abortion

## BLINDFOLDED IN WASHINGTON (*Joan Rossini*)

*I am near a state college and I do see a number of young girls with this problem, perhaps a few more than some of my colleagues who are not as handy to the state college.*

*I received twenty requests from my private practice for abortions. . . . in each instance I had a conference with the individual seeking abortion, expressed my own views, which are that I have never done and . . . do not feel that there is any real medical indication for abortion, *per se*. . . .*

JOSEPH J. RICOTTA, M.D.

The "protective" environment on campuses, which is structured to limit the freedom of women, becomes a nightmare of rejection and hypocrisy when the circumstance that supposedly justified all the oppression becomes an actuality. Women are often restricted by discriminatory curfew hours, limited week-end privileges, and/or enforced on-campus

residency. These restrictions seem to be somehow connected with protecting women from sexual encounters which might, lead to unwanted pregnancies. (Discrimination against young women who are married is also exhibited by the unequal housing facilities and scholarship money available to married women students, as compared with married men students.)

Confronted with an impacted wisdom tooth, an appendicitis attack, or such, the house mother, the school infirmary, or even the dean of women, can be very supportive. Medical attention can be financed, term papers can be deferred, and every effort will be made to prevent a disruption in a student's education. But if the worst happens, and a student actually becomes pregnant, she is not merely isolated, but threatened with expulsion and even off-campus medical facilities are hard to come by.

It is hard to imagine a time when a woman is in greater need of speedy, sympathetic medical attention than when she needs an abortion. This case describes in graphic terms the callous and even treacherous attitude of some gynecologists in campus communities. Most evidence suggests that this same attitude prevails in poor communities and Black communities, and wherever women are not well heeled and well connected. The following account demonstrates not just the rejecting, uncooperative attitude which characterizes the medical profession in these situations, but also a cruelty bordering on sadism. This college-town doctor adopted a technique frequently used by hospitals: refusal of treatment to a bleeding woman unless she implicates the one person who had tried to help her.

This abortion took place prior to the change in the Washington, D.C., law.

### Examination by Carol Lefcourt

**Q:** What do you do?

**A:** I am a painter and I work two days a week as an elementary school teacher.

**Q:** Are you married?

**A:** Yes, I am.

**Q:** How long?

**A:** I have been married three and a half years.

**Q:** Did you ever have an abortion?

**A:** Yes, I had an abortion in 1962 when I was nineteen years old.

**Q:** Could you tell us about that?

**A:** Yes. At the time I was in my third year at Vassar College in Poughkeepsie. I was a New York State resident, and I became pregnant and I wanted an abortion.

The reason I became pregnant was because there is no birth-control information given to young, unmarried women by their schools, and my information on contraceptives at that time had amounted to a lecture as an entering freshman. We were shown diagrams of the human body and were told by all the authorities from the various departments of the college that it would be better for us psychologically to remain virgins.

When I began having a sexual relationship, I knew from the beginning, of course, that I did not want to get pregnant. However, there was very little I could do to prevent it.

The college had a rule at that time—that. . . .

**MR. FORD:** I am going to enter an objection to this entire line of testimony as not relevant.

**THE WITNESS:** I beg your pardon?

**MS. SCHULDER:** You may continue. Go right ahead.

**A:** We were told that any woman who was not a virgin was not entitled to a college education.

Therefore, it was in my interest to protect myself from—and protect everyone else from—the knowledge that I was pregnant, as I did not want to jeopardize my education or my future.

I tried to get an abortion by finding out the name of someone that I could get one from, without having it known to the college authorities, since I didn't want to be expelled. There was ample precedent for this. Students had been expelled from the college for becoming pregnant.

I had used birth control, I think that's important to state—what I could get. What I could get in my possession at the time was a book from the library describing the rhythm method. I couldn't go to a drugstore. There was only one drugstore next to the campus. I couldn't go to a doctor. I couldn't take the chance of trusting any human being, except myself and the man that I was involved with. So I used the rhythm method and I got pregnant.

The first thing I learned when I found out I was pregnant was that, under the present policy at the college, nonvirgins were not entitled to an education. There had been an earlier policy at Vassar that, although there were public statements to the effect that you must be a virgin, pregnant women were sent from the college psychiatrist through the medical department and ended up at an abortionist. When the official pronouncement was handed down that henceforth students really had to be virgins, this was cancelled.

But I didn't have any other place to go, so I went to the college psychiatrist too. I told him I was pregnant and that I wanted an abortion. I thought that perhaps he might send me to the doctor who would send me to an abortionist, but he said that he couldn't do that. Instead, he offered to have me placed in an institution where I could bear a child and put it up for adoption, and cover up my college records with the statement that I had had a nervous breakdown. A year later I was to come back to college as though nothing had happened and take up where I had left off.

This was a special privilege that he was giving to me because he was supposed to turn me in and I was supposed to be expelled. I could see, you know, that he was trying to do the right thing as far as he could, but I had no intention of interrupting my education and spending nine months working to produce a baby that I did not want.

I said, "No, thank you," and when I left, he told me that I should not breathe a word of what had happened to anyone else on the campus, that he would do me another special favor and not put in my record the fact that I told him that I was pregnant. He was supposed to maintain records and said that if I breathed a word of this to anyone, it was possible that I would be expelled anyway.

So I left and then, through friends and friends of friends, I obtained the names of several abortionists that were possibilities. I had to decide which of these abortionists I was going to trust my life to.

One of them was . . . well, I called up Dr. Spencer, who is the Pennsylvania abortionist, and he could not do it at the time. He suggested another doctor who charged \$500, but he said he was a real doctor and would do a good job.

Through someone else I got the name of the . . . the man who had been the "official" Vassar College abortionist, a drunken doctor, who worked out of upstate New York. He charged \$300.

I knew a girl who had gone to him and when she had recovered consciousness from her abortion, she was lying on newspapers, and he was saying to her, "You little whore, I want to fuck you," and that was why he enjoyed. . . .

**MR. FORD:** I object to this, too, as complete hearsay. It is not relevant, either.

**A:** This was my state of mind at the time. That was the information that I had to go on to choose which of these doctors I was going to trust my life to.

The third one was a nurse in the Bronx, who, for \$50, would give me a knitting needle abortion and put me in a taxicab and send me to the hospital bleeding. Hopefully, I would arrive there still alive and get a hospital D and C for a started abortion.

If you arrive at a hospital bleeding, they will complete the abortion, but they won't start it. You have to go to a nurse and pay her \$50 to put a needle up your uterus and start it.

I chose the doctor that charged \$500, although I didn't have the money, because I felt that my life was at stake and I borrowed the money. This doctor was in Washington, D.C. The arrangement was to telephone him. We talked and he told me the code and where to meet him, and I met him behind a snack bar.

I was sitting in my car with my friend when this car pulled up. It was a long black limousine and it had three men in it. We had to exchange code sentences and I don't remember what they were. They took me into their car and blindfolded me, and I sat on the floor and they drove around for a long time until we stopped in front of a house.

They took the blindfold off, so that I could walk up the front steps. It was a clean apartment house—I don't know Washington—I don't know where it was. We went up inside and there was about a three-room apartment that was completely fitted up like an operating room in a hospital. They put me in a small room and got two other women. I had to wait there until everyone was gathered together.

This was on a Saturday that this happened. It was a weekend operation. Women—from what I'm told—come from all over the East Coast on Saturdays and Sundays.

Two other women were there, one of them an older woman who told me that she had three children and didn't want any more children. The other one. . . .

MR. FORD: I am going to object again and let it stand for the whole line of questioning, both as to irrelevancy and as

to hearsay, and also outside the scope of the issues in this case.

THE WITNESS: Are you kidding? If abortion were legal, would I be in Washington, blindfolded and taken to a grubby apartment?

MR. FORD: It is outside the issues of this case. . . .

THE WITNESS: The issue of this case is that I shouldn't be made to do that.

MR. FORD: . . . which is the constitutionality of the statute, which is a question of law.

MS. KENNEDY: The testimony has thus far and will continue to go to a woman's right to privacy, which is an issue raised and also a woman's right to practice her religion.

MS. SCHULDER: We now have the objections from the district attorney and from Mr. Ford's group of doctors. We will allow them to stand for this entire line, and I would appreciate it if our witnesses could continue without interruption along this line.

A: I was saying that there were two other women besides myself in this apartment. One of them told me that she was . . . that she had three children and that she did not want any more. The other one, who was brought in late, was a very young girl who had been picked up at the airport.

To get this abortion, I had to say that I was twenty-one years old—and I was not. I was nineteen. This other young girl had also obviously said that she was twenty-one and she was obviously a high school girl. She looked very, very young.

The three of us waited in one of the other rooms, which was a bedroom, and we were told that we could choose which of us would go first.

The younger girl said that she wanted to be first because she had to get back on a plane and go home. So she went out and the other woman and I waited. She was only gone for a few minutes when we heard a lot of screaming and hysteria from the other room.

The doctor had apparently asked her some questions and she had become hysterical. She was constantly saying, "Don't touch me, don't go near me! I want to go home!"

So the doctor came in and asked if perhaps the older woman or myself would like to speak to this girl. The older woman went out and tried to say to this girl, "Think about it, what's going to happen to you if you go home now?" But this girl didn't really hear a word that anyone said. She just went right on screaming, "Don't touch me, I want to go home, don't come near me!" Finally, they took her back to the airport. There was nothing . . . no one could talk to her.

At that time I felt that if it hadn't been this girl, it would have been me. I was also terrified, but all I could think of was that if I got hysterical they would send me home pregnant.

So the older woman said to me, "You know, if you want to go next, all right. If you don't want to go next, I will go next, I can see you're very scared." So I said, all right, she should go next and she did. She had her abortion and then afterward I had my abortion, and I was taken back to my car and I went back to New York.

That's not the end of the story, however, because after that I continued to bleed. I was told by the doctor that I would bleed for a few days afterward. But it didn't stop and I thought . . . I thought that maybe it was very serious because I had heard about women who had bled after abortions and had been too frightened to go to hospitals and had died. I kept wondering, you know, whether it was enough blood to take a chance on going to the hospital or whether, maybe, if I just waited it out, it would go away. But it didn't go away, so finally I decided that I would have to see a gynecologist about it and take the chance.

Another fear that was in my mind was that the gynecologist—that the abortionist, rather—had perhaps done something to my reproductive organs. That's another story that makes the press all the time, that if you have an abortion they really

take out all of your reproductive organs and you can never have a child, which is not what I wanted.

**MR. FORD:** I object to that testimony as calling for the operation of the witness' mind, which is not proper. These stories are hearsay.

**MS. SCHULDER:** That objection is noted for the record. Continue.

**A:** I called up the abortionist to tell him what had happened to me. This is very unusual. Usually an abortionist will not even speak to you after he's done the operation, but this one had given me his telephone number.

So I called him up and I told him that I was still bleeding and I was very, very frightened. He said, "All right, you can come back to Washington and I'll examine you."

But I didn't have the money to go back to Washington, and the only thing that was in my mind at the time was that, if this man had done something very wrong, perhaps he would kill me.

**MR. FORD:** The same objection.

**A:** What I did instead was . . . there was only one gynecologist in Poughkeepsie, New York, at the time. I looked him up in the phone book and I made an appointment with him and I told him that it was for a checkup.

So I went to him and I told him what my fears were. I told him that I'd had an abortion and was very frightened that I had not stopped bleeding. I wanted him to give me an examination and tell me that I was all right, and that I would be able to have children again.

What he said was . . . he said, "How dare you come in here like this?" He said, "Don't you know that now I have to call the police?" He said, "You're going to have to go to jail."

Well, at the time I cried and I begged him not to send me to jail. Finally, he said to me, "All right, I won't turn you over

to the police and you won't have to go to jail, just give me the name and the telephone number of the abortionist."

[Witness struggles to control herself]

**Q:** Do you want to stop for a few minutes?

**A:** No, because I am almost at the end. I'd rather just finish the story.

Well, at the time it had been about two months since I had gotten pregnant and I had not spoken to one person in those two months who hadn't threatened me or tried to manipulate me, make my decisions for me. The only person in this whole time who had asked me what I wanted to do was the abortionist and I wasn't going to turn him over to this gynecologist.

I told this doctor that. I also told him that there was nothing that he could do because there was no way that he could find out this man's name from me or his telephone number. So he let me go, he didn't turn me in to the police.

As I left, the last thing he said to me was, "You're trying to protect that abortionist, and I am a doctor and I have just examined you and I know that you were never pregnant. This man that you think so highly of, that you're trying to protect, just took your money and sent you home. You never were pregnant."

Now, that's the end of the story.

**Q:** Could you tell me, did that affect your friendships and your schooling, the fact of the illegality of the abortion?

**A:** Well, it affected my schooling. I mean, I almost flunked out that semester. It affected my schooling in another way, too, which was that I found it very hard to have any respect left for the people who had been involved on an administrative level in the college. I mean, the hypocrisy of the whole system, you know . . . I had lived through it and as far . . .

**MR. FORD:** Objection.

**A:** . . . as far as my friendships were concerned, there was

the very real fact that I had not really escaped. I mean, I was still alive, but my college education could still have been terminated at any moment, had one of my friends decided to turn me in.

MS. BELENKY: I object, I have a very strong objection to this as to the relevancy.

MR. FORD: My objection is the same, but also to the term of hypocrisy. There is no foundation for that.

A: I would like to explain that. Perhaps I shouldn't have used the word. What I mean is, a situation in which you're told that if you're pregnant you are going to be expelled, but then, under the table, you are offered an excuse of a leave of absence with an official explanation of nervous breakdown. That's my explanation of hypocrisy in a system which doesn't give you birth-control methods, then afterward refuses to send you to an abortionist. I call that hypocrisy.

Q: Since then, have you been using contraceptives? Were you able to find out afterward?

A: Well, right after that happened, I went to the Margaret Sanger Clinic. I gave them a false name and I told them I was married, because that's what you had to do. I don't know whether you still have to do it. At the time they would not give birth control to an unmarried woman. It was universal, almost, and perhaps it still is. At the moment I am using the pill.

Q: What are your feelings about that?

A: My feelings. . . .

MR. FORD: I object, the use of the pill is irrelevant here.

A: The reason that I am using the pill is not irrelevant, because it directly comes out of the fact that I had an abortion. The pill . . . there's been a lot of stories that it may be medically unsafe. However, I can not take the chance of using

something which is not unsafe, because if I became pregnant again I could not go through another abortion.

**Q:** Do you think the fact of the abortion affected your sexual relations?

**A:** At the time it did, because. . . .

**MR. FORD:** I object to that as irrelevant as well.

**MS. LEFCOURT:** Your objection has been put on for all questions.

**MR. FORD:** No, it was the line of questioning previously. There are new questions.

**MS. KENNEDY:** I would be happy to answer on the law. In our complaint, as a matter of law, we have alleged that the existence of the New York State abortion laws is, in part, unconstitutional because of the effect it has on the right of privacy, on First Amendment associations. Among those are questions of private, sexual, marital associations, and within that comes the whole concept of the chilling effect it has on those associations.

This was discussed in length with the judge in our original argument and will continue to be one of our legal points.

**MS. SCHULDER:** Go ahead.

**A:** At the time the relationship that had resulted in the pregnancy was definitely chilled by the fact that, although it was by mutual consent and the abortion was also by mutual consent, it was I who endured all the consequences of it when the gynecologist threatened to have me put in jail.

He didn't also threaten to have the father of the child put in jail, although the father of the child was half responsible for conception and half responsible for the decision on the abortion. The man that I was involved with could not possibly have had the same attitude as I did toward the experience that I had undergone.

**Q:** Did you know anything about legal abortions at that time?

**A:** I knew hardly anything. I didn't really know that they existed. The only thing I did know was that no one was going to help a single, unmarried woman.

**Q:** Were you in debt afterward?

**A:** Yes, the abortion cost me \$500. I didn't have any of it myself. It took me well over a year to pay it off.

**Q:** What is your religious training?

**A:** The first twelve years of my schooling was in Catholic schools.

**Q:** Did they teach you anything particularly about abortion and birth control?

**MR. FORD:** I object, it's not relevant.

**MS. SCHULDER:** You may answer.

**A:** Well, abortion was murder and birth control was almost as bad. That was the Catholic line.

**Q:** Are you still a Catholic?

**A:** No, I am not.

**Q:** Was that as a result of your experience?

**A:** Yes, it was. But not totally the abortion experience. It had to do with the attitude of the Catholic Church toward women, which I became more aware of as I grew older, but certainly the abortion was the culminating factor in my leaving the Catholic Church. I couldn't. . . .

**MR. FORD:** I object. Totally irrelevant. Beyond the scope, too.

**MS. LEFCOURT:** I would like to state that this goes to freedom of religion, practicing religion on the part of the plaintiffs, which is one of the constitutional issues we have stated in our complaint against the abortion laws.

**MS. SCHULDER:** Also, one of our major arguments in this case is the idea that the Catholic Church is trying to impose its religious dogma through the state criminal laws upon

people who might tend to disagree with the Catholic dogma.

We feel that that testimony is relevant to the First Amendment rights to practice religion without the establishment of a particular religion as state doctrine.

**MR. FORD:** There is nothing in the question or in the answer which is germane to the point you mentioned, so it's beyond the scope.

**MS. BELENKY:** I would like to interpose an objection on the same grounds that Mr. Ford has, the line of questioning.

**A:** I couldn't accept the fact that abortion was murder, and I realized that that attitude was in complete disagreement with the attitude of the church that I had been brought up in. It was such a large point that I just . . . I could not accept it and that was the reason.

- **MS. BELENKY:** I would like to object to the testimony of this witness as to whether or not this constitutes murder as irrelevant.

**A:** I said according to the Catholic Church it was murder. I said I could not accept that.

## PUERTO RICO—"LEARNING THE ROPES" (*Deborah Robinson*)

A woman who has had a previous abortion is better able to deal with the emotional as well as the financial circumstances, when the problem arises another time.

For all the women's clubs, labor unions, and business people purporting to cater to women, as of 1969 there was no fully publicized referral service for the masses of women in New York City. Among the few functioning referral services

was the Clergy Consultation Service, Bill Baird's Parent's Aid Society, and a few other organizations dedicated to abortion reform. Even an individual woman who told a friend about an abortionist was subject to arrest and criminal prosecution. Individuals connected with the referral groups were constantly being harassed and threatened.

According to Miss Kinny of the Association for the Study of Abortion,\* many women used to call, prior to the change in the New York law, to inquire about Puerto Rico, saying, "I know abortion is legal in Puerto Rico, but is there somewhere I could go for my abortion closer to home?" Actually, the law in Puerto Rico was almost identical to the old New York law. But, in interpretation and application, there was much more leeway. The quality of the facilities where abortions are performed in Puerto Rico run the gamut from places with tarantulas crawling on the walls (as reported by Dr. Natalie Shainess) † to hospital clinics and well-appointed doctors' offices.

The tendency of doctors to use the woman's plight to maximize what the traffic would bear is typical of the bootleg situation which arises when a criminal statute is widely dishonored. Although this woman was confronted by exorbitant demands, she held her ground and insisted she be given medical aid that was not completely inconsistent with her \$100-a-week salary.

### Examination by Florynce Kennedy

**Q:** What is your profession?

**A:** I am a free-lance writer.

**Q:** Have you ever had an abortion?

**A:** In 1963, in New York City, I discovered I was preg-

\* Association for the Study of Abortion, 120 West 57th Street, New York, N.Y. Telephone: CI 5-2360.

† See p. 125.

nant. I was not married and I knew I'd have to have an abortion. I didn't know quite what to do.

The first thing I did was go to a gynecologist, who was very well recommended by a friend, to have a pregnancy test. It took a couple of weeks for the results to be made known to me, and he told me I was indeed pregnant. I told him that I had no intention of having a baby, since I was not married and hadn't planned to have a baby and what should I do.

He said, "Well, don't worry, you're resourceful, you'll find something." I said, "You must . . . I am not the first person who ever came to you and wanted to have an abortion. You must help me, you must give me the name of a doctor." But he refused and got very upset. He didn't want to pursue the conversation, he just said, "Go away. Come back when it's over and we'll put you on the pill or something."

**MR. FORD:** Would you enter an objection on the record for me on this hearsay testimony?

**Q:** What was your emotional condition at the time?

**A:** Close to hysteria. I knew I had to have an abortion and I didn't know where to get one. The doctor that I went to, whom I thought would be understanding of my situation, was not. He just sent me out again.

**Q:** Did you attempt to make your emotional state clear to the doctor?

**A:** There is no doubt that he knew my emotional state. I was quite agitated. I said to him, "You must help me." He said, "I can't, you know, it's against the law. There is nothing I could do for you, but you'll find something."

**Q:** Did he offer to refer you to a psychiatrist to make some kind of judgment as to what your emotional condition was at the time?

**A:** No.

**Q:** When he turned you away, what did you do then? Before I ask you that, did he seem afraid?

MR. FORD: I object to that.

MS. KENNEDY: They are objecting because you are drawing a conclusion about his emotional state.

THE WITNESS: Could I answer that?

MR. LEWITTES: Yes.

**A:** He seemed quite afraid when I was pushing the matter, when I said, "You must give me the name of a doctor. I am sure you know the name of a medically competent abortionist."

I'm sure you will object to this, but it seemed to me that he was terrified. He acted as though I was pushing him to say something that he didn't want to say. I really felt that he didn't trust me, that perhaps he thought I was a government agent or that I could get him into trouble. I mean, he certainly terminated all conversations that I initiated.

**Q:** As a result, he made no attempt to determine whether or not your case could arguably come within the New York State statute? He didn't ask you any questions as to your emotional state? He didn't ask you any questions as to your physical state, to see whether or not an abortion would be necessary to preserve your life in the terms of the New York State statute?

**A:** No, he tried very fast to send me out of the office with the assurance that I would be able to take care of myself, but there was nothing he could do . . . that I should be understanding enough to understand his position.

**Q:** What did you do after that?

**A:** I had, through the grapevine, always known that there was this famous East Coast abortionist named Dr. Robert Spencer in Ashland, Pennsylvania. So I picked up the phone and got the Ashland operator, and got the number of Doctor Spencer and called him.

Dr. Spencer told me that at this time he was not in practice. I think he said there was nothing he could do and I hung up. I

I gave him the money, I signed the three blank pieces of paper. He examined me manually and told me, yes, indeed, I was pregnant. He told me, however, that he was not going to do a D and C, a dilation and curettage. Instead, he had a new method which was considerably better and it was an injection in my stomach.

I knew enough about abortion and medicine to know that the established procedure up to three months of pregnancy is a dilation and curettage, and I was terrified when this man said that he was going to inject a hypodermic needle into my stomach.

We had an argument, and he said, "Well, this is a new method," and I either wanted an abortion or I didn't want the abortion and I should make up my mind. He concluded I was too nervous and he told me to sleep over again in Baltimore and come back the next day. I did so.

The next day he gave me an injection of what he said was sodium pentathol, and again explained that this was a very new method that he was working on and that he had great success with it and I shouldn't object to the hypodermic.

I was terrified and he noticed my tension. Luckily for me, he said, "Look, I don't think you are right for my method and I don't think you are pregnant enough. Here, I'll give you your money back, go back to New York City. Why don't you come back again in a couple of months and I will be able to take care of you."

Later, I discovered that this doctor was probably experimenting with the saline method, a method that is not recommended for women who are under their fifth month in pregnancy.

**Q:** When you left the Baltimore doctor, what did you do then?

**A:** I came back to New York and began to call friends of mine whom I thought would be knowledgeable . . . you know, my more sophisticated friends who might know others who'd had abortions recently and knew of a competent doctor.

A good friend of mine told me that a friend of hers, whom I also knew, had had an abortion. However, this third friend did not want to talk about it specifically because in 1963 few women dared to share their abortion experiences with each other.

However, through the intermediary who was my close friend, I learned the name of a doctor in Puerto Rico who was supposed to be quite competent, had his own clinic, and was kind to women. He charged a reasonable fee—\$300.

I was given all the specifics down to what to pack in my overnight case—a toothbrush, a change of underwear. I was told to wear low-heeled shoes and to take along some Modess, because I could not use Tampax afterward. I was told not to eat anything before I went to see the doctor and various specifics like that.

I was also instructed as to the convenient flight to take to San Juan. The specific flight that was recommended to me was a week-end flight, which would mean I would not lose any time from work. I could leave Friday evening and be back to work on Monday morning.

I followed the instructions and presented myself at this clinic of the recommended doctor. He was surprised to see me, because he hadn't been in practice for about six months. He examined me, though, and did confirm that I was pregnant, which I knew. I was very close to the third month cut-off mark at that time.

He said he couldn't help me. I cried, and said, "You have to help me. I came all the way down here and I must have an abortion."

He recommended another doctor in the San Turce area of San Juan. I went to the other doctor's clinic. When it was my turn to be called in, he said, "How much money do you have?" I said, "Well, \$300, that's what I was told to bring for the other doctor."

He said, "I'm sorry, I charge \$700. You have to go away. I can't be dealing with you people who come in off the street

with \$300." At that point I cried, and said, "I am not going to leave your office until I have an abortion."

He recognized my seriousness and also that I didn't have more money, so he performed the abortion for \$300.

**Q:** Including the air fare and the amount of money that you had to spend in staying in Puerto Rico, all of those expenses, approximately how much do you believe the abortion ultimately cost you?

**A:** Five hundred for Puerto Rico, \$25 for the pregnancy test, \$15 each for two visits to the gynecologist. I can't calculate the trip to Baltimore, I don't remember. I remember going down to Baltimore, but I don't remember what the plane fare was and the two nights in a very inexpensive hotel.

**Q:** So it cost you roughly between \$500 and \$600 to get your abortion?

**A:** Oh, probably \$700. Yes, with the telephone calls, \$700 would be a conservative estimate.

**Q:** Had you not been able to get the abortion, would you have been able to stay in your job? What would have happened to your professional career?

**MS. BELENKY:** Objection.

**A:** It would have been the end of my life as I had constructed it. I couldn't possibly. . . .

**MR. LEWITTES:** Objection.

**A:** I couldn't possibly cope with an illegitimate child.

**MR. FORD:** Objection.

**Q:** Did you have enough money at that point, so that if you had had the child you could have hired someone to take care of it and continued your career?

**A:** At that point I wasn't earning more than \$100 a week. I don't see how I could have possibly continued to work full-time with a baby and without a husband. I couldn't have pos-

sibly done it. I guess . . . I don't know . . . I would have applied for welfare.

**Q:** Could you tell me about your next experience?

**A:** Yes, in 1967 I was working as a television news writer and I discovered I was pregnant. I should say, by the way, that when I originally was hired I had to fill out a very lengthy employment application which listed all of my previous work experience. It also had on it a rather unusual sentence, I thought. The sentence was: "Have you ever had any illegal operations?" Figuring that if you answer "yes," you might not get hired, I of course wrote "no."

**Q:** Did anyone explain to you at the time why they had the question on the form?

**A:** No, I have always wondered.

MR. LEWITTES: I object, it is irrelevant.

**Q:** Would you go on?

**A:** Yes. Discovering I was pregnant in 1967 was very different from my experience in 1963, because I knew the name of an abortionist who was competent. I didn't have to go through the harrowing experience of making contact with a doctor, and wondering if I would make that contact before the end of the third month which I knew was the cut-off time for a relatively safe and simple abortion.

I approached my next abortion with great competence. I didn't stop at all to worry about finding help from a gynecologist in New York State—New York City.

I just called the name . . . called the doctor in San Juan and made the appointment, took the Friday afternoon flight, got there on Saturday, went to his office and said, "I don't know if you remember me, but I remember you."

He said, "Oh, well, things are very different now. I don't know what you paid in 1963, but now my price is \$700, \$800, \$900."

I said, "Come on, Doctor, I have \$350 with me and that's

what I am going to pay for my abortion." He said, "It's very dangerous now, we have a lot of problems with the police now." I said, "You will do it for me, won't you?"

He agreed and I had a very easy abortion this time. His method had improved considerably over the years. When I had seen him before he used the overnight method, where you dilate that night and you scrape the next day. By this time, in 1967, he had a very simple half-hour method of dilation and curettage right there on the spot with a local anesthetic.

I got up from the operating table half an hour later, and I felt wonderful. I think I stayed over one night in San Juan, figuring I had gotten down this far. I returned to New York the next day and was back at work on Monday.

### Examination by Ms. Belenky

**Q:** In the 1963 abortion that you described, which resulted in abortion in Puerto Rico, I believe you said you first consulted a New York gynecologist?

**A:** Yes.

**Q:** Did he make any attempt at all, did he examine you medically?

**A:** No, he did a specific pregnancy examination.

**Q:** And that is all?

**A:** That is all.

**MS. BELENKY:** I have no further questions.

**THE WITNESS:** I would like to say something . . . about the particular gynecologist. He encouraged me to come back to him after I had taken care of my own problem and I did so. He pronounced me medically sound and clean and not pregnant any more and said it had been quite a fine abortion.

### Examination by Mr. Ford

**Q:** Did you ever consider placing a child for adoption in your pregnancies?

**A:** No, I would never consider placing a child of mine for adoption. I would think it would be a cruel and inhuman thing to do to a child.

**Q:** Have you ever come in contact with adopted children?

**A:** Yes.

**Q:** Would you give us instances where this thought of yours might have been borne out, or is this something you feel?

**A:** I personally feel that one brings a child into this world. . . .

**Q:** Do you have an instance?

**A:** I am answering your question. I personally feel that to bring a child into this world is a fantastic human responsibility that should only be carried out when a man and woman together desire a child and are willing to take full responsibility for that child's upbringing.

### DR. SPENCER'S ABORTION CLINIC IN ASHLAND, PENNSYLVANIA (*Mimi Sharman*)

**MR. FORD:** *From your experience as a doctor and in your association with other doctors and gynecologists-obstetricians, can you state whether they have any qualifications to judge socioeconomic considerations with respect to abortion and the quality of life, as doctors?*

**GEORGE J. LAWRENCE, M.D., (expert for intervenors):** *As doctors, I'd say no. I think that when it comes to aborting or any other aspect of medical care, the considerations of economics or social considera-*

*tions are not medical considerations and they should not enter into medical decisions.*

Dr. Robert Douglas Spencer has been regarded as a saint by many women desperate with unwanted pregnancies. It has been estimated that 30,000 abortions were performed in his Ashland, Pennsylvania, clinic, which closed upon his death in March, 1969.

In "Dr. Spencer, 1889-1969: Last Trip to Ashland,"\* Susan Brownmiller describes a trip arranged by Dr. Nathan H. Rappaport, who had spent many years in prison as a result of convictions for performing abortions. However, Dr. Spencer's name was known to Ms. Brownmiller before her trip to Ashland. A painter friend, who had had a successful abortion, had reported "with wonder" that Spencer was "a kindly old man."

His clinic was spotless. He had a nurse and an attendant. She had slept over at the clinic and had met some other girls who were in a similar plight. The next day when she departed he had given her an assortment of pills to ward off infection and build up her strength. He seemed concerned about her, downright fatherly. He didn't make her think she had done something wrong. The operation hadn't caused her much pain, and, the biggest wonder of all, it was only \$50.

As the article put it:

... going to Spencer meant deliverance, it was as simple as that. Going to Spencer meant taking an alternative that the culture was doing its damnedest to hide or distort. The public image of an abortionist, through books, plays, movies, articles, or whatever, was of an evil, leering, drunken, perverted butcher at worst, and a cold mysterious money-hungry Park Avenue price-gouger at best. And then there was Spencer with his clinic on the main street of a small American town, who charged \$50, who believed in abortions, and who was

\* *Village Voice*, January 30, 1969. Ms. Brownmiller's article was an exhibit in the women's case.

kind. Knowing about Spencer in Ashland was one irrefutable piece in the logic which led one to the conclusion that the culture was capable of the big lie.

Ms. Brownmiller painted an interesting word portrait of the doctor:

... He was a committed atheist and free-thinker who often pressed his literature into the hands of the girls along with the antibiotics and vitamin pills. He had gotten into abortion work during the 1920s through the supplication of the miners' wives in the Pennsylvania coal country, and his work for the miners—he was a pioneer in the technique of bronchoscopy—won him a heavy workmen's compensation caseload and, some said, the protection of the United Mine Workers during the years when the protection of the mine workers was something that counted.

Ashland, Pennsylvania. Principal products: coal, home-made wine, and abortions. ... The town of Ashland is in some parts as narrow as the width of two streets. One of those streets is Centre Street, which is also a state highway. For some romantic reason I'd pictured Spencer's clinic as a rambling, gabled mansion with a front porch. It was, instead, a very ordinary three-story brick-face structure, flat, characterless, and attached on both sides to similar-looking units.

... He sat in a rocker with what looked like a bear rug slung over his knees. He hardly looked capable of the energy required to attend to three or four abortions a day, which was his current schedule. (In his heyday, he had handled 10 to 11 patients.)

... The interests of the man were evident in his study. Books of every description, some still in their mail-order wrappings, lined the walls and were stacked on tables, fighting for space with the mementoes of his travels: large chunks of mineral rocks, strange and beautiful Indian masks, a blow gun, and a fine collection of rifles.

Dr. Spencer apparently combined the very best qualities of a great physician: a deep dedication to science and scholarship, an absence of greed (the highest figure mentioned for his

performing abortions was \$200), and a truly humane concern for his patients' suffering. On how he began:

Trying our best to pin him down to his very first abortion, we discovered that there really was no such thing as a first abortion, a conscious decision to break the law, with trumpets. He had gotten requests from some local women, and he had obliged. "But why," I persisted, "did you oblige? Most other doctors don't. Why were you different? Why did you do abortions for women?" He rocked back and forth in his chair. "Because," he said slowly, "I could see their point of view."

There were stretches when Dr. Spencer had had to board up the clinic and go into retirement. There was one reported occasion of a death on his operating table from a reaction to the anesthesia. And, then, "there was a trial and there was, miraculously, an acquittal."

How did he explain his remarkable record of longevity in a career which is usually marked by the law crashing down on the practitioner's head?

... He said thoughtfully, "I've been here since 1919. I daresay I've helped out half the town. Even on the abortion end, there is probably one of my patients related to a family in half of the town. I think most of the town would stand up for me."

#### Examination by Florynce Kennedy

**Q:** Could you tell me what your profession is?

**A:** I am a journalist.

**Q:** Have you ever had an abortion?

**A:** Yes, I have.

**Q:** Could you explain the circumstances of it?

**A:** Well, I was nineteen at the time and a student in college and I became pregnant almost . . . well, almost completely unknowingly, because I had used birth-control devices—a

foam device which I was told was safe. But I was not told that they are only 92 per cent safe and I came into that eight per cent. It seemed so horribly unjust, because I had been careful and here I was pregnant and in a lot of ways I refused to believe it.

First I went to St. Vincent's, since I lived in the neighborhood, and a woman doctor examined me. She said that I was pregnant and gave me some tranquilizers, because I was quite hysterical.

Then I began contacting friends to try to find an abortionist and no one really knew of one. But a friend—not actually a friend, but kind of a local physician whom people in the neighborhood knew—gave me a series of tests to determine whether or not I was pregnant.

The first test was a pill that I would take and if I was not pregnant, in twenty-four hours I would get my period. So there were these agonizing twenty-four hours, where every moment you waited for a cramp and, of course, no cramp came and no period came. Then there was a horrible feeling that "I can't be pregnant."

Next the doctor gave me an injection and if, within twenty-four hours again, I got my period, I wouldn't be pregnant. I had two injections and there was no period. I was quite pregnant, and I took a rabbit test and that confirmed it.

I really didn't know what to do, because I wasn't married and I was living on my own, much against my family's objections. And I couldn't . . . we couldn't go to my family. I couldn't go to anyone. The young man did not want to marry me, although, very unwisely at the time, I wanted to marry him simply because it didn't seem likely I could get an abortion, and I wanted to give the child some kind of a family.

I think that was unwise in retrospect, because if we had married. . . . I had come from a broken home and I was an unwanted child, and I really don't think one should bring children up under those circumstances.

At any rate, I didn't know what to do and I tried every home remedy one could possibly try to abort. A friend told me that if you drank lots of gin that that was an abortive. So I took . . . I mean, I can't even describe how much gin I took and how sick I was from it. Then people told me that nutmeg was an abortive, so I took nutmeg in intense quantities and mustard baths, and nothing happened.

**Q:** Had someone given you pills or had you sought that from anyone else?

**A:** Yes, this local physician finally gave me some pills. He said they were for migraine headaches and if I took them in very, very large quantities that they would have an abortive effect.

I took an intense overdose and I became deaf for twelve hours. I thought I was going to die, but I did not know who to go to and I was even too afraid to call a doctor or anyone to come and help me. I was too terrified, so I just lay there until it went away. It finally did go away and, you know, I hadn't been to school maybe in a month or six weeks and not out of bed . . . nothing.

Finally, a friend of my family's, one of the young people I had told about it, told me about a Dr. Spencer in Ashland, Pennsylvania, who seems to have been the person that saved so many people's lives.

I went down there just short of three months' pregnant. I remember driving through the coal-mine territory down there and thinking, "Maybe I'll die," because there are all these kind of myths about abortions . . . that you will go to a butcher.

When I got there it was a clinic. It was so reassuring to see a real clinic and a real doctor, and someone who was not a butcher and had the equipment. For the first time in nearly three months, you know, I breathed some kind of relief. In two days it was over and I was able to resume my life.

**Q:** Are you now employing any form of birth control?

**A:** Yes, I am. I take pills despite the fact that there is a

large incidence of diabetes in my family, and my grandfather died from diabetes. But I refuse to go off them because of the great fear of pregnancy, and because I don't feel at this point financially or emotionally competent to have children.

MS. KENNEDY: That is all.

#### Examination by Ms. Stearns

**Q:** Now, are you religious?

**A:** No, I am not.

**Q:** Do you feel that you are being prevented from availing yourself of a medical or surgical procedure because of religious sanctions, which have been institutionalized into statutory law?

**MR. LEWITTES:** I object to that as being irrelevant and because it is a leading question.

**A:** Well, yes, I do. I feel the religious beliefs of some people who have a large lobby in Albany are preventing me from practicing my very private life. I can tell you that in some ways it does interfere with my health, because if abortions were legal I would go off birth-control pills.

#### LONDON BEFORE THE NEW LAW (*Liz Barnett*)

I.U.D., *in situ* to the contrary notwithstanding, this witness became pregnant in England, in the 1950s, prior to the liberalization of the abortion laws there.

The preceding witness, who had gone to Dr. Spencer, had become pregnant while using the "foam." Others who at-

tended meetings or who were plaintiffs in the case had become pregnant while using: the diaphragm, the pill, and, of course, the rhythm method.

The drug companies and makers of contraceptive devices, all multimillion-dollar businesses, have never been subjected to the consistent attacks that they deserve; nor have they been held liable, to any substantial degree, for the failure of their products. A drug company that advertises a contraceptive should be held liable for any failure of its product. As women begin to recognize the need for funding women's institutions, a likely area to approach would be these companies that spend—or rather waste—millions in advertising and public relations.

The law in England, at the time referred to by this witness, was restrictive and comparable to the New York law prior to 1970. (England's liberalized law is similar to the 1970 New York law.) When Dr. Spencer was interviewed by Susan Brownmiller, he was asked what he thought of attempts to liberalize abortion laws.

Spencer told us that he was following with keen interest the recent attempts to liberalize abortion laws in several states. He himself had written Governor Shafer of Pennsylvania. "I told him that most of our laws are from the English," he said spiritedly, "so why don't we go to work and copy the one they just passed?"

#### Examination by Carol Lefcourt

**Q:** Now, have you ever had an abortion?

**A:** Yes, I have, I have had two.

**Q:** Could you tell us the facts and circumstances surrounding them?

**A:** I have had both a spontaneous and an induced abortion. I would like to comment that I find it somewhat ironic and amusing that considerable concern has been manifested

about the fetus which I lost deliberately, whereas no such concern is generally manifested with respect to the fetus that I lost accidentally. I find this difficult to understand, that such a distinction is made between these two particular fetuses, neither of which was of much interest to me.

The spontaneous abortion occurred after I became pregnant with an I.U.D., *in situ*, Lippes, loop-size "C." The induced abortion occurred ten years ago in England, prior to the passage of England's somewhat more liberal current abortion law.

I went to two midwives, one of whom stretched me on her kitchen floor. I went to several physicians who refused me. I finally went to a man who said he was a retired gynecologist—I don't know what he was—who gave me a general anesthetic, with ether, in his apartment.

I concluded the episode with nine days in a London hospital, a perforated uterus, peritonitis,\* and eight shots of penicillin, every day, for nine days. I didn't even know at that time that, according to medical experts, this is perhaps the most dangerous complication from an induced abortion—a perforated uterus.

Just one further comment which might be of interest at this gathering: On my arrival in the hospital, the first thing I did was to ask for a priest, so I could make my confession. I was a high-church Episcopalian at the time and all they could produce was a low-church Episcopalian who didn't want to hear my confession, but would be glad to talk to me.

I told him I was feeling guilty and he immediately launched into a consoling talk in which he explained that I undoubtedly had followed the wiser of the courses open to me, and that it was certainly better to have rid myself of this fetus and not interrupt my education and my career. I was soon to be married and it would have been very disruptive all around.

\* Peritonitis is very serious and can be fatal.

I was puzzled by his reaction because I was not feeling the least bit guilty about the abortion. It had never occurred to me to feel guilty about the abortion. I was raised in a very puritanical family, so I was feeling very guilty about the sex act which had led to the pregnancy.

I felt nothing whatsoever about the abortion.

### JAPAN (*Sheila Raskin*)

In Japan, and other countries where abortions are openly, freely, and humanely performed, there is much less fear and anxiety about when the abortion procedure may be safely undertaken. Where doctors are motivated to perform the abortions and where no penal laws inhibit them, the methods of terminating unwanted pregnancies proliferate and safe remedies are available at almost any stage of a pregnancy.

That a country which prides itself upon its scientific advancement must send a citizen half way around the world for a medical procedure is evidence of the irrationality that abounds where women are concerned.

The following account is given by a woman who, because of improper diagnosis and other delays, was between three and five months when she was finally aborted.

### Examination by Florynce Kennedy

**Q:** Would you indicate for the record the nature of your work?

**A:** I am an editorial assistant.

**Q:** Did there come a time when you found yourself pregnant?

**A:** Yes, there did.

**Q:** Would you indicate in your own words the circumstances of that situation?

**A:** This took place earlier this year, and the first indication that I had that there was anything abnormal was when I awakened in the middle of the night with severe bleeding, about the time of my menstrual period.

I really . . . I did not suspect that this was a pregnancy at the time, and I went to a general practitioner who had been recommended by a friend. He examined me and said that he suspected that what I had was a fibroid tumor in one of my ovaries. He said if I didn't have a regular period a month from the time that I saw him I should return, but that I shouldn't be overly concerned, that it was a matter—it would probably be a matter—of minor surgery.

So I waited for a month and I experienced light bleeding. Then I returned to him, and he said, "Well, I think you should have a pregnancy test." I did submit to that and two days later I found that it was positive. Then I went to see a gynecologist who told me that I was three months pregnant, which was, you know, a little bit difficult for me to accept since it should have been only six weeks, according to my body.

**MR. FORD:** I am going to object to conversations with the gynecologist as hearsay.

**MS. KENNEDY:** The objection is noted. Please continue.

**A:** I told him at that time that I would be desirous of getting an abortion. I did not want to have the child if I was pregnant. He told me that I would have to go to Japan if I wanted to obtain an abortion legally at three months.

So I decided to consult another gynecologist, which I did. This one informed me that my uterus was very large for the time . . . the amount of time that I should have been pregnant, according to the various tests that I had. He said that he suspected that either I was carrying twins or had a hydatiti-

form mole,\* I believe, and that I would have to have a series of other tests to decide which of these things was going on.

I did have a series of blood tests. They checked for hormones—the presence of "x" amount of hormones in the blood. It was higher than that of a normal pregnancy at that time, but it was borderline. So he could not diagnose whether it was a pregnancy or the mole.

He suggested that I see another gynecologist who specialized in moles and I did see this man. He suggested that I be admitted to the New York University Hospital for further diagnostic tests. So I checked in there about three days later. I was seen there by an intern, a woman, who said that she was fairly certain that I was pregnant.

MR. FORD: Note the hearsay objection.

MS. KENNEDY: (to the court reporter) In case the person reading the first part of the record can't read, you can note them whenever he indicates he would like them noted.

A: The intern said that she was certain that I was pregnant, and I had a number of internals, and some nurses came into my room with a machine which detects fetal heartbeat. The intern told me that she was going to find the heartbeat, but she was unsuccessful. She once again reassured me that I was, indeed, pregnant and it was my responsibility to bear the child. I told her I wasn't interested.

The next morning—I was there for one night—I had an x-ray. It was . . . it came up positive. There was a fetus in my body, whatever it is at that stage, and I was summarily dismissed from the hospital. They told me there was nothing they could do for me.

At that time I was very frightened that the x-ray—you know, assuming that I had to go through with the pregnancy—that the x-ray might have harmed the child. As I said, I

\* A cyst, filled with fluid, sometimes found in various parts of the body.

had decided not to go through with the pregnancy, but in any case that was just an additional worry.

I went back to one of the gynecologists whom I had seen previously and he said that there was really nothing that could be done for me in New York State, and that I might as well think about going elsewhere or getting an illegal abortion.

So then I tried a number of things. I went to the Clergy-men's Referral Service. They informed me that in order to get a legal abortion, which I would have preferred, I would have to go to England for a Caesarean section. I didn't wish to do that, so then I went to Boston to a man there who refers women to abortionists in whatever area they are from. He gave me a list of five names to telephone.

I called these gentlemen and I was refused—no one would see me. Four of them wouldn't see me and the fifth asked me to come to his office. I went there. He was in geriatrics. The office was full of old people. It was very dark and unpleasant. I had to give code names to all of these doctors. It was slightly dehumanizing. This man spoke to me a little, and he said, "Well, I am afraid there is nothing I can do for you. It's too late, I don't want to take the risk."

So I went back to my gynecologist who was kind enough to set me up in Japan. I was very lucky because I was able to borrow the money and it was very, very expensive to go there.

When I arrived, everything went very smoothly. It was a very pleasant, warm kind of an experience. The doctors were humane. I had four doctors, I was in a clinic.

Everything, as I said, went very smoothly. I didn't feel like a criminal. It was just very relaxed and people treated me like a human being.

I'd just like to stress the difference that I felt from the way that I was treated here, as if I had no feelings and . . .

**MR. FORD:** I am going to object to these characterizations. They are calling for conclusions of the witness' mind.

MS. KENNEDY: As to her feelings, let the record note. Go right ahead, please.

A: I guess that's really just about it.

Q: Would you indicate for the record the expenses, as well as you recall them, for the trip to Japan?

A: It was just a little under \$3,000. Well, that's including the care I received at the New York University Hospital. The trip to Japan itself was about \$2,600. I took a friend, you know, because I felt that I couldn't quite handle all of the details myself.

Q: Would you indicate what your religion is?

A: I was raised. . . .

MR. FORD: I object to the question as not relevant.

Q: Proceed, please.

A: I was raised in a Reform Jewish tradition.

Q: Is it your opinion, having had this experience, that your religious persuasion would not have been in conflict with your rights medically, had it not been for the New York State abortion laws?

MS. BELENKY: Objection.

MR. FORD: I object on two grounds—not relevant, and it calls for a conclusion of the witness' mind. There is no foundation laid to qualify the witness to make a religious determination of that kind.

Q: Proceed.

A: I don't believe there was any conflict.

Q: So that, in your opinion, were the limitations that you find yourself confronted with the result of the imposition of religious beliefs which you do not share?

MR. FORD: I object to that as completely irrelevant—no foundation laid, and the witness is not qualified to answer.

**A:** I would say, to a large extent, yes.

**Q:** Were there any further statements you wished to make for the record?

**A:** Just one short one, and that is I feel that by bearing this child I could easily have almost destroyed three lives.

**MR. FORD:** I object to that.

**A:** . . . that of the child, that of the father, and my own because I had other plans.

**MS. KENNEDY:** He is very nervous and he has to put each of these objections on separately, so just interrupt. He is always interrupting. Did you want to say something on your objection or did you just want to interrupt?

**MR. FORD:** Yes, I would like to say something on my objection. I object to what the witness feels, and to the statements she made for which no foundation has been laid as to the number of lives involved or anything else.

**MS. KENNEDY:** I object to any repetitious statement on this point. You have already indicated this on three different occasions, breaking the continuity of this deposition and the testimony. You are, after all, an "intervenor," but I hope you won't take that position too seriously.

Now I am going to move in this court for an exclusion of the intervenors on the ground of disruptions beyond any reasonable procedural position. You have no business in the case, you are not entitled to be in this case, and I am simply not going to have my witness intimidated by these continual interruptions.

**MR. FORD:** Simply continue to note my objection. Each time I did object, she was in a different area. Now she is in her feelings about the number of lives. Previously she was giving religious opinions and religious doctrine opinions, and in each case there has been no foundation at all for her qualifications to give any of those replies.

**Q:** (to the witness) Now, can you complete your statement, if you remember where you were?

**A:** Well, what I wanted to say was that I am interested in a career. I felt that that would severely interfere, if not end it entirely. And neither of the parties involved—myself and the father—had plans for marriage and the raising of a family in mind at the time. Assuming that I had had the child and married, it's quite possible that it would have been very detrimental to the child's welfare if at one point in the future I had said to that child, "It's because of you that all of this misery that the three of us are experiencing ever came to pass." You know, I felt I had to consider that, and that the state of New York was preventing me from making those decisions and from acting within my conscience.

## SPONTANEOUS ABORTION (*Daisy Marks*)

The gynecologist (ever ready to accept a buck for treatment of a vaginal disorder or hysterectomy and, in many cases, for prescribing pills or fitting a woman with a contraceptive device) usually assumes a know-nothing or evasive attitude, when requested to treat a woman who is suspected of needing or having had an abortion.

An example of almost criminal neglect is shown in this case of a gynecologist-obstetrician who had delivered a woman's two children and refused to treat her when she was bleeding. The disloyalty of such a doctor has an emotional as well as medical effect on the patient. Women are encouraged to think of doctors who deliver their babies as friends or almost relatives. They look up to them, even if they see them very seldom. When women, such as the plaintiffs in this case, realize the extent to which male chauvinism and greed exist among

their beloved doctors, they hopefully will band together and demand more control of health facilities by the women's community.

### Examination by Diane Schulder

**Q:** Would you please state your occupation?

**A:** I am a professor and a writer.

**Q:** Do you have any children?

**A:** I have two.

**Q:** Having given birth to your two children, did you find yourself pregnant again?

**A:** I did, yes.

**Q:** Would you tell us about that situation, please?

**A:** I was pregnant and I think I must have been about eight weeks pregnant, something like that. I . . . this isn't painful, it's just that I want to get everything in the right order.

The doctor had told me I was pregnant. I knew I was pregnant. One morning around that time I woke up and I was bleeding very severely. I called the doctor and I told him I was bleeding, and he said, "Well, see what happens, wait a day or two."

So I waited a day and I continued to bleed. Then I called him again, and he said, "Well, come in."

I went in, and I continued to bleed, and he said, "You'd better go home now." So I went home. I should say that I knew this doctor very well, so I simply just did what he told me to do.

**Q:** Is he the doctor. . . .

**A:** He had delivered my children, so I liked him a lot . . . you really like the people who deliver your children. I went home, as he told me to do, but I continued to bleed for another couple of days.

This time I called him, and said, "Well, it's about four or five days. What am I going to do?"

He said, "I really can't see you."

I said, "What do you mean you can't see me?"

He said, "Well, I can't see you, you know, there are a lot of doctors in your family, maybe you can get some ergot. I can't do anything for you." I said, "It's true there are doctors in my family, but they are eye doctors, so I couldn't do too well."

**MR. LEWITTES:** I object again on the ground of relevancy unless counsel for the plaintiffs would like to give an offer of proof.

**MS. SCHULDER:** I think it will develop that, even according to your standards, this testimony will be highly relevant.

**MR. LEWITTES:** I object, it isn't the standards of mine, it is the statutes of the state of New York.

**A:** What finally happened is that I bled for about seven or eight or nine days. You know, when I understood that he would not see me and when I began to understand—and I must say, really, I can give you neither proof nor anything, except the world in which we live—that a doctor would not see me because he was under the impression that I had tried to induce an abortion of some kind and that he was—this doctor whom I had loved up till then—was afraid to be involved with me.

I did speak to other doctors at that time and they explained to me that the heat was on in some way and that no doctor wanted to be involved with anybody at that time. There was a lot of fear among . . . in the medical profession. On about the ninth or tenth day, I. . . .

**Q:** By the way, had you tried to abort yourself?

**A:** No, I had not, I had not.

By about the ninth or tenth day I really was very weak, and I called him and I . . . I should say my husband did, in an absolute rage. He had me come down and I went to the hospital and a D and C was finally performed.

Now, I really . . . I don't know what the reason for this was, but it was a very inadequate one. Within a short time after that, I . . .

MR. LEWITTES: Objection.

A: . . . I was bleeding again.

Q: Maybe because the D and C was done at a late stage?

A: Well, I don't know. . . . I am extremely anemic.

It was very important that I work, since we were very poor then. But I couldn't work. My kids were taken away from me on week ends and taken to a day care center during the week. I had about four months when I was in bed and anemic and quite sick.

Q: Did you ever go back again to see that doctor who had delivered your two children?

A: No, no, I never have. I will never see him.

Q: Had he specifically told you, "Do not come to my office?"

A: Yes. I am sorry for him, but I won't see him.

Q: Did you have any other miscarriages?

A: Yes, I have had a couple of miscarriages.

Q: Where was the D and C finally performed?

A: In St. Vincent's.

Q: Is there anything else that you want to add at this point?

A: Well, I think I would like to add one thing. I don't know if it's important or not, but it really relates very much to the testimony of the witnesses who preceded me. At one time I did have an abortion. I was already married and I had no ill effects, because my . . . it was done illegally, but in a very neat and clean place and with the approval of my husband and my entire family and the general milieu in which I lived. That's all.

**Q:** Do you have any regrets about having followed the procedure of an abortion?

**MR. LEWITTES:** Objection.

**A:** No.

**MS. SCHULDER:** I have no further questions.

**MS. KENNEDY:** Conversation with other women is admittedly hearsay and can be objected to as to its probative value. However, have you had occasion to discuss with other women similar situations, where their own gynecologists refused to see them when there was vaginal bleeding?

**A:** Yes.

**MR. LEWITTES:** Objection. As Ms. Kennedy correctly observed, this is hearsay.

**THE WITNESS:** I have a lot of hearsay on this!

**MS. SCHULDER:** Let the record indicate that there was laughter from counsel at that point, counsel for the plaintiffs.

# The Abrupt Ending

Some people have questioned whether the decision about birth should be left up to the woman. The following excerpt indicates how easy it seems to be for a man to walk away from the situation, leaving the entire burden on the woman:

## Examination by Nancy Stearns

**Q:** Have you ever had an abortion?

**A:** Yes, I did have an abortion.

**Q:** Can you tell me a little bit about what led up to that?

**A:** I became pregnant in 1964. I think I was twenty, nineteen, I don't . . . I didn't want. . . . I became pregnant, after having a relationship with a man for three years. We were both in school, so being pregnant forced a decision on us because I didn't know whether I would be able to get an abortion or not.

We went to about ten doctors, asking what to do, where I could get an abortion. Most of the doctors just said, "Get out

of the office, I don't want to have anything to do with this, just get out."

**Q:** Had you asked him to marry you at any point, when you realized you were pregnant?

**A:** Yes, yes, and he didn't want to. I mean, up until this point we had been like engaged and planning to get married in the future. At this point he said, "Well, I changed my mind about the whole thing. I don't want anything to do with it. You do what you want with the baby." So the whole thing rested on me and he disappeared.

**Q:** Did you ever see him again after that?

**A:** No, after this I never saw him again.

## *II. The Case*

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The case of *Abramowicz vs. Lefkowitz*, in which the foregoing depositions played a major part, was begun in the fall of 1969.

On September 5, 1969, various people were subpoenaed by District Attorney Burton Roberts to appear before a Bronx County Grand Jury for supposedly giving women information as to where they might secure a safe abortion. (Roberts, who was conducting the Grand Jury "investigation," was the same prosecutor who had instituted criminal proceedings in an abortion case the previous spring. Policemen raided an apartment where a seventeen-year-old girl was on the operating table. Her mother, in the waiting room, reportedly pleaded with the policemen not to enter the room until the operation was completed, but was brushed aside. It is reported that policemen entered the room in the midst of the operation and did not allow the operation to be completed there).

Lawyers decided to move to quash the subpoenas, so that

no one would have to testify before the Bronx Grand Jury.\* At about the same time it was decided that now was the time to launch the affirmative attack in the Federal court, against the New York abortion laws which had been in effect since 1828.

One of the first things that was done in the affirmative suit was to coordinate with activists in the Women's Liberation movement. Some of the women in the Women's Health Collective † had begun to have meetings to discuss the abortion suit. (During the previous summer, in fact, this group had been discussing the possibilities of bringing an attack against the abortion laws.) Rachel Fruchter and Merrill Sudborough (both of the Collective) organized the lists of plaintiffs. A meeting to discuss the litigation was held. Nearly 100 women attended, and many had names of others who wanted to be in the suit who could not be present. The determination of the women to see the case through was overwhelming. Women who had been fed up for years, because of their own experiences and those of their friends, could hardly wait for the suit to get underway.

A coalition of women's groups, called Women's Abortion Project was organized to co-ordinate women's actions in connection with the suit. A press conference was called to announce the institution of the women's law suit and there were individual representatives from health groups, legal groups, media women, and many parts of the Women's Liberation movement.

The *Abramowicz* case (referred to this way because the first plaintiff, in alphabetical order, was Dr. Helen Abramowicz)

\* Gerald Lefcourt, Esq., represented Paul Krassner (one of those subpoenaed to testify) at that time. Mr. Lefcourt withdrew from the affirmative suit, because of prior commitments and also to leave us with a team of all women attorneys. (See Krassner Affidavit, Appendix I, p. 199.)

† The Women's Health Collective is a group of women concerned about how women interact with the health system as consumers and workers (as described by Vicki Cooper of Health PAC and a member of WHC). See Rachel Fruchter's article on abortion in the March, 1970 Health PAC Bulletin, the *Male-Feasance of Health*.

was argued before Judge Edward Weinfeld on October 28, 1969, by Nancy Stearns. On that day, the courtroom was filled with plaintiffs and other sympathetic women. Most of them were young, white, college-educated women, some of whom had brought their children. Many of the women carried wire coat hangers.

At the time of argument, Judge Weinfeld consolidated the *Abramowicz* case with three other cases that had been brought to attack the New York abortion laws. (For a list of the cases, see pp. xv-xvi.) At the end of the argument, Flo Kennedy requested that three women judges be assigned to hear the case. Judge Weinfeld, not knowing whether he was being put on or not, said: "But, Miss Kennedy, you should know perfectly well there is only one woman judge \* in this district." To this she replied: "That is, indeed, shocking!" The judge reserved decision.

A few weeks later, Judge Weinfeld granted our application for the convening of a statutory court. This meant that there was a serious issue as to the constitutionality of the statutes under attack, and that the court would therefore presumably render a decision as to whether or not the statutes had to be abolished. (A statutory court is composed of three judges and from there a decision can be appealed directly to the United States Supreme Court.)

Shortly thereafter, lawyers for all parties were summoned to appear before the three judges. In addition to Judge Weinfeld, they were Judge Harold R. Tyler, Jr., also of the District Court, and Judge Henry J. Friendly of the United States Circuit Court for the Second Circuit.)

\* Judge Constance Baker Motley, formerly an NAACP lawyer who fought segregation at the University of Mississippi and later borough president of Manhattan, has recently distinguished herself in various judicial decisions; e.g., (1) awarding Martin Sostre monetary damages for brutal treatment he suffered in jail; (2) ordering New York police to protect antiwar demonstrators against physical attack by the "hardhats"; (3) declaring, in a dissenting opinion, that the Character Committee of the bar could not ask questions of applicants to the bar concerning their political beliefs or associations.

The judges wanted to set up a "time table." Meanwhile a new complication had entered the case. There were applications on behalf of eight doctors who sought to intervene. In his supporting affidavit Dr. Tisdall, one of the eight, said, in part:

... As a practicing obstetrician and gynecologist I have a direct and vital interest in the preservation of present medical standards which I believe are more fully in accord with my oath as a healer and preserver of life, and with that profession of Hippocrates' classic oath that states as follows: "I will use treatment to help the sick according to my ability and judgment, but never with a view to injury and wrongdoing ... I will not give to a woman a pessary to cause abortion. But I will keep pure and holy both my life and my art."

... I believe that such a judgment would operate to expose me and other doctors who recognize the fetus' right to life to civil suits for malpractice for failure to either abort a pregnant patient on demand or to recommend a physician who would abort. It is no answer to say that no doctor would be required to perform an abortion. Doctors who treat the unborn child as a second patient would have little opportunity to head a Department of Obstetrics and Gynecology in accredited hospitals under the "new standards."

Permission was granted to this group to enter the case as intervenors and they became a party to the case, much as the defendants. However, permission to enter the case was refused to another set of would-be intervenors who had submitted a memorandum of law in support of a motion of "Baby Poe" to intervene. They wished to represent the interests of the unborn fetus of Jane Poe, a plaintiff in the community case.

The intervenors soon became known as the Friends of the Fetus.\*

The judges and the attorneys then discussed procedure to

\* This phrase was first popularized by Ti-Grace Atkinson who heard it at the three-day International Conference on Abortion cosponsored by the Kennedy Foundation and the Harvard University Divinity School. The conference was held in Washington, D.C., in September, 1967.

be followed in the case. We sought a trial for the purpose of allowing witnesses in support of the women's case to testify. The judges indicated that they had very full calendars, and that while they might be willing to hear from a few doctor-experts, they made it clear that they had no desire to listen to what women had to say. Some of the lawyers were prepared to accept the arrangement of submitting everything to the court in writing. This was totally unacceptable to us.

The court then suggested that we might proceed with the taking of depositions "as in a stockholder's case." At first, we were thoroughly turned off to this idea. The suggestion, especially in its wording, seemed to show a fair amount of insensitivity to the distinctions between a case involving basic human liberties and one involving run-of-the-mill property disputes, as to who owned how many shares of stock. Besides, depositions were usually conducted quietly, in an attorney's office, away from the public eye. We felt that public education on a subject that had been kept under wraps for so long was just as important as the court decision in this case.

Then we were reminded that down South, during the Civil Rights movement, on at least one occasion, depositions had been held publicly. We decided to follow that precedent. The plaintiffs were anxious to keep abreast of the case and we had reason to believe that for each plaintiff there were many others interested in following the developments. One ever-present problem was that of financing the litigation. Depositions are expensive and we had practically no money.\*

It was decided that depositions would be conducted in each

\* As usual, when there is need in a "movement" for litigation, affirmative or defensive, there was no money for legal fees or expenses. Again, as is usual when oppressed people need money to go to court, there was considerable discussion of various fund-raising projects. There was no money for the facilities of the Law Center for Constitutional Rights, out of which Nancy Stearns practices, and the Law Commune, where Carol Lefcourt and Ann Garfinkle were partners. All legal, clerical, and secretarial work was on a volunteer basis. Nancy's time was incalculable and interminable. (We called her "Flash.")

of the four cases, which were now consolidated. Depositions were begun, in December, 1969, in the well-appointed offices of Greenbaum, Wolf and Ernst. (Harriet Pilpel, Esq., a partner in the firm, has been fighting in the area of women's rights for many years, and was one of the attorneys in the companion *Hall* case.) Witnesses in the doctors' case (*Hall vs. Lefkowitz*) deposed first.

The doctors testified that the abortion laws: were vague and subject to various interpretations; infringed upon their rights to practice medicine; interfered with the doctor-patient privilege; and harmed women.\* Some of the doctors had published as many as fifty articles in their field of specialty, many of which were submitted for the record.

Attorneys for the Friends of the Fetus (FOF's), on cross-examination, tried to make the point that the law was perfectly clear and also that, since a fetus was a human life, abortion was the equivalent of murder. When asked the inevitable question, on cross-examination, "When does life begin?" Dr. Christopher Tietze replied that life began millions of years ago, in the primeval slime!

Reverend Jesse Lyons, in his deposition, stated that he had consistently committed civil disobedience by counseling women as to where they could get abortions:

Since the human need is so great, I am willing to break the law, so that a woman can get treatment when she is desperate.

At the beginning of January, 1970, we began the interviews to select the witnesses in the women's case. A committee was

\* Witnesses in the community case (*Doe vs. Lefkowitz*) were doctors who testified similarly. Note, however, that the plaintiffs in the *Doe* case were poor people—one palsied couple who, although physically unable to care for a child, were denied a therapeutic abortion, and three individual women with unwanted children, two of whom had become forced to rely on public assistance. They sued anonymously and their identities were never revealed, due to fear of harassment.

formed to act as liaison for the lawyers, which included Ann Doubillet, Polly Kellogg and Ellen Maslow, organizers and activists in the Women's Liberation movement; they met with Diane Schulder and Carol Lefcourt at the Law Commune, where it was decided that people who wanted to testify would come to Flo Kennedy's place for interviews as possible deponents. The tough job ahead included the selection of no more than ten or twelve of the several dozen willing witnesses, anxious to testify to the oppressiveness of the New York State abortion laws and how they were personally affected by them. The limitation on the witnesses was dictated by our limited finances and our clear impression as to the limited patience and concern of the court with the women plaintiffs.

One of the first tasks of the liaison committee was to find a place large enough to accommodate the over 300 plaintiffs and others interested in the case. They finally succeeded in getting the Washington Square Methodist Church.

Two days were set aside for the lawyers to sit down with the twenty-eight or thirty potential witnesses. We had already eliminated almost as many. It was not easy to reject the courageous offers of women prepared to expose their personal anguish and heretofore secret traumas. The selections were finally made on the basis of having each witness' situation illuminate a distinct kind of situation. Thus, equally appealing stories had to be excluded on the basis of the similarity of circumstances involved. Having seen the unrelenting cross-examination (by attorneys for the Friends of the Fetus) of the witnesses in the companion cases, we were concerned that the experience would unnecessarily multiply the trauma for a sensitive witness. In a few cases, it was felt that despite the willingness of the woman to testify, it would be better for her not to, since society might capitalize upon her vulnerability in her personal or family circumstances and damage her in her job or relationships.

Flo Kennedy's office contrasts sharply with the offices of

Greenbaum, Wolf and Ernst, where the other depositions had been taken. There are two main rooms, one called "the dirty room," the other called "the filthy room." She lives in her office.

In the dirty room is a wall of books with everything from a two-volume history of Cravath, Swaine and Moore, the Wall Street firm, to remnants of the science fiction collection of Flo's late, unlamented, alcoholic Welsh husband, Charlie Dye. (Charlie's Satsuma vase, given him by his Japanese mistress and inherited by Flo when he died, sits on the floor, chock-full of autumn leaves, dogwood branches from seasons past, and peacock feathers.) In both rooms there are piles of leaflets from picket lines long gone and stacks of anti-establishment newspapers from ecological journals to the *Black Panther*. Under every desk and table in the foyer is a box of clothes destined for Mississippi, collected as far back as 1967.

There are three phones with buttons and lights and at least two of them are constantly ringing, so that Flo has to take them off the hook to go to the "john" or to take a bath.

Flo ceased practicing criminal law in 1959 when a judge refused to let her question jurors in an abortion case as to whether or not they were Catholics. She has further cut her court appearances due to the repression of strong lawyer advocacy by the judiciary, with the sanction of the bar, and is awaiting the outcome of the contempt citation handed out to William Kunstler before deciding whether she will resume a trial practice.

Ruth Silber from the Law Commune took notes on the interviews of the witnesses. Interviewing chores were divided between Diane Schulder and Carol Lefcourt with help from Nancy Stearns, Flo Kennedy, and Emily Jane Goodman, erstwhile counsel to Grove Press. (Ms. Goodman and Harvard Law Professor Alan Dershowitz made history with the litigation of "obscenity" issues raised in pious attempts by nervous moralists to outlaw the Scandinavian film, *I Am Curious, Yes*—

*low.)* Emily was to raise some of the sharpest controversial issues in the case in her brief filed on behalf of *Amicus Curiae*, asserting that unwanted pregnancy and unsought responsibility to rear an unwanted child is involuntary servitude. Organizing the testimony fell to Diane Schulder, primarily, who had handled many criminal trials in the past.

Our first witness for interview was a stunning mother of three daughters who gave an account of five abortions. She was cool, but it was felt that in her case the testimony might be used against her.

From then on, and through the next evening, people kept coming and going. Both offices and the front area were often used for the taking of statements from the witnesses. The women exchanged experiences and swapped horror stories. You could almost sense the relief from the salutary effect of opening up the darkened secret parts of their lives, and letting the fresh air of truth and dignity replace the pall of guilt that had prevailed.

One recurring atrocity in women's accounts of illegal abortions is that of rape by the abortionist. Several women told of knowing of rapist-abortionists and one gave an account of her own experience. She told us that when she came out of the anesthesia, the man who had just performed the abortion (was he a doctor?) was standing before her in bloody undershorts, murmuring depravities to her.

Everyone was looking forward to the sessions at the Washington Square Methodist Church. A slight complication had arisen when Le Roi Jones's play, *Slave Ship*, which had been playing in Brooklyn, was moved to the main auditorium of the church. For one wild moment we considered holding the depositions there, with the *Slave Ship* in the midst of the proceedings. We settled for the ground floor area and arranged to have about two hundred seats set up.

Our attempt to avoid the bizarre was clearly unappreciated by the opposing counsel, when on the subfreezing morning of

Wednesday, January 14, 1970, they converged on the church. Thomas Ford, the attorney for the intervenors, flipped. The moment he stepped inside the church he began to shout and rant that it was "a circus," "ridiculous," that he would not stay.

It was impossible to ascertain the source of his outrage. Was it that his Catholic religious background made him feel outraged and enraged to be in a Protestant Church? Or was it his religious background that caused him to be shocked at the fact of any church harboring opponents of abortion laws? Could it have been the peace posters on the wall? The numerous women—some with babies? Or possibly the press?

Ford was the most dramatic; but the attorneys for the defendants, who had arrived a few minutes before, were also clearly unhappy. It was decided, after various phone calls to Foley Square, that we had to adjourn to the Federal courthouse. Ford kept repeating he wanted a "protective order" from the Court. (It wasn't clear what he wanted to be protected from.)

All the attorneys sat down around the large table set up in the church, at which we had planned to take our depositions. Our scheduled witnesses were present, but were completely confused by the change in procedure. Attorneys for the intervenors and defendants didn't seem the least bit concerned about the inconvenience caused to the witnesses and the approximately one hundred women who were in attendance, most of whom were plaintiffs.

Without ever having had the opportunity to hear our first witness, the representatives from District Attorney Hogan's office delivered an immortal statement for the record, declaring: that women were "irrelevant" on the subject of abortion. Said the Assistant District Attorney Burton H. Lipshie, in objecting to all of our witnesses: "There are no factual issues on which these women could testify which are relevant." This seemed to sum up the then prevailing attitude of the attorneys for the de-

fendants, the intervenors, and, indeed, the court. Diane Schulder was quoted the following day in a *Daily News* article as having said: "The fact that there are women who want to testify about their own pain scares people."

In any case we all trooped out of the church into the sub-freezing weather again, into Carol Lefcourt's car, and down to the Foley Square courthouse.

We had been told that no appointments could be made with the judges by telephone, but that we should come down to chambers and try potluck. By the time we got down there, attorneys for the defendants had seen Judge Weinfeld's law clerk without us, and had been advised that the judge had to resume his afternoon calendar and could not see us until four o'clock that afternoon.

The attorneys then took it upon themselves to go to Judge Harold R. Tyler, Jr., also without doing us the courtesy of waiting. But, fortunately, we followed their trail from Judge Weinfeld's office and managed to get to Judge Tyler's courtroom in time for the judge to explain to us that he was in the midst of a proceeding. Before him, on a table, were about two dozen dolls, and he told us that they were a part of the crux of the case that he was hearing. It was somehow ironic that these foot-high painted and enameled dolls for the moment were taking precedence over the lives of women who were seeking to be liberated from oppressive criminal laws.

Judge Tyler was impatient at being interrupted by Ford, whose demand for a protective order (from the Washington Square Methodist Church? or the women?) seemed highly unnecessary. Judge Tyler indicated his reluctance to get involved in a case which, until then, had been more or less handled by Judge Weinfeld. Ford's application for a protective order was sent back to Judge Weinfeld and set down to be heard at the end of his calendar at four o'clock.

Since Ford had announced his objection to their presence that morning, the overground press had become increasingly

interested in following the case. There were by now various reporters, both overground and underground, flocking around us. We decided to retire to Chinatown for lunch.

Meanwhile, back at the church, some additional witnesses (whom we had been unable to reach by phone to tell them not to come that day) had joined the bewildered dozens who stayed at the church, with the thought that we might return. By the time we returned to Judge Weinfeld's courtroom and collected the people that had gotten lost in the Federal building, it was nearly four o'clock. After each lawyer had had her or his say, the judge moved the taking of depositions to the Federal courthouse. Two witnesses, who had taken the day off from work, were in court. The judge allowed one of them to testify that evening. At 5:30 P.M. our first witness finally deposed.

The following morning, on the thirteenth floor of the Federal Courthouse, in the conference room of the judges, depositions resumed. There was standing room only and young women were soon unceremoniously sitting on the floor along the walls. You could hardly negotiate your way around the table. Designed to accommodate approximately 30 people, the room now held upward of 65 or 70, including lawyers, plaintiffs, witnesses, friends, husbands, and press. While the judge's order had excluded photographers, it allowed reporters. The women's story was about to become part of the official record. (At this point the depositions presented at the beginning of the book were taken.)

### *III. Some Other Experts*

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In addition to the women, five of the more traditional type of experts were called as witnesses.

An expert in theology, Rabbi David M. Feldman, presented his view that restrictions against abortion have a religious, denominational base; that abortion is not murder, and that abortion laws should therefore not exist in state criminal codes.

Two doctors testified. One, Dr. June Finer, who operates a clinic for young people, was angered by the fact that wealthy women are able to maneuver around abortion laws, while poor women suffer additional anguish and physical jeopardy. A psychiatrist, Dr. Natalie Shainess, discussed women's emotional reactions to pregnancies, and how totally different syndromes develop, depending on whether a child is wanted or not. Judith Leavitt, a social worker, cited instances of "coat-hanger abortions" in communities where young women do not have access to this medical service.

There was testimony from two population experts. Judith Bruce spoke of the importance of the timing of the birth of

the first child in relation to a woman leading a fulfilling and productive life. Both she and Emily Moore decried the lack of freedom accorded women. They expressed the fear that, whereas today women are forced to bear children they do not want (perhaps 40 per cent of births are unwanted), one day women may be *forced into having abortions*, due to the population explosion. This alternative is found to be equally oppressive.

Four out of five of these experts were women. At most hearings in the past, the experts who were called, such as doctors, have generally been men. In the future, women, who have a double expertise, will be consulted instead.

# Theological Scholar

## RABBI DAVID M. FELDMAN

Rabbi David M. Feldman is the author of *Birth Control in Jewish Law: Marital Relations, Contraception and Abortion*.\* He had appeared at New York legislative hearings in the 1960s regarding abortion law changes, and represented the United Synagogue of America as a member of the Law Committee of the Rabbinical Assembly.

His testimony, which ran to seventy pages, was based on his experiences, studies, and the five years of research which culminated in his book. Source materials for the book include the Bible, commentaries on the Bible, Talmudic and post-Talmudic literature, and the *Responsa*, which is a body of literature of responses to legal questions, reflecting the case law of new issues.

Rabbi Feldman, responding to questions by Diane Schulder, pointed out that the fundamental generalization that emerges

\* New York University Press, 1968. London: University of London Press Limited, 1968.

from his studies is that from a Jewish standpoint abortion, although not regarded as a desirable course, is not considered murder. Also, the welfare of the woman is paramount:

So much so, that . . . if the woman were to say that she had taken thalidomide during pregnancy (and the chances of a risk of deformity are very great) and she wanted an abortion, because a deformed life is not very good, the Rabbi would dismiss such talk of the future on grounds of: "Well, you don't know what's going to be, whether the child is going to be deformed and whether being deformed is worse or better than not being born. . . ."

But if the same woman were to phrase the question differently and say that "the possibility of deformity is driving me to anguish or distraction," then the Rabbi would say: "Well, now, you're talking about someone who is here and alive and real and all of Jewish tradition says . . . if a woman asks for compassion in that respect, then she is entitled to it."

All of the burden of the law is in her favor and the book quotes many examples in which various considerations are weighed, one against the other. One thing emerges from the writings of all Rabbis . . . that the welfare of the woman is primary, and that welfare, of course, is not limited to saving of life, but even to saving of mental health and to saving of welfare. It might even be extended to saving her the anguish of shame or embarrassment.

Rabbi Feldman cited the passage in the Talmud that sets forth the case that all Jewish law (with the exception of cases that call for martyrdom) is to be set aside for the sake of preservation of health.

When asked whether he felt the New York State penal law affected his ability to counsel pregnant women who sought his advice, he answered that he was unable to counsel them satisfactorily according to Jewish law where the systems conflict.

The Rabbi had also studied comparative views of other religions on the subject of abortions, and had found that the Jewish and Catholic viewpoints were radically different on

this subject. From the Jewish standpoint, the fetus is not regarded as a human being until the moment of birth. The Rabbi emphasized that the difference between the Jewish and Catholic views is essentially one of theology, a denominational difference. It was obvious that the Jewish, Protestant, and secular communities would join with the Catholics in condemning murder, if the term were applicable. But he felt that to call abortion murder, thereby giving the impression that it is a civil offense about which all citizens would agree, is misleading. Elaborating on this point that the crucial difference has to do with the idea of the "soul" and original sin, he said:

... There is the concept of original sin which is basic to Catholic theology and which is entirely absent from Jewish theology.

The Catholic idea of original sin is that Adam and Eve's sin was a sexual one and that it was hereditary, and that every child is born with that taint, a taint which cannot be removed except through the waters of baptism, which symbolizes the blood of the cross. For those who accept that Jesus died for them, his death is the redemption for this sin and thus the waters of baptism cleanse them of that sin. But without the act of Baptism, the taint remains, no matter how many righteous acts you perform, you can't remove that taint.

The point here is that the sixth-century Saint Fulgentius, said that that applies also to the fetus in the womb; that the fetus in the womb is born with original sin, with the consequence, a very logical consequence, that if you have a mother and child locked in combat, so to speak, and it is a question of whether this difficult pregnancy should continue, the classic Catholic position has been to let the child be born and let the mother die.

That position is more logical and less cruel than it seems. It's very consistent with this theology, because the assumption is that the woman, twenty, twenty-five years old, was baptized at birth and is going to heaven, whereas the fetus it-

self is not baptized, will go to hell, go to eternal perdition or at least to limbo . . .\*

According to the Rabbi, from the sectarian, denominational standpoint of Catholic theology, abortion is worse than murder, because abortion is sending a fetus to hell. He declared:

Therefore, all the talk goes on about when does the soul enter, and when I testified at the New York State hearings last year or two years ago, Senator Dominic DeCarlo asked me would I not agree that abortion is murder if I agree that the soul enters at the moment of conception and I answered again emphatically no, because it's not a question of when the soul enters.

I think this can save volumes of discussion. It's not a question of when the soul enters, it's a question of what kind of a soul.

If it's a tainted soul born in original sin, then we have to care. . . . But if the soul that we are given at conception or at the first trimester or at the moment of birth is pure [and Jewish theology considers it to be pure], then it does not really matter whether it is dispatched to heaven a moment after it enters or one hundred and twenty years later.

The soul is not enlargeable or reducible, the soul doesn't grow in nine months, nor does it reduce itself; the soul is spiritual.

So if it's spiritual and pure, it's really irrelevant to the abortion question when it enters.

The only relevant question for us earthlings is are we committing murder or not and that has been clearly, if formally, answered in the negative, that feticide is not homicide.

It's taking a potential life. But in taking a potential life, the Rabbis have said we must examine the difference between a woman who decides after conception that she doesn't want

\* The Rabbi then spoke of a baptismal syringe, developed in the eighteenth century at a theological seminary that could baptize a fetus in uterus (in the case of a possible miscarriage) in order to prevent that fetus from going to hell.

to have a child and a woman who decides on a particular night not to sleep with her husband because she doesn't want to conceive. In a way, the one is no more a murderer than the other.

Closing his direct testimony, he offered two instances which he thought dramatized the fact that Jewish law accepts reasons for abortion that are of a much wider variety than those of the New York State law.

The first case was that of a woman who had asked for an abortion because she felt that her lactational processes were adversely affected, that is, that her milk was weakened and this was having an adverse effect on the infant that she was nursing when the pregnancy occurred. The rabbis granted her request, stating that clearly the existing infant had priority.

The second example had to do with rape. The Rabbi pointed out that there was not much discussion in Jewish legal literature of the issue of abortion in the case of rape, and it was his considered opinion that this was because it was simply taken for granted that in a case of rape an abortion would be recommended.

The one explicit reference to rape in the Jewish legal literature on the subject makes this point:

The woman is compared to a field. She is called Mother Earth.

Just as the farmer plants the seed in the field or in the farm, and the field or the earth nurtures and nourishes that seed, so a woman, like Mother Earth, nourishes and brings to fruition . . .

Agricultural metaphors, said this Rabbi, are very interesting, but there is one very crucial distinction between woman and Mother Earth and that crucial distinction is that the woman is a human being and a human being should not have to nurture or nourish seed implanted in her against her will, as if she were an object like a field."

The women applauded Rabbi Feldman and the above analogy, which ended his examination by the women's lawyers.

We were all impressed by the adroitness with which he then answered the questions posed, on cross-examination, by the attorneys for the defendants and intervenors. The attorney for the Friends of the Fetus that day was Ford's co-counsel, William P. McHale. His first question on cross-examination of the Rabbi was:

**Q:** Rabbi, you mentioned before a traditional Jewish position on abortion in which Jewish theology describes abortion as not being murder. Now, would you tell me, Rabbi, what the age or the extent of that tradition is?

Without blinking an eye, the Rabbi answered: "It begins with the Old Testament, with the biblical passage in Exodus: chapter 21, passage 22."

McHale pressed on:

**Q:** Jewish theology has clung to that position which was established in the Old Testament to the present date, has it?

**A:** Without exception. Abortion is to be judged on its own grounds, but, since the Exodus ruling, it is technically not murder.

After the Rabbi had repeatedly stated that, in the final analysis, it was the woman's decision whether or not to terminate a pregnancy, McHale asked: "But if the woman is married, do you suggest the consent of the husband?"

Rabbi Feldman answered:

Yes, but there is a typical case, if I may quote it, of a woman in a different situation who wanted to make herself sterile because childbearing pain was too difficult for her.

So the question came before Rabbi Sofer of early nineteenth-century Hungary: Might she sterilize herself so she could avoid childbirth pain, and the Rabbi said, "Well, in the days of polygamy, I wouldn't have to worry about your husband, because if he wanted more children, he could marry a second wife. But now that polygamy is no longer in force"—it was an infrequent option, but even that would now not be allowable—"then your husbands are involved, so his permission should be secured."

But then, in the same paragraph, it goes on to say that "if your husband denies the permission, do it anyway, because who is he"—to paraphrase his words—"who is he that you should have to undergo unusual pain for him just because he wants more children? The marriage contract does not bind you to that extent that you should have to undergo extraordinary pain for his sake!"

He goes on to say something I quote here in relation to the whole abortion matter. The woman herself may believe that having more children is her duty, part of her function in building the world. Important as that may be, the woman in her own right is a more important entity and so he says, and I quote, "No woman is required to build the world by destroying herself."

Rabbi Feldman made it clear that he did not seek to denigrate the Catholic position. Moreover, he stated quite unequivocally that abortion was not a matter to be taken lightly. He even applauded the Church's efforts to strengthen reverence for life.

When questioned about whether he was advocating abortion in socioeconomic hardship situations, he stated that in that respect Jewish law has very much in common with Catholic law, both having a spiritual orientation in which economics does not play a part. Indeed, if a woman should say to a Rabbi: "I can't afford a child," then the Rabbi would say, "... Shame on you, that's a very bad reason. You know, money is here today and gone tomorrow, or gone today and here tomorrow, and no decision so human and so spiritual as whether or not to have a child should ever be based on economic consideration."

Most of these legal *Responsa*, said the Rabbi, come from times when the Jewish community was very poor, and despite the poverty, a child was wanted and wantedness overcame any economic difficulty.

However, Jewish law does concern itself with pain. He disagreed with the policy whereby, pursuant to a church interpre-

tation of a biblical passage, Massachusetts General Hospital was told, in 1840 (when anesthesia was first discovered), not to use anesthesia for women in labor because in the Bible God said to Eve: "In pain shalt thou give birth."

In interpreting that passage, he mentioned an incident in France, in the late nineteenth century, when the church had declared two women capitally guilty for using chloroform in childbirth, the woman in labor and the midwife who had administered it to her. The doctors turned to the Rabbis and said: "This is your Old Testament. May anesthesia be used in childbirth?" "Well," they said, "'give birth in pain' is not a commandment, it's a curse. The Torah enjoins us to alleviate pain and our commandment, therefore, is to spare this woman this curse of childbirth pain. So, if you've got something to spare her that pain, bring it in. It's a religious commandment to use it to relieve pain, to spare her this curse."

Rabbi Feldman also cited a book, *The Crux of Pastoral Medicine* by a Father Klarman, published in 1904. According to this book therapeutic abortion is wrong, not only for the reason that the child is born in original sin (therefore we should allow it to be born so that it can be baptized), but because the woman, who is locked in mortal combat with the child when she undergoes risky childbirth, is fulfilling the commandment to give birth in pain, since pain implies risk. If she is in risk, then by having a child, or going through this pregnancy and risking her life, she is continuing to fulfill the commandment and to atone for the sin of Eve.

The Rabbi insisted that the Catholic Church should not be accused of being the villain in this case, because, after all, the laws were not put on the books by Catholics. However, once the laws were there, he conceded that the Catholic Church became vocal in their defense. He pointed out that there are Catholics who, while being opposed to abortion, are also opposed to the existence of abortion laws, and would like to remove the laws from the books.

In conclusion Rabbi Feldman suggested that without any abortion statutes, Catholics, Protestants, Jews, or atheists could make their decisions without interference from the law. Let abortion be a denominational matter, which it properly is, because it is not murder and therefore not a matter for state law.\*

\* Portions of Rabbi Feldman's original testimony have been revised by him for the sake of clarity.

# Health Workers

Three women who are involved in the field of health professionally, on a daily basis, testified about experiences in their clinics, private practice, and field work, concerning the misery caused to women by the antiquated abortion laws.

Unlike the support received by people when they undergo other operations, in abortion situations doctors not only refuse to get involved, but also refuse to allow paraprofessionals to be trained to perform the operation. An operation that could be performed today, under sanitary conditions, with the amount of risk roughly equivalent to that entailed by a tonsillectomy, is, instead, performed in apartments, hotel or motel rooms, under unsanitary conditions (see Dr. Shainess' testimony), with women sometimes left to bleed to death.

Hospitals, curiously, have refused to admit women for a D and C operation, unless the abortion had been started previously in some way. This of course, has led to the use of knitting needles and other crude instruments. Unsanitary conditions, in addition to leading to serious infections, can also

cause sterility in a woman, and make it impossible for her to have a child at some future time, when she might really want one.

One priority for women concerned about health problems would be to break down the conservatism and elitism of most male doctors, especially those in obstetrics and gynecology. Their snobbism and professionalism must be assailed.

There have been numerous reports that reform laws are not working. For example, Jane Brody in the *New York Times* reported that eased laws on abortion are failing to achieve their goals, because of the "dual elements of legal cumber-someness and medical conservatism."

Ms. Brody quoted one doctor who remarked: "The specter of abortion as an illegal, dirty, immoral procedure and the notion that 'those who play must pay' die hard."

## DR. JUNE R. FINER

Dr. June Finer, the pioneering young doctor who is one of the founders of the Medical Committee for Human Rights, is currently medical director of the Judson Memorial Health Clinic, a new project that dispenses free health services to young people on the Lower East Side. This clinic operates out of a construction trailer, at 7th Street and Avenue B. Dr. Finer is a staunch supporter of the idea that medical services should be equally available to all, regardless of wealth. She, herself, was also a plaintiff in the woman's case.

At her clinic those who qualify for free medical treatment are residents of the area between the ages of twelve and twenty-three. Each week at least two or three young women consult her about the problem of an unwanted pregnancy. An internist and general practitioner, she refers pregnancy cases

elsewhere. She testified that the state law "hinders" her in referring patients, because her decision must be based on how much money a patient has. The testimony follows:

**Examination by Diane Schulder**

**Q:** Now, does there come a time when young women have occasion to come to you with a problem of unwanted pregnancies?

**A:** Yes. . . .

**Q:** How is it that you deal with this problem?

**A:** I try and evaluate their financial resources, which is a bad thing by medical standards, . . . to have to evaluate the financial resources of a person . . . before you can decide what medical advice to give them. I am afraid that's a problem.

Given that they have the capacity to raise \$400 or more, I would refer them to the Clergy Consultation Service. . . . It's a group of clergy from all over the country who believe that abortion is the right of every woman, and they are able to recommend ways and places to obtain safe abortion, many of which are out of the country and which are relatively expensive.

If I find they have no financial resources, I am in a very difficult situation, because I am unable to give very effective advice. I may feel that abortion is indicated, but by the New York statute, I am really tied. I cannot give the advice that I would like to give. I cannot point them to the resources that I would like to be able to.

Under the old New York law, where abortion was legal only to preserve the life of the mother, "suicidal tendencies" were sometimes diagnosed to permit an abortion that would otherwise be illegal. The doctor testified that many of these psychiatric "diagnoses" took place in the course of one half-hour interview, clearly not enough time to make an in-depth analysis in most cases. Some people were aware that this subterfuge

was available to circumvent the law, but, then again, it would more likely be the wealthy with access to private psychiatrists who could take advantage of it.

Dr. Finer testified that many patients who were denied abortions tried to abort themselves, and returned to her with severe infections.

## JUDITH LEAVITT

Judith Leavitt, currently a social worker at a metropolitan hospital and formerly a case worker for the Department of Welfare in New York City, testified concerning observations made in the course of her work.

### Examination by Nancy Stearns

**Q:** When you were a case worker for Welfare, did you ever have clients come to you with problems of unwanted pregnancies or with their children who had unwanted pregnancies?

**A:** Yes, I did.

**Q:** Could you tell me about that?

**A:** Mostly mothers came to me with daughters, young teen-age daughters, thirteen, fifteen, cases like that—wanting, you know, their daughters were pregnant, and wanting abortions and asking me if I knew anywhere to send them.

**Q:** Were you able to give them any assistance?

**A:** I was not able to, because they didn't have any money. In similar instances where friends of mine had been pregnant and had money, I knew where to refer them, but I was really unable to refer Welfare clients for abortions.

What usually . . . well, different things happened. There were all kinds of butcher factories in the Bronx, where they are able to get tragic abortions, and I . . .

**MR. FORD:** I am going to object unless a foundation is laid

of the witness' personal knowledge of what she describes as butcher factories.

MS. BELENKY: Note my objection.

THE WITNESS: It's not personal . . . I mean, it's like common knowledge and everyone talks about that.

MS. BELENKY: Objection again.

THE WITNESS: It's not personal knowledge.

Q: Go on.

A: I know of one instance where a client came to me with a fifteen-year-old daughter, pregnant, not wanting the pregnancy, not wanting the baby, and I was unable to refer her any place for an abortion.

She found someone in the community to give her a coat-hanger abortion and was bleeding . . . hospitalized for about two months, hemorrhaging. I don't know what happened to her, but it was a horrible story.

There were many, many other instances where clients came with young, teen-age girls pregnant and didn't find anyone in the community to do that, and they had to drop out of school, have the babies. Usually, the mothers adopted . . . took the children, and the girls never returned to school.

#### Examination by Ms. Kennedy

Q: So as a result of the inability to get the abortion, they terminated their education, effectively?

MR. FORD: I object.

A: That was the case.

MR. FORD: No foundation of her personal knowledge of the reasons, so I don't believe that the foundation has been laid to answer the question.

THE WITNESS: I was told. . . .

MS. KENNEDY: I will restate the question.

Q: After having the child, after they were not able—and I am not asking you for a conclusion as to why—after not being able to get an abortion, they, in fact, dropped out of school and never resumed their education. This you knew as their case worker?

A: Right, and as being told personally to me.

## DR. NATALIE SHAINNESS

Dr. Natalie Shainness is a psychiatrist and psychoanalyst. She is known for her work in feminine psychology, and particularly for her work on female identity and the mothering aspect of woman's experience. Since the early 1940s (she received her medical degree in 1940), she has done hospital, clinical, and private medicine, as well as teaching and writing. Dr. Shainness has written approximately thirty papers that relate to mothering, including a chapter "Psychological Problems Associated with Motherhood," in the *American Handbook of Psychiatry*, a standard psychiatric text. Her other published papers include: "The Psychological Experience of Labor," "Feminine Identity and Mothering," "The Structure of the Mother Encounter," "Mother-Child Relationships," "Abortion: Social Psychiatric and Psychoanalytic Perspectives," and "The Right to Abortion."\* She teaches a course at the William Allison White Institute, called "Evolution of the Mother-Child Relationship," and has been an invited participant at many conferences on abortion.

Her basic thesis is that an unwanted child always creates and subsequently experiences difficulties. These difficulties are expressed throughout pregnancy, in delivery and in the post-partum period, and they then become translated into the particular dynamics or modes of relationship between mother and child. Furthermore she believes that a child, once rejected, unwanted, or unaccepted, is *invariably* a hated child.

In the course of her work, Dr. Shainness has described the particular emotional patterns associated with pregnancies, both wanted and unwanted. She noted that pregnancy is al-

\* See Bibliographical Notes, p. 134.

ways an added stress to the woman; in itself it creates additional emotional problems to be dealt with.\*

In describing some of the differences between a wanted and an unwanted pregnancy, Dr. Shainess gave the following example:

I would like to contrast the imagery of a woman accepting her pregnancy, at the time of quickening, with one rejecting it.

Now, the woman—particularly, it's true, with a first pregnancy—the woman, at quickening, if she accepts it, has a very pleasureable feeling. She will say "Oh, isn't this wonderful, it feels like the fluttering of a bird inside."

The woman who rejects it finds it a very unpleasant experience and I have had comments like, "It felt like a rat scurrying around."

A woman who can not accept her pregnancy becomes, and remains, depressed. This depression may go on and take all kinds of forms. It may be a neurotic depression, or may develop into various psychotic states. The woman is never the same again. She has nothing to do but go on and accept an intolerable fate. And both psychological and physiological manifestations in relation to the child come into play.

Dr. Shainess described an excessive vomiting phenomenon that can sometimes be observed.

A certain amount of vomiting somewhere around the third month is a natural physiological response, oddly enough, to get a woman to eat adequately, because the healthy woman knows that if she puts something in, in contrast to most kinds of nausea, she feels better.

But the woman who rejects her pregnancy somehow doesn't know this and she starts a cycle which may ultimately lead to pernicious vomiting of pregnancy, in which her whole

\* As an aid in understanding her theories, Dr. Shainess has developed charts describing emotional reaction to pregnancies. She brought them with her to the courthouse and they were presented with her testimony.

blood balance gets upset and which ultimately can be a very dangerous condition.

It is as if the woman is saying, bodily, "I can't stand this, I would like to vomit it up or vomit it out."

Vomiting is not the only means that women choose, and the question that comes up is: Why does a particular person have a particular type of psychosomatic reaction? One can't easily say, however, why one person gets a gastric ulcer while another gets colitis, there are usually many reasons, and often a physical predisposition.

Another way that some women have of coping with an unwanted pregnancy is habitual, spontaneous (noninduced) abortion. Spontaneous abortions occur sometimes where there are no psychological findings. Women who spontaneously abort may have a weak spot there. Many other women who might wish to abort simply cannot.

There are many responses to unwanted pregnancies. In some women very serious migraine headaches develop. Another response that is of significance has to do with malignant hypertension during pregnancy, which is known as preeclampsia or eclampsia. Here pregnant women develop severe hypertension which rarely occurs to this degree in the young at this time of life. Dr. Shainess' view of this is that it is as if they were saying: "I have to clamp down and grit my teeth and bear it." In effect, it is a bodily expression of forced compliance.

Dr. Shainess then discussed an example of a case history, where a married woman had one child and three years later became pregnant again. (She became Dr. Shainess' patient six or seven years later.) The woman had difficulties, particularly with vomiting during the second pregnancy, and she had numerous other psychiatric symptoms.

Dr. Shainess set forth the case history as follows:

Now, after delivery she went into a serious depression—and this was a psychotic depression—and she developed a

delusional idea connected with it. The delusional idea was that she was paralyzed by polio.

Now my interpretation of this delusional idea—the reason I picked this case is that it is so symbolic of what goes on in women and how they feel—has two components in it.

First is the idea of a disease damaging the person and I would say that this was her symbolic or metaphorical way of indicating that she felt damaged by the fetus, by the pregnancy, by the child. On the other hand, she said she was paralyzed and I think this is interesting, because this, too, is a symbolic way of expressing her feeling of incapacity to care for the child.

Now this woman was hospitalized, on and off, had others to care for the child, and the child became a disturbed child. She was about five when she came into treatment with me.

I believe that this woman, who had what I would term weak ego resources, certainly might have avoided all of this if she had succeeded in obtaining an abortion at the time when she wanted it, and we wouldn't have one more extremely troubled child. So I think the implications for me are not only damage to the woman, but to the child and to society.

Dr. Shainess then discussed emotional reactions to abortion. Some experts had believed that an abortion, in and of itself, was traumatic and inherently damaging to a woman. However, numerous recent studies indicate that the most traumatic aspect of an abortion is the fact that society has labeled it criminal, and has forced the circumstances of it to be tawdry and degrading. Rather than being in a worse emotional state after an abortion, one recent study shows that "about 75 per cent of the patients reported subjective impressions of improved emotional status following abortion." \*

\* Rappaport and Barglow, "A Follow-Up of Therapeutic Abortions," *Archives of General Psychiatry*, 1969, Vol. 20, No. 4.

See also, Arthur Peck, "Therapeutic Abortion: Patients, Doctors and Society," *American Journal of Psychiatry*, 125 (6): 797-804, December 1968.

Dr. John M. Cotten, of the Division of Psychiatry of St. Luke's Medical

Dr. Shainess believes there is a vast difference in reaction to abortion that is illegal as opposed to legal abortion. She presented a case history to illustrate the above point:

I have had in my practice women who have gone through horrendous circumstances, and any agitation, depression or upset they have experienced followed that.

I particularly think of one young girl who could not obtain a legal abortion in this country, went to Puerto Rico, went to a doctor's office—I presume it was a doctor—where there were tarantulas crawling on the walls and where she was . . . first of all, what she went through to get to him was something.

She had to go alone because no one could afford to come with her. There were tarantulas crawling on the walls. She was alone in a . . .

MR. FORD: I object to this.

DR. SHAINESS: She was placed alone in the room and nearly bled to death.

MR. FORD: I object to this as not relevant.

When asked how she would describe the emotional reaction to a *denial* of abortion, Dr. Shainess said that no men, or few men, could understand because they have never been through pregnancy or delivery. But she offered a useful analogy:

... It's as if, let's say, people are walking along the street . . . some get across the street, some are stopped by a red light and let's assume that for no other reason than that they are stopped for a red light, these people are told this:

"From now on, for about nine months, you are going to have to carry a twenty-five-pound pack on your back. Now

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Center in New York, has stated that if there are any psychological problems in relation to abortion, they arise from traumatic and stressful circumstances rather than from the abortions themselves.

Other doctors with similar views include Dr. Abraham Heller, Dr. H. R. Whittington, and Dr. Robert Laidlaw of Roosevelt Hospital. See A. Heller and H. R. Whittington, "The Colorado Story: Denver General Hospital Experience with the Change in the Law on Therapeutic Abortion," *American Journal of Psychiatry*, December, 1968.

you will have to endure it, whether you develop ulcers under the load, whether your spine becomes deformed, no matter how exhausted you get, you and this are inseparable.

"Then after nine months you may drop this load, but from now on you are going to have it tied to your wrist. So that wherever you go this is going to be with you the rest of your life and if, by some accident, the rope is cut or the chain is cut, that piece of rope is always going to be tied to you to remind you of it."

Dr. Shainess, herself the mother of a son and a daughter, both medical students, made it perfectly clear that she favored motherhood where children were wanted. As she put it:

I don't believe women shouldn't be mothers, I believe they should be, but I want the right conditions for it, which is why I am talking the way I am.

Dr. Shainess indicated her dismay that many people, especially men, are not more understanding. No man has to cope with pregnancy and delivery, and he can therefore take rather casually what is really quite burdensome to the woman. Men do not realize that it is only the real desire to have a child that makes it all worthwhile. She deplored the fact that modern technology is not used to help women:

We don't say to people that they have to live in a wooden lean-to in these times of modern technology because that's the way it was. If a person breaks an arm, we do everything we can, and we believe we should apply medical knowledge to restore him to his proper state. Why, then, say "no" to a woman who is trying to master her life's circumstances?

Further, she suggested that from the point of view of survival of the species, there was a time when insistence that every pregnancy be carried through made certain sense. (Not all children survived, and abortion was dangerous.) Today, however, this is not valid; the population explosion, indeed, militates against it.

We are told that 35 to 45 per cent of the population in the United States consists of unwanted births,\* and eliminating these births can significantly help with the population explosion. If there is no feeling for women, at least let there be expediency. It is a way to be helpful to women in mastering their lives; at the same time it is a way to relieve them of something that threatens all life.

In conclusion, Dr. Shainess stated:

... If mental illness exists before an abortion, it is likely it will exist after.

... if there is mental illness before and an abortion is not granted, the illness will get worse. The relief that has been seen, the improvement where women have obtained abortions, whether legally or illegally, but more comfortably legally, has just been enormous. It's as if the woman is given another lease on life.

When asked under what circumstances she felt an abortion would be necessary or appropriate for a woman who was her patient, Dr. Shainess said:

I would say that any woman who is clear that she wants an abortion should be able to have one, because to greater or lesser degree, it [refusal of abortions] inevitably, in my view, interferes with her sense of self, with her ego, with her capacity to cope with her life, with her capacity to master her life, a choice that I believe even our Constitution, in a sense, grants; and therefore I believe that it inevitably creates difficulties and she should have the right to an abortion.

I believe it's *her* decision and I might state that my position is that the physician is there to *serve* the patient, give what the patient needs, not to *legislate* over whether the patient should or should not have what she needs.

Finally, Dr. Shainess was asked whether the New York laws governing abortion affect her relationship, her ability to

\* According to a study by Dr. Charles F. Westoff of Princeton University, Office of Population Research.

deal with her patients. She replied that the very restrictive New York laws did seriously interfere with a doctor's capacity.

A second phase of direct examination concerned Dr. Shainess' disagreements with the affidavit of Doctor Armand DiFrancesco, the psychiatrist presented by the Friends of the Fetus in support of their motion to intervene. (Dr. DiFrancesco is staff psychiatrist to Our Lady of Victory Home for Unwed Mothers in Buffalo, New York.)

*Dr. DiFrancesco*

In my twenty years of practice as a psychiatrist I have never seen a case where abortion provided an acceptable solution to the problems of a pregnant woman.

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Requests for abortions are based on fear. . . . The world of psychiatry is to foster the development of mature and responsible attitudes to enable patients to cope with fear.

*Dr. Shainess*

. . . I would consider it an outrageous statement.

The type of fear is important. Is it an irrational fear or a rational fear? Irrational fears are largely what psychiatrists have to deal with, because they come out of the distortions of earlier periods . . . and are inappropriate.

The other point is, he seems to be saying you let a condition develop, then you try to help cope with it.

It's like letting a man fall into a pit, saying, "Don't worry, we'll help you accept this and if you're not killed by the fall into the pit, we will support you emotionally and we'll put splints on your broken bones," and so on.

*Dr. DiFrancesco*

A psychiatrist does not aid a patient when he permits self-indulgence.

*Dr. Shainess*

In other words, if you know that a situation is going to create difficulty, I would say preventive medicine and preventive psychiatry is infinitely on a higher level than treatment. . . .

We should be able basically to *prevent* disease or prevent illness or—just like at a certain level of society—it's better to give a quart of milk to people than to give them a lot of lectures about this and that and have them cope with their fears of starvation.

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The punitive attitudes that some people have which come out of their own . . . punitive experience and which are . . . extremely irrational, lead them to all kinds of projective views of others: It's a very curious thing that, for women, any implication of sex means that they are being self-indulgent.

Once again I want to turn to the importance of preventive measures. As I see it, we should have good, safe means of contraception available to all . . . the first choice is to prevent. When you can't prevent, then you have to correct. . . . Often this kind of

*Dr. DiFrancesco*

*Dr. Shainess*

statement is made as . . . an angry attempt, let's say, to control sex punitively on the part of the young or the unwed people.

In my view, if we are capable of teaching true ethics and concern for life, we ought to be able to do that not punitively, but on the basis of having demonstrated our own good will and capacities and helping the young have truly high standards. Anything that is brought about through punitive means is really not worthy, as far as I'm concerned.

I would like to comment on protecting the unwanted child. My concern has very much been the child and that's why I am in favor of abortion. . . . Children who are wanted don't become battered children or tortured or neglected children. They don't become overprotected children either, which seems to be the kind that happens among the higher economic levels, but equally destructive in its way.

Now my point is if we are concerned about the rights of the child, we've got to make abortion possible, because a

*Dr. DiFrancesco*

I have never seen a woman who sought an abortion on psychiatric grounds become worse when the abortion was refused.

*Dr. Shainess*

wanted child is a decently treated child.

That's outrageous. He says he's never seen it. My answer would be: he can't see. . . .

I have never seen a case where a woman resenting a pregnancy is not further damaged herself . . . the angrier the mother is, the more she takes it out on the child . . . . The more it's taken out on the child, the more the child fights back with the mother, and ultimately the whole relationship becomes a degraded one and the woman is definitely damaged . . . . Some of the sickest girls insist on having this baby . . . because the girl is going to use this pregnancy and this out-of-wedlock child to punish her parents, to get back at others, and so on. The interesting thing is that the healthier girls don't want the pregnancy, and try to get an abortion, while some of the sicker ones insist on having it.

In each case the patient responded well to psychiatric treatment that enabled her to cope with her fears.

I would like to cite a research project by Klein, Potter, and Dyk. . . . They did a study of unwanted pregnancies which were not

*Dr. DiFrancesco*

*Dr. Shainess*  
granted abortions, and what  
happened?

They said that the rejecting attitudes were either resolved or repressed. Now . . . there is a tremendous difference between repressing something you have to endure, and really resolving and accepting it. I do not, as yet, know of an instance of an unwanted pregnancy becoming a really accepted one through psychiatric therapy.

However, one has to recognize that there is a kind of an effect which I would say is relevant to the hypnotic effect, in which, if an authoritative person is nice to you and implies you have to accept this, and so on, there are effects from that.

But the interesting thing to me is, if you go on to study the quality of the relationship between mother and child, and the different modes the mother uses in dealing with the child, you may not find *overt* expressions of rejection once the child is there. You find other worse things in her way of dealing with the child.

For example, a mother who battles her infant over food and keeps thrusting food into the infant's mouth to the

*Dr. DiFrancesco*

*Dr. Shainess*  
point that the infant vomits  
... looks like she is caring  
for the child, but she is at-  
tacking the child.

That's the kind of mode I  
mean and one can find end-  
less variants of this. Or the  
mother, who is always over-  
dressing her child and  
smothering it to death, is  
also expressing something:  
rejection

On cross-examination Thomas Ford questioned Dr. Shainess about the battered child and represented Dr. Ray E. Helper, an expert on the battered child, as having asserted in his book: \* "... that he (Dr. Helper) can find no correlation between an unwanted pregnancy and a battered child syndrome . . ."

The next day, when Dr. Helper was called by Mr. Ford as a witness, the doctor denied that he found no correlation.

Throughout Dr. Shainess emphasized the importance of wantedness, acceptance, and love in child bearing. She quoted Freud as saying that the boy who has been loved by his mother feels he is a hero the rest of his life.

Thomas Ford asked her: "When a patient comes to a doctor on abortion problems, aren't they seeking medical advice . . . ?" She replied: "Women do not want the *advice* of their doctors, they want the *services* of their doctors."

Summing up her position, Dr. Shainess said: . . . My basic concern as an analyst has been in good mothering. This has been the area of my interest and my study. Therefore, it's not as if I don't want women to have children. My attitude comes out of my concern that women be good mothers to their children. . . ."

\* *The Battered Child*, University of Chicago Press, 1968.

1. "Psychological Problems Associated with Motherhood." In *American Handbook of Psychiatry*, Vol. III, ed. Arieti, Basic Books, New York, 1966.
2. "Psychological Experience of Labor." *New York State Journal of Medicine*, 63(20): 2923-32, October 15, 1963.
3. "Feminine Identity and Mothering." In *Science and Psychoanalysis*, Vol. VII, ed. Masserman, Grune & Stratton, New York, 1964.
4. "The Structure of the Mothering Encounter." *Journal of Nervous and Mental Disease*, 136(2):146-61, February, 1963.
5. "Mother-Child Relationships: An Overview." In *Science and Psychoanalysis*, Vol. XIV, ed. Masserman, Grune & Stratton, New York 1969.
6. "Abortion: Social, Psychiatric and Psychoanalytic Perspectives." *New York State Journal of Medicine* 63(32):3070-73, December 1, 1968.
7. "Abortion is NO Man's Business (The Right to Abortion)." *Psychology Today*, Vol. 3, #12, May 1970.
8. For her most recent reference to abortion, see *Abortion in a Changing World*, Vol. II, pp. 58-61, 210-211, ed. Robert E. Hall, Columbia University Press, New York, 1970.

## DR. RAY E. HELFER

Dr. Helfer was one of the only witnesses called by the attorney for the intervenors who supported some of our contentions. Ford stated for the record: "Doctor Shainess emphasized . . . a definite correlation between an unwanted pregnancy and a child that was subsequently abused or battered . . . For that reason I have produced Doctor Helfer."

As it turned out, Dr. Helfer's testimony tended to corroborate rather than to contradict Dr. Shainess' testimony.

Dr. Helfer is chairman of the Department of Pediatrics at the Catholic Medical Center of Brooklyn and Queens; co-editor of *The Battered Child*, and is writing a second book, to

come out at the end of 1970, *Helping the Battered Child and Its Family*. He participated, for five years, in a research team which conducted an intensive study to try to determine why mothers and fathers beat small children (i.e., children under four or five years). He believes that this study has enabled them to delineate, rather clearly, some of the psychodynamics of this phenomenon.

Dr. Helfer described the three factors almost invariably found in situations where parents batter small children:

... the major reason why small children are physically injured . . . has to do with . . . the mothering function. . . . The mothering function is a part of both fathers and mothers. It has nothing to do with the sex of the individual . . . it has to do with the ability for parents or adults . . . to care for small children.

Most normal parents—by normal I mean those that don't beat small children—don't do this because they have learned in their infancy how to receive emotional support from their parents. As they learned this, they then begin to understand, through a sort of imprinting process, how to give and take emotional support from and to others. So this whole learning process from the very early stages is one that is acquired through being mothered. When these normal individuals rear their children, they are able to love them and hold them and rock them etc. just because they are there and it requires it. Even though the little baby who messes his pants and vomits and gets up at night is very upsetting to most parents, at times, the great majority of people are able, just because this child is theirs, to take care of him and give emotional support. When they are really uptight, they have learned through their relationship with their parents and others as they have been growing up the ability to seek and find help . . . in the area of mothering when their children are unusually frustrating. For example, most normal parents when a child cries and is not stopping and is really getting to them and just doesn't stop crying or being sick or vomiting or what have you, are able to seek help from the outside world, whether it

be from a husband or wife or neighbor, friend, relative, doctor, etc. They have this ability.

With very, very few exceptions this whole concept is not true in the parents who physically injure their small children. They have not been reared in a way that has made it possible for them to know how to emotionally provide this support that their children need. They have never gained the ability to mother their children. Since they have never gained this ability . . . parents who physically abuse their small children have a very high expectation of the child when he is born and they truly expect the child to provide them with the type of support that their parents never were able to. . . . They have the unique ability, some of them, to marry a person who has also been reared in this way and cannot provide each other with support, so that the marriage itself is in some jeopardy. So when the child is born the classic statement that we hear over and over again, in one form or another, "I waited all these years for my baby and when he was born, he never did anything for me." This whole concept of expecting too much of the child centers around this, what we might call a potential to physically abuse the small child.

Doctor Helfer then indicated that there were two other necessary factors besides the potential in the parent: a crisis situation, and a "bad child," i.e., a child unable to provide the parents with what they are expecting. He re-emphasized that the ability of parents to find help is crucial because, if parents do not know how to find help and have built a wall of isolation around themselves through past years, the baby is in trouble.

There was more of considerable interest in Dr. Helfer's 46-page testimony, but of particular relevancy were his comments on the relationship of an unwanted pregnancy to a battered child syndrome, which he dealt with in the following way:

Now, regarding the unwanted pregnancy, if the potential is there—and the crisis could be the pregnancy—you know, that could be it . . . and then the baby happens to be a bad baby (I don't mean bad in that sense, but just a hard-to-care-

for baby)—then all these things built together are enough to cause the physical abuse. However, without the potential, the unwanted pregnancy, *per se*, is not enough to cause physical injuries to children.

Some parents who have been reared in this "normal sense" that I talked about earlier, who have unwanted pregnancies, a large majority of them are able to handle the frustrations, at least to the point of not physically beating their children. So, although unwanted pregnancy is part of the system of child abuse, it has to be fit into that complicated puzzle as the crisis and it cannot produce the potential, if the potential wasn't there in the first place.

Dr. Helper was the only one of the intervenors' witnesses who seemed to be as concerned about the child as he was about the fetus (the second patient). In his scholarly presentation, he produced the following statistics:

It is estimated . . . we do know that about two children are killed every day by their parents. That's a reasonably stable figure. . . . So if you go backward, you can say that there are thirty thousand or forty thousand physically abused children per year in the country, but these are all guesses, because the reporting incidence is relatively low.

Ford was not entirely successful in his attempt to use Dr. Helper to contradict Dr. Shainess:

**Q (Ford):** Would it be fair to state from what you described to us that an unwanted pregnancy, *per se*, is not a major factor as correlated to child abuse?

**A:** I don't believe I can answer that, because the word "major" is thrown in there. Given the potential of child abuse, it would be a major factor in the crisis situation, but since the potential is not very high in most parents, I wouldn't say it would be a major factor. If you have the potential, then an unwanted pregnancy is a major factor. If you don't have the potential, which isn't present in most unwanted pregnancies, then it is not a major factor. . . .

In other words, a bullet, *per se*, is not dangerous unless you have the gun around. Is that a good analogy?

MS. STEARNS: Probably a very good analogy.

A: With the gun and with the bullet, then you have a significant potential—then you have a higher incidence of abuse.

MR. FORD: I have no further questions.

Dr. Helfer distinguished himself in still another particular in that he admitted to the existence of the remedy of leaving New York State to seek an abortion elsewhere where it is legal. Despite the attempt of counsel to keep his remarks off the record, they were recorded:

MS. STEARNS: To begin with, I believe that a witness cannot take himself off the record, so I would like to state that in the initial answer to the prior question or his prior description of a woman who has potential for battering a child, who has, in fact, battered one child, become pregnant again with a child she does not want, he then said, "Off the record, I'd send her to Colorado because they have more liberal abortions there."

MR. LEWITTES: First of all, I think it was in a jocular vein and, number two, the witness specifically stated he wanted to go off the record, as witnesses for the plaintiffs have in the past, and we have respected that.

MS. BELENKY: In addition to which, I believe the witness did not say, "I would send her to Colorado," but it was made in a less personal way as an over-all suggestion, not necessarily the action that he would recommend.

MR. FORD: I would like the doctor's comment on it.

THE WITNESS: I think that we have had situations, having been in Colorado for five years, that this problem has come up—that women have been sent to Colorado for abortion for this particular reason—and I think that if the woman and her doctor desire the abortion, and if she desires it to be legal, she would have to be sent to some place where it is considered legal.

Although I don't agree with the use of the state's laws in that way, I think that some women have taken advantage of

the liberal laws in Colorado, and have been sent to Colorado for abortions for this and other reasons why it couldn't be performed in other states.

In one last vain attempt, on redirect examination, Ford tried to get the witness to support the intervenor's position, but without success:

**Q:** Did I understand you to say that in the majority of child abuse cases you studied that the child was originally wanted and then disappointed the expectations of the parent?

**A:** I don't think I said that the majority of cases were originally wanted. I did say that they disappointed the expectations of the parents, and I did say that there were three situations that it took to lead to small child abuse, namely, the potential, the crisis, and the child, and the crisis certainly could be the unwanted pregnancy. But that, *per se*, was not enough to cause physical abuse to occur.

**MR. FORD:** I have no further questions.

**MS. SCHULDER:** We never claimed that every woman who had an unwanted pregnancy battered a child.

# Population Researchers

Other experts carried the proceedings into an area of social concern, potentially land-mined. Judith Bruce and Emily Moore testified as women deeply involved in social statistics of family planning, population control, and the role of women as workers and/or caretakers of children.

The role of women as mothers is currently undergoing a re-evaluation.\* Some groups, within Women's Liberation and elsewhere, have suggested that at this point in history, in this country, women should not bear children, but should engage in serious political work. Others are considering communal child-rearing, where the traditional children-to-every-couple will no longer exist.

It is clearly crazy to prohibit abortion when there is the specter of too many people in the world. The reason many people have suddenly discovered "compassion" for women may, of course, relate to what they consider a simple matter of expediency.

\* See, "The Motherhood Myth: Women don't need to be mothers any more than they need spaghetti," *Look Magazine*, Sept. 22, 1970.

## JUDITH BRUCE

Judith Bruce, a student of population who does research in the field of family planning, testified concerning population problems; also about abortion in the context of the importance of the timing of the birth of the first child in a woman's life. Ms. Bruce studied biological anthropology at Harvard University, concentrating on population problems, and she has written a number of papers on the subject.\* She has also worked on specific population projects in Puerto Rico and in Minneapolis.

We are faced with the fact that women from the ages of 15 to 45 must control their fertility. They could have a potential of maybe thirty children in their lifetime, if they get pregnant every year. She pointed out:

The motherhood role is an irrevocable role. You can be employed and unemployed, you can be a student today and not be a student tomorrow, you can be a wife and opt out of being a wife. The role of a mother is permanent.

The question is to what degree the timing of the first birth interferes with the capacity to develop other roles. For example, in New York City, in Central Harlem, 44 per cent of the girls leave school before graduation because they are pregnant. Now, on a nationwide level, 38 per cent of white females and 49 per cent of nonwhite females leave school

\* One published paper, for example, on attitudes toward contraception and the initiation of advice on contraception by physicians in Cambridge, Mass., illustrated the gap between public attitudes toward contraception and what was public policy. The difference between public policy and church policy in Massachusetts was also noted. The top echelons of the Catholic Church had said there should be an Ecumenism (that is, admitting all attitudes toward birth control), but the middle echelons, the policy-making echelons—Catholic doctors, in particular, who were head of various gynecological hospitals—had not permitted information on contraception to be dispensed.

before graduation because they are pregnant. Obviously, the motherhood role—and in this case, at that age, it is usually a first birth—is interfering with the continuance of education, and it interferes to a much greater degree at the college level.

A first birth, at an early age in particular, focuses a woman's life on a reproductive role. If she has a baby before the age of eighteen—and the median age for having a first child in this country is 20.3, which means the majority of women have a child before twenty—there is a long span in her life when, if she is not producing the children, she has to do something.

Possibly, having had a child, she will be prevented from returning to other roles. Perhaps the shock of this first child at the age of eighteen removes other alternatives from her. Perhaps she goes on to have five children, but if she had been able to finish her education she would have said, "Well, I want to do some work, I want to be a student."

Her whole life would have been more considered, and abortion would definitely be beneficial in giving her a choice. Right now she doesn't have a choice. Pregnancy is compulsory. If a woman finds she is pregnant, she is compelled to become a mother, unless her *physical* life is in danger. But in general, the more important parts of her life may be in danger.

Ms. Bruce pointed out that she herself would like to have two children. Since she has roughly twenty years in which she could have twenty children, she will have eighteen years in which not to have children and two years to have them. (This may sound obvious, which it is; but very few women have had the orientation or the capacity to plan their lives in this way.)

The tragedy of the unwanted child was then mentioned. Regarding the fetus, Ms. Bruce believes that a woman who is nervous and does not want a child can cause the child to be of a nervous disposition at birth. If the woman does not want the child, once it is born, in the eyes of society the pregnant woman has become a mother, but the child can become a vegetable.

Ms. Bruce summarized the tragedy of an unwanted child from both the mother's viewpoint and the child's:

Society has placed the burden on the woman for humanizing and socializing and, if you like, ensouling the child. But it has not granted her the possibility of making a choice, of having control over her own body or her own motherhood. This is the tragedy, not only for the mother but for the child as well.

I am a friend of the child. I am not a friend of the fetus, but one in four to one in three families have an unwanted child; one in two poor families have an unwanted child. Unwanted children are found to be socially and psychologically disadvantaged.

In the evolution of the rights of the child, as well as in recognition of the rights of the mother, abortion repeal is necessary. It is irresponsible to bear an unwanted child, but women are forced into that irresponsibility.

Ms. Bruce decried the lack of freedom accorded people:

If I may say one final thing, the ludicrousness of all this is that in my estimation, and from what I see of present population problems in the United States, in ten to twenty years women will be prohibited from doing what they are now forced to do and forced to do what they are prohibited from doing now.

That is, pregnancy will be prohibited, because we cannot take that many more people on this earth and abortion will be compulsory. And, unhappily, there will have been no intervening period of freedom for women to make a choice—and not just women, but couples, husbands. We will have gotten the back side of the hand on both accounts.

In the area of abortion, as elsewhere, black women are accorded even less freedom than white women. Asked if she had an opinion as to the availability of abortion to poor women as compared to wealthy women, Ms. Bruce pointed out that in New York, in 1963, for example, 91 per cent of the women getting "therapeutic" abortions were white and 93 per cent of

those receiving them could afford a private room. Moreover, half of the maternal deaths are assumed to be due to abortions, and the maternal death rate is nine times as high for nonwhite women as for white women.

Currently, Ms. Bruce said, there are no really effective and safe methods of birth control. The most effective methods of birth control can not be used by every woman. She outlined the available methods as follows:

1. *The pill* is currently under a cloud, and it may be removed from the market; or, at least, its potential usage is likely to be narrowed rather than enlarged. (Particular difficulty accrues to women with circulatory or diabetic problems or liver ailments.) Under the circumstances, women may prefer not to use it.

2. *The I.U.D.* has a mixed record, and so far 50 per cent of those women who have had them inserted have had to have them removed within the first two years.

3. *The diaphragm* and *condom* also have degrees of effectiveness that leave something to be desired.

Ms. Bruce believes that a combination of contraceptives and abortion would be the best approach to birth control.

## EMILY MOORE

Emily Moore, is a sociologist /demographer. She holds a master's degree in sociology from Hunter, a master's degree in sociomedical science from Columbia, and a bachelor's degree in anthropology from Cornell. She has also studied at the London School of Economics and Yale University.

For more than a year, Ms. Moore had been collecting data from around the world on the subject of induced abortion. So far there are 728 articles and books (in a number of lan-

guages), soon to be published by the Population Council as a compendium of research findings on the demographic, legal, medical, religious, and other aspects of induced abortion.

As one part of her research, Ms. Moore became familiar with numerous surveys in the area of abortion. Known as KAP studies in the family-planning field, they relate to the *knowledge, attitudes, and practices* of people.

The latest attitude survey in the United States, conducted by the Harris Poll, shows a 64 per cent affirmative answer to the question: "Do you believe that abortion should be a private matter between the family and the physician?" With respect to the difference in attitudes on abortion between men and women, Ms. Moore pointed out that the American Medical Association has lagged behind the American Medical Women's Association in endorsing repeal of the abortion laws.

Surveys on abortion have been mostly conducted in the areas of attitude surveys, such as the ones mentioned above. (Contraception surveys, in contrast, have been made in all three areas—knowledge, attitudes and practices.) There is one recent study, however, which examined the question of knowledge of abortion. The results were shocking.

The question in the survey was: "Would you please describe how an abortion is done." The responses, when analyzed, were put into categories: (1) folk methods only reported; and (2) folk methods and /or medically approved methods. Fully 38 per cent reported knowledge of only folk methods. In other words, many dangerous methods—such as administering quinine, falling down stairs, holding a light on the belly until it is burned, inserting coat hangers, or knitting needles, and so forth—were the only methods they knew.

Ms. Moore then commented that it is because there is a great dearth of knowledge on proper medical procedure in many communities and because abortions must be performed illegally that they are dangerous. By contrast, abortions performed early in pregnancy, under proper medical circum-

stances, entail very low risk. In fact, it is a mortality risk exactly comparable to the use of the contraceptive pill.

Many experts see abortion and contraception as complementary elements in a total system of fertility control. (See testimony of Judith Bruce, above.) In the current state of contraceptive technology, Emily Moore agrees that abortion is an essential element to the control of fertility.

Studies from many countries (including Japan, Korea, and Chile) show that women who tend to use contraceptives also tend to abort. This indicates that those who are determined to control their fertility will do so by one means or another. For example, a woman who becomes pregnant with an IUD, *in situ*, is more likely to abort that fetus than a woman who has used no contraceptive.

When asked whether there are valid reasons why some women choose abortion over contraception, Ms. Moore replied that studies indicate that some women will choose abortion, particularly where planning is not a normal part of every day life, because:

1. Abortion is the only method of fertility control (with the exception of I.U.D.s and sterilization), which is a single-event procedure.
2. Abortion requires hindsight, not foresight; based on certainty, not probability.
3. Abortion is 100 per cent effective in contrast to most of the other methods of fertility control.

Some people have claimed that there is an insufficient number of doctors, resources, and/or facilities to do the number of abortions that would be requested, if abortion were legalized throughout the country. Emily Moore indicates that this is a poor excuse.

*Re Facilities:* There are 80,000 obstetric beds in the country. If each bed were used for one abortion per week for 50 weeks (allowing a two-week interval), this would account for four million abortions a year.

*Re personnel:* If only half of the board-certified obstetricians and gynecologists in the nation were to perform *two* abortions per week, that would account for one million abortions a year. (An abortion from start to finish can take fifteen minutes to half an hour.) \*

Finally, Ms. Moore discussed how changing laws affect the continuation of illegal abortions. (Some critics have charged that illegal abortions continue, even if abortion is legalized, so why bother legalizing it?)

1. If a law is merely liberalized to a moderate degree, illegal abortion is not eliminated but continues, although it is difficult to determine at exactly what rate.

2. If a law is liberalized to the point of allowing abortions in almost all circumstances and yet continues to have restrictive aspects, such as compulsory consultation of the patient with a group of physicians or where the privacy of the patient is not total, illegal abortion still continues at a minimal rate. It is considerably less, however, than when the law is only modified.

3. The closest we can come to eliminating illegal abortions is with a law similar to the one in Japan. It has been said that there is no such thing as an illegal abortion there. Complete privacy is maintained in the Japanese situation. It is entirely a matter between the woman and her physician.

Under cross-examination, Emily Moore said that, in her personal opinion, responsible women would make conscious decisions concerning the control of their fertility. She was pressed further on this, and the following colloquy took place:

**Examination by Carol Lefcourt**

**Q:** Do you have any opinion on the fullness or potential life of a woman who has two children as opposed to a woman who has five children?

**A:** Very simplistically, I'd answer that the former has more time on her hands than the latter.

\* These calculations are based on those of Dr. Christopher Tietze, perhaps the world's greatest expert on the subject.

**Q:** Does that make for a full life, in your opinion?

**A:** I would rather have two children than five children, but I make no such judgments about it.

MS. KENNEDY: If you have seen one dirty diaper, you have seen them all.

**A:** My concern is not only with the individual woman and her family. I also have population pressure concerns; I am concerned with the growth rates in my own country and many other countries, and hope that on a voluntary basis we will soon reduce our total fertility, so that we don't have to indulge in coercive measures, which may well be coming soon.

I don't subscribe to the view that every family must have no more than two children. I believe that there have been other plans suggested which would provide a quota for the total population—some having none, some having one, some having three, some having four.

I think there are perhaps other plans and ways in which this can be worked out. I believe there are many women whose anticipated fullness of life would be grossly interrupted, were they to have more than two children, more than one child, more than zero children.

The notion of a fullness of life is an enormously variable concept, with each individual woman seeing it differently. Some women might see five children as the ultimate fullness of life; but, as Ms. Bruce pointed out, the natural human capacity, in absence of any fertility control, is roughly twenty to thirty children.

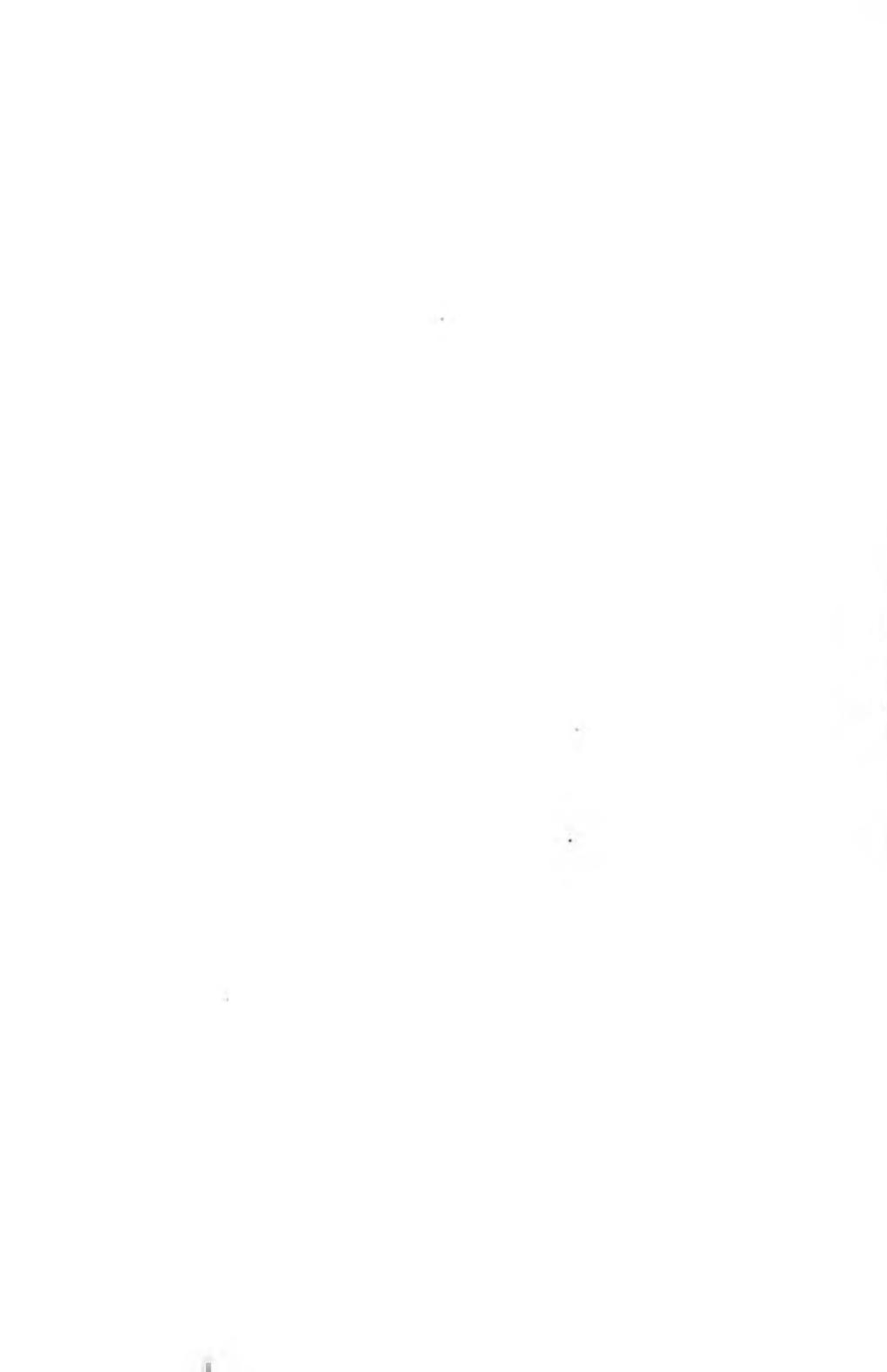
A few days after Emily Moore's testimony, the women in attendance at the hearing responded favorably to the testimony of Dr. Ricotta, one of the witnesses for the intervenors, when he criticized the widespread use of the contraceptive pill for women without sufficient warnings. He considered it dangerous and compared its use to using a sledgehammer to crack a walnut.

This doctor's testimony about a contraceptive pill for men

was received with great interest. He spoke of a pill that was available, but never put into use:

I call to your attention the fact that there was available a contraceptive pill for men in 1959. It has never been used because the Federal Drug Administration would not permit its use, unless there were fifty testicular biopsies. The man that developed this pill went to Sing Sing to see if he could get people in Death Row to volunteer for these biopsies. He could not.

Many people who are enthusiastic about "population control" seem to remain so only as long as it is the woman who takes the risks, not the man.



## *IV. Black Genocide*

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*Black people know that part of our revolutionary strength lies in the fact that we outnumber the pigs—and the pigs realize this too. This is why they are trying to eliminate as many people as possible, before they reach their inevitable DOOM. ALL POWER TO THE PEOPLE!*

*Brenda Hyson, in The Black Panther  
Saturday, July 4, 1970.*

The overwhelmingly white Women's Liberation contingent, was rather nonplussed by the failure of the Black community and the Third World people to join in on the struggle to repeal the New York State abortion laws. Outside the white community there was scarcely an audible rustle for or against reform, or repeal of laws or practices relating to abortion. In short, the Black community seemed preoccupied with other problems or totally unininvolved. To the extent that the views of the Black community were publicly expressed, they were almost always diametrically opposed to the ideas encountered in the eye of

the storm for abortion repeal. On several radio programs Black men and women (and, in at least one case, people from the Muslim community) denounced abortion as racist genocide, directed at Black people.

Moreover, there was an immediate and emphatic response by the Black Panther party a few days after the new abortion law became effective. This response was reminiscent of the position taken at the Black Power Conference in 1967, in Newark, New Jersey, where there was a consensus that birth control and abortion were both forms of Black genocide. At that time there was a workshop on "Black women and the Home" from which a rather generally worded statement was issued:

. . . Black women commit themselves to: a self-preservation and continuity through educating and exposing to our people the genocidal practices by racist societies.\*

This resolution was predicated on considerable discussion in which it was very clear that the consensus was against contraception.

Some revolutionaries in the Black community take the position that Black revolutionary forces will be decimated by birth control and abortion. Dire predictions about "population explosions" or sudden offers of long-denied birth control information only serve to confirm well-founded suspicions of racist motives.

Many of the arguments emanating from the Black community have been set forth by Brenda Hyson in the July 4, 1970 issue of *The Black Panther*. This article is a well-articulated exposition of views held by many varied Black groups. Her article was directed at the abortion law passed by the New York State Legislature, effective July 1, 1970.

\* Resolution from the National Conference on Black Power. These resolutions represented the distillation of the first major national dialogue by 1,300 Black Americans on the creative possibilities inherent in the concept of Black Power. There were a great number of resolutions from the 17 workshops—at which there were delegates from 39 states, Bermuda and 190 organizations.

The *Panther* article took a dim view of the idea that the new law was a victory:

... Perhaps it is a victory for the white middle-class mother who wants to have a smaller family, thereby enabling her to have more material goods or more time to participate in whatever fancies her at the moment. But most of all it is a victory for the oppressive ruling class who will use this law to kill off Black and other oppressed people before they are born.

This *Panther* view was similar to that stated in the Manifesto from the 1967 National Conference on Black Power:

Black people who live under imperialist governments in America, Asia, Africa and Latin America stand at the cross-roads of either an expanding revolution or ruthless extermination. It is incumbent for us to get our own house in order to fully utilize the potentialities of the revolution or to resist our own execution.\*

The *Panther* article also expressed an emotional and sentimental view of the Black family. Brenda Hyson labeled the true problem as capitalist greed:

Black women love large families, and the only reason that they would want to eliminate them is to rid them of the pain and the agony of trying to survive. Why in a country where farmers like Eastland, are given large sums of public funds to not grow food; where food is actually burned, must Black mothers kill their unborn children? So they won't go hungry? Absurd! Eliminating ourselves is not the solution to the hunger problem in America nor any other problem that could exist from a so-called unwanted pregnancy in the context of this capitalistic society. The solution lies in overthrowing this system and returning the means of production back to the people—REVOLUTION.

The specter of enforced abortions is almost upon us. Pregnant women in New York, prior to the new law, had some-

\* Presented together with the Resolutions, Newark, New Jersey, 1967.

times been told that they could get an abortion only if they agreed to be sterilized. Women on welfare are sometimes threatened with being removed from the rolls if they have had a relationship with a man, let alone have another child. Cynicism about the new abortion law is related to cynicism about the law generally. As the Panther writer so well put it:

The abortion law hides behind the guise of helping women, when in reality it will attempt to destroy our people. How long do you think it will take for voluntary abortion to turn into involuntary abortion, into compulsory sterilization? Black people are aware that laws made supposedly to ensure our well-being are often put into practice in such a way that they ensure our deaths. The current welfare laws are one of the classic examples.

Finally, the article strongly decried the poor health services available at hospitals and other treatment facilities, about which there can be no dispute.

Notable exceptions to those who equate abortion with Black genocide include Black women, such as Florence Rice of the Harlem Consumer Education Council, Shirley Chisholm, first Black congresswoman, and the many Black women who contacted us for abortion information during the course of the case. Among them were several youngsters under sixteen. The *amicus* brief filed by Emily Goodman had as one of its signators Percy E. Sutton, Borough President of Manhattan and a former New York State assemblyman, who was one of the first sponsors of abortion law reform in the New York State Assembly.

At least three small groups of Black and Puerto Rican Women's Liberation groups participated in plans for the spring, 1970, demonstration against abortion oppression. Speaking for groups, and as individuals, several Black women related horrendous experiences they had had in near-fatal attempts to terminate unwelcome pregnancies. One young Black

woman told of becoming pregnant while working for the New York Telephone Company. Unable to obtain an abortion, she worked as long as she could, then was forced to seek welfare. The baby was born prematurely and was kept in the hospital. She encountered endless difficulties getting her welfare checks. She had no place to live, could not bring the baby home from the hospital, and her life was in total chaos.

Several Harlem Hospital physicians verified the rumors that a number of Black women died each month as a result of incomplete abortions or infections caused by self-induced or illegal abortions.

That a discrepancy exists between the Black genocide position and the plight of many women and children in the Black and Puerto Rican community is very clear. This seeming contradiction might be accounted for in a number of ways:

1. Other day-to-day problems in the Black community less dramatic, but chronic and ongoing, are felt to have priority. This would account for the impatience, amounting almost to annoyance, evinced by Black people and community groups invited to participate in the struggle for repeal of abortion laws. Abortion is a relatively rare crisis as contrasted to such problems as unemployment, racism, poverty, bad housing, police rioting, and war.

2. Distrust of the white women's movement, a natural consequence of the D and C (divide and conquer) techniques of the oppressive establishment. Even young Black women, on and off campus, disdain the women's movement and declare that Black liberation has priority. They describe Women's Liberation as a media-promoted fad and charge that it is sometimes used to divert attention from racism. Black women apparently feel patronized by white women. Some few may see them as rivals for the affection and attention of Black men. Others suspect white women of attempting to play the role of the missionary's wife, dispensing vaseline to the raped native.

However much white women evince concern for male chauvinism in the Black community, however eloquently they declaim their solicitous regard for the hundreds of Black women who die annually in Harlem Hospital and other institutions that service predominantly Black communities, there is a chill, almost icy reserve toward Women's Liberation among Black women—if it is taken into account at all—and this carries into the struggle for abortion law repeal.

However, this is gradually changing due to the cumulative effect of the Free-Our-Sisters/Free-Ourselves demonstration in support of the New Haven Panther women; also the successful Free Joan Bird campaign which resulted in her release on July 6, 1970, after fourteen months in the Women's House of Detention, and the supportive action for telephone workers on strike by the Gay Liberation Front, women's groups, and at the May 28, 1970 Conference for Women.

3. A residual, subsurface religious bias not dredged up and dealt with, and probably not even acknowledged as such. Many Black people, who are not themselves religious, have been reared in circumstances where their parents and community are heavily influenced by religious concepts.

4. The habit of accepting oppression, without any relevant reaction, except horizontally- or self-directed guilt.

5. A distrust of systems, especially courts, as well as a feeling of aloofness to wooing "movements" which historically (e. g. the labor movement) tend to use Black people as troops, then return to the white "buddy system" as soon as the time comes to allocate the conquered territory.

6. Some of the people active in population control, family planning, and so on, have a bad stench of racism. In the spring of 1970 a radio panel of Third World women on WBAI-FM discussed their antipathy toward contraception and abortion. They cited the testing of birth control pills in South America and Puerto Rico. This clearly impressed them more than the concern of the white women's movement with *machismo* in the Puerto Rican community.

Early concern for population control was most often focused upon nonwhite areas. For example, in India, where transistor radios are given to young men who consent to having vasectomies which render them infertile, white racism seems symbolically to be making a transistor radio *the quid pro quo* for a man's manhood.\* Recently, Planned Parenthood sent out a fund-raising pamphlet entitled "Overpopulation." They asked for contributions to help build Planned Parenthood clinics "in Asia, Africa, or Latin America."

In our opinion the Black genocide argument is subject to certain objections. Of girls who drop out of high school, a large proportion are from the Black or nonwhite communities and a major reason for leaving school is pregnancy, which competes with economics and boredom to motivate the drop-out.

Black majorities in places like South Africa and Mississippi are not noticeably revolutionary. No evidence has come to our attention that mothers of large broods led the rebellions in Watts, Detroit, or Newark, although Mothers for Adequate Welfare in Roxbury precipitated the Boston rebellion with their sit-in.

Women hampered by children tend not to be in the vanguard, and male revolutionaries frequently abandon their children when the going gets rough. Perhaps the thought is that the parents will continue to consent to oppression, but will reproduce large numbers of children who will snatch them from

\* "In Bogota, Colombia, there is a new billboard advertising a service formerly only whispered about—family planning.

"Radical young priests, along with their lay supporters, are taking the line that family planning is being fostered by 'imperialist United States agencies' in place of social and economic aid. Many of the radicals believe that only a change in basic social and economic institutions can solve Colombia's problems.

" 'Washington is trying to give us the pill because they think it is a simple solution to our problems,' one priest is quoted as having said. 'Oh. God, how Washington loves neat and simple solutions in Latin America! First it was the Alliance for Progress, which they are quietly burying. Now it is the pill.' " (From an article "Colombians Get Aid On Family Planning," by H. J. Maidenberg, *New York Times*, July 15, 1970.)

the claws of the oppressors in their old age. This concept of breeding revolutionaries, rather than revolutions, is appropriate in a society where the old people do the voting and the youngsters do the fighting and dying. Breeding revolutions can be fatal, whereas breeding revolutionaries is not too far removed from a cultural past where Black women were encouraged to be breeding machines for their slave masters.

It might shock Black radicals to entertain the possibility that religious programming combined with certain of the slaver's social values, plus a soupçon of male chauvinism, account for the volume, of the contention that a legalization of a woman's right to terminate an unwanted pregnancy is Black genocide. In any case, Friends of the Fetus in the Black Community have permitted a number of potential revolutionaries to languish in orphanages and foster homes, despite widely broadcast pleas for rescue (for revolutionary or whatever purpose).

If abortion or other forms of birth control are used by oppressors against a certain class of people, there might easily come a time when all women will have to fight against the imposition of abortions. Like any other problem, abortion must be approached openly and dialectically and not in a mechanistic manner. Enforced sterilization is not merely a nightmare of the future, since it has often been ordered in the case of welfare mothers, and has been used as well as a precondition for an abortion.

We favor the right of women, Black and white, to have the choice of deciding whether they wish to have babies. To the degree that Black people equate the repeal of abortion laws with compulsory sterilization, they obviously must oppose it. However, among the silent majority there would appear to be bleeding women in the emergency rooms of hospitals who could use the help of those who have been espousing the Black genocide theory.

A further irony in the Black Genocide position is that here it is the opponents of governmental control of Black communities who urge the continuation of state interference in the personal lives of Black people. It would seem more understandable for these anti-establishmentarians to seek community control of such matters. This control might better result if abortion laws were repealed and free choice prevailed.

Nevertheless, the white women's movement must be careful not to use the Black women's plight to make their case for them. White women must let the Black movement formulate its own ideas and strategies in its own time and way.

That Black women are beginning to publicly oppose the Black Genocide position is further evidenced by a recent article in *Black America*: \*

Don't call me sister if you can't call me wife. Dig it! This is not a catch phrase, or one of the ten top Black sayings of the week. This is a sentiment taking a strong hold on many sisters who are no longer willing to be the punch line of some brother's joke. The sisters say it and they mean business. No more fatherless Black babies, no more weeping Black unwed mothers. Sisters are firm in this stand, and they warn, "Don't cry Black Genocide!"

\* Carolyn Jones, "Abortion and Black Women," *Black America*, Vol. 1, No. 5, September 1970.



# *V. On My Merry Way (Friends of the Fetus)*

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*Man (upon discovering his pregnancy): Why should I give this . . . this thing representation? It is nothing to me. I am not responsible for it, or where it is, nor do I wish to be. I have a life, an important life. I have work, important work, I might add, that has more than incidental benefit to the entire population of this world, and this—this mushroom which you have visited upon me in your madness—has no rights, no life, no importance to anyone, certainly not to the world. It has nothing. It has no existence. A little group of cells. A tumor. A parasite. This has been foisted upon me, and then I am told that I owe it primary rights to life, that my rights are subsidiary! That is insanity! I do not want this thing in my body. It does not belong there. I want it removed. Immediately. Safely.*

—From *But What Have You Done for Me Lately?* by Myrna Lamb.

The 1970s for women could very well be a replay of the phase of Black people's struggle for civil rights beginning in 1954 with the school desegregation decision (*Brown vs. Board of Education*).

The Women's Liberation movement is congratulating itself on the victory of the passage of the reform abortion law. But the struggle is just beginning. Freedom for women is still dependent upon a change in the power structure of male-dominated institutions.

The first person a woman is likely to turn to, when she wants to terminate a pregnancy, is a doctor; her fate is in a doctor's hands. Unfortunately, despite the few courageous doctors who have committed themselves to working in clinics, the medical profession is one of the more elitist, chauvinistic areas of our society. Women, up against formidable odds, will continue to have to cope with the institutionalized oppression by doctors, who are more concerned with their professional careers and their religious philosophies than with women's lives. The medical community, as a whole, never publicly condemned the priorities established by the medical experts called by the intervenors; nor did any substantial part of the medical community come forward to support publicly, privately, or financially, the women or the doctors who brought these suits.

Better examples of male chauvinism could hardly be found than the testimony of the doctors in behalf of the intervenors. Six witnesses were presented as part of their direct case: three gynecologists, a psychiatrist, an embryologist, and a fetologist. All were male; all were white; and all, or most, were Catholic. Each of the three gynecologists had a position in a hospital, yet each said he would not change his medical practice regardless of possible changes in the law. The following excerpts are from the nearly one thousand pages of the depositions taken by the intervenors.

Dr. Leslie Tisdall was characteristic in his tendency to dismiss the crisis of an unwanted pregnancy. As he put it:

All the abortions that I have had requests for have been for reasons of convenience; an unmarried mother or an unwanted child, let us say, and I have, of course, refused these patients. . . . I have invariably tried to explain what, in my mind, is the foolishness of such a procedure.

When asked: "Have you seen any difference in the condition or response or emotional situation of unwed mothers that you would point out, as against mothers who are wed?" his answer was a flat "no."

Tisdall conceded that, at first, some women are upset—especially an unwed mother or a woman with several children in a situation where there are economic or social problems. However, from an admittedly detached point of view he surmised:

... in the case of the unwed mother, the girl who finds herself pregnant, this is a *cause célèbre* and there is much furor with the girl and her family . . . but from a more detached point of view . . . I am able . . . to tell them that in time all this furor, this bitterness, this remorse, this guilt will vanish and that life will go on very well for them.

That such is not the case has already been demonstrated by the testimony of Dr. Shainess who, along with other psychiatrists and psychologists, has been trying to unravel the guilt, remorse, and bitterness which does not vanish into thin air, as Dr. Tisdall predicts. In contrast to Dr. Shainess, who substantiated most of her conclusions with graphs, documents, articles, or detailed case histories, Dr. Tisdall, and the other experts called by the intervenors, tended to make unsubstantiated pronouncements. About unwanted pregnancy, Tisdall said:

I will inform them that they are pregnant and they will be very upset. "I don't want this baby, I'm very upset by this," etc., etc. It has also been my experience . . . that in the course of pregnancy that this unwanted feeling, to a great degree in the majority of cases, disappears and it has also been my experience that these children, when they are born, are then wanted.

Dr. Shainess was not alone in refuting this wishful thinking. Social workers, such as Judith Leavitt, psychiatrists, such as Eli Messinger, and psychologists, such as Suzanne Ross, stood ready to refute these conclusions.

Tisdall and the other two gynecologists rationalized their treatment of women by expounding what came to be known as the "two-patient" theory. They claimed that when a pregnant woman came into their office, they had an equal obligation to two patients—a woman and a fetus. Tisdall made it clear that a change in the law would not change his policy or practice.

It is difficult to improve on Tisdall's characterization of his attitude toward the law. When asked whether he would start performing abortions, if the New York Legislature repealed the abortion law, he replied:

A: I would go on my merry way, just as I am going now.

Q: That would also be true for your hospital, St. Mary's Hospital?

A: Yes, it would.

Asked whether St. Mary's receives public funds, he said:

"Oh, yes, quite a bit."

It has been estimated that one-third of the hospital beds in the country are in Catholic hospitals. This raises the larger question of whether public funds should continue to be used in institutions where such sexist, chauvinistic precepts prevail.

While accusing the women of emotionalism that colors their rational judgments, Tisdall himself made the following prediction:

I believe it (repeal of the abortion laws) would have a horrendous effect, not only on medical standards, but on every man, woman, and child in the country. . . .

I believe that unlimited abortion, or abortion on demand, . . . would open up a Pandora's box.

It would be . . . a deprivation of life to the unborn child, it would establish principles and standards of action which would, in my opinion, lead to chaos, not only among the morals and ethics of our people, but among acceptable procedures.

I believe that such a thing as euthanasia would be next. I believe that benevolent government on the basis of such a ruling could then perform selective extermination, that deformed children would be, in the humane feeling of the state, executed for their own good and I firmly believe that we . . . would soon get back to the days of the current belief in Hitler Germany where the ovens of Dachau and the trenches of Auschwitz would be really roaring.

This response caused even Lewittes, representing the defendant, Attorney General Lefkowitz, to object.

Dr. Tisdall testified that he has been director of the ob-gyn department at St. Mary's Hospital, in Brooklyn, for the past three years. He is also a consultant at Cumberland Hospital, the Brooklyn Cumberland Medical Center, the Good Samaritan Hospital in Islip, New York, and the Peck Memorial Hospital in Brooklyn. He has specialized in obstetrics and gynecology for thirty-five years. He testified that there were approximately fifty-two maternity beds at St. Mary's Hospital; that, in 1969, there were approximately 1,650 deliveries and, in 1968, 1,580 deliveries. He estimated that 85 percent of the patients were ward patients and fifteen percent private patients.

Asked whether there had been any requests for abortions, during this three-year term as director, he answered:

Not to my knowledge.

Tisdall conceded, however, that about 300 patients with incomplete abortions were admitted to St. Mary's each year. He estimated that of that number the majority were spontaneous abortions and that about forty or fifty were criminal abortions.

Napoleon B. Williams, Jr., Black attorney, co-counsel in *Doe vs. Lefkowitz*, pursued the issue of the policies and practices at St. Mary's. Under his cross-examination there was the following exchange:

**Q:** Doctor, you stated also that this hospital has not performed any abortions . . . ?

**A:** No therapeutic abortions.

**Q:** And that you have also had no requests?

**A:** That is correct.

**Q:** Could you account for the lack of requests for therapeutic abortions in this hospital?

**A:** Well, it's quite possible, sir, that since this is known as a Catholic hospital, that patients realize that. I would be prepared to concede that the local surrounding population know this, know this is our policy and therefore don't present themselves for that.

Tisdall then described the kind of abortions he had performed:

**Q:** Have you performed any abortions in the last three years, four years?

**A:** Yes, yes.

**Q:** What type of abortions were they?

**A:** One was a case of a ruptured uterus . . . this was a criminal abortion, where the uterus was ruptured by some extraneous instrumentation. I have performed them for ectopic pregnancy, I have performed them for abdominal pregnancy. So the abortion, of course, was incidental to the necessary surgery.

**Q:** So, in that case, could you describe to me medically in layman's terms, if you could, what would happen in a case of the ruptured uterus?

**A:** Well, in the case of a ruptured uterus, there would usually, not always, but usually be a lot of bleeding, internal hemorrhage into the abdominal cavity which would obviously create a serious situation with the mother, and an immediate operation would be required to stop that hemorrhage. As a result, in such a case, it is impossible to arrest the hemorrhage without performing a hysterectomy, in other words, removing a womb. In removing a womb, of course, we would remove all the pregnancy and, incidentally, perform the abortion.

This further demonstrates the total confusion of Dr. Tisdall's line of logic. The hospital does not do therapeutic

abortions, but also, apparently, never refuses to complete an illegal abortion. Thus, they are, in effect, saying to a woman that the only effective way she has of requesting an abortion is for her to cause her uterus to be punctured, and seek admission to the hospital, bleeding. As has also been shown, in the case of Blanche Seidel, and others, an unwanted pregnancy can, in the alternative, become an insurmountable barrier to a woman's education, career, or family plans.

The detachment of Dr. Tisdall and the other gynecologists, where women's futures were concerned, diminished when their attention was directed to their professional careers:

I think it would be difficult for a man like myself, for example, to operate as a director of obstetrics and gynecology in any hospital. . . . I believe . . . it's . . . quite likely that any patient to whom I refuse an abortion could sue me for malpractice.

In his 95-page deposition, Dr. George T. Lawrence, director of the ob-gyn department in Flushing Medical Hospital, Queens, New York, was in substantial agreement with Dr. Tisdall:

**Q:** Do you believe, as a doctor, that a woman should have the right to make a decision with respect to an abortion?

**A:** I don't believe that a woman has such a right, no.

He did not perform abortions, even to preserve a mother's life, or in cases of rape or incest, because he believes that performing an abortion is murder, that the fetus is a human being. Like the others, he believed that a woman merely provided the "environment" and "nourishment" for a fetus to grow.

Dr. Lawrence testified he had had no requests for abortions at his hospital, either, while he was head of the department. In a previous period, however, when Doctor Fred Carpenter had been director, there had been requests for abortions and they had been performed at Flushing Hospital. Asked "Do you

know what the reason was for the performance of those abortions," he answered, unperturbedly, "Well, I really can't answer that question. They weren't my cases. I knew about them, but I can't really remember what the specific reasons were." This lapse of memory by the head of a department about such an important issue was astounding.

Dr. Lawrence made it clear that, in his practice, he did not prescribe contraceptive devices and techniques to his patients. Having indicated that, depending on the circumstances, he would refer certain patients to other doctors for birth control, he was asked:

**Q:** What is the reason that you will not do this yourself?

**A:** . . . because I am a Catholic and I don't believe in birth control.

Dr. Joseph J. Ricotta was an attending physician at Buffalo Children's Hospital, where he estimated that 2,950 babies were delivered in 1969; in Buffalo Sisters' Hospital, 2,600; Buffalo Deacon's Hospital, 1,700; and Millard Fillmore Hospital, 2,500. Three of these hospitals had therapeutic abortion committees.

He testified that his private practice and hospital were near a state college and that he saw a number of young girls who were confronted with unwanted pregnancies. Ricotta agreed with Dr. Tisdall on the "two-patient" theory,\* also that repeal of abortion laws would lower medical standards.

Dr. Ricotta's attitude toward women was clearly demonstrated in his response to a line of questioning about refusals to commit abortions in his private practice. He confessed:

I have women who have come into my office who said, "I hate you," and I talked to them and supported them. . . . I had a girl, a woman, who said, "I am going to kill myself, to go out and kill myself, I am going to run my car into the tree

\* He called attention to a little-known fact concerning the "second patient": while viability takes place in white fetuses at twenty-six weeks, in the case of Black fetuses, he said, it occurs at twenty-five weeks.

outside of your office door." I had one girl that made that accusation. She has a beautiful baby boy and she is as happy as she could be.

That Dr. Ricotta might not have had perfect insight into his patients' mental condition is demonstrated by another anecdote:

I think one of the most tragic situations that I ever had anything to do with was a young lady who was tremendously excited over the prospect of bearing a child and, in fact, had a very uneventful prenatal course, had an amazingly short labor and delivery, and then had a beautiful baby. I learned at the time that she was to return for her three-week checkup. (I see my patients in three weeks, which is a little bit earlier than the six-week checkup.) She was an inmate in a psychiatric hospital because five or six days after she was home, she deliberately dropped her baby and killed the baby.

If anybody had said to me, "Of the numerous patients that you have delivered in the last two months or two weeks, even, can you pick one person who you think might have a problem?" she would have been the last person that I would have picked.

There was absolutely no indication. She was ecstatic over the prospect of being a mother, she had a very normal prenatal course, she had an easy labor and delivery. She was excited about the prospect of being home with her baby. As a matter of fact, she wanted rooming-in, so her baby could be with her at night and day, and it was a complete shock to me to learn what had happened.

Obviously, the care of this baby was more than she could undertake. She felt that her husband was not helping her. He refused to help her with the care of this infant, coping out in the usual way that fathers will on the grounds that they don't know how.

MR. FORD: I resent that remark.

The anecdotal approach was typical of the medical experts produced by the intervenors. This is not to say that anecdotes were not used by Dr. Shainess and experts in our case and the

companion cases. But witnesses for the plaintiffs supported their arguments with analysis and statistics.

All too often the familiar tactic of ridiculing women in their attempts to find solutions to serious problems was used. In the following colloquy Dr. Ricotta indicated a certain lack of trust in female judgment. He seemed to imply that control is necessary as a rein on women's empty-headed suggestibility:

**Q:** Would the absence of a statute prohibiting abortion interfere, do you think, with your relationship with your patients?

**A:** I think it would create problems for me, yes. You know, there are so many people that have to do something just because it's the fad: mini skirts, maxi skirts, and midi skirts.

Their desires are not based on good judgment, many times —a four-hundred-pound girl in a mini skirt.

# *VI. The Fight Goes On*

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*Our history has been  
stolen from us.*

*Our heroes died in  
childbirth, from  
peritonitis . . .  
overwork . . .  
oppression . . .  
from bottled-up rage.*

*Our geniuses were  
never taught to  
read or write.*

*We must invent a  
past adequate  
to our ambitions.*

*We must create a  
future adequate  
to our needs.*

*(From the Old Mole, Cambridge, Massachusetts and  
Women: A Journal of Liberation, Baltimore, Maryland.)*

It was not until New York women took the affirmative in the courts and in the streets that the New York Legislature acted. On July 1, 1970, a reformed New York State abortion law went into effect. An abortion was to be legal if performed by a doctor prior to the twenty-fourth week of pregnancy.\* On that same day, Judge Friendly dismissed the *Abramowicz* case, begun in the fall of 1969, as "moot."

An important concomitant to the court case had been the organizing of new Women's Liberation groups and actions. It became obvious that the abortion issue was one that could mobilize large numbers of women across the country.

At several meetings, the largest of which took place at St. Peter's Church, a group of women, called People Against Abortion Laws, planned a mass demo of women to be held on March 28, 1970. This demonstration was organized by a coalition which included women of numerous commitments. At a press conference called to announce the demo, it became clear how broad was the spectrum of women supporting this action.†

There were to be three focal points for the demonstration—Bellevue Hospital, St. Patrick's Cathedral, and Union Square.

\* The amended law still provides that a person can be found guilty of abortion (and sent to jail) when she, or he, commits an "abortal act," unless such "abortal act" is "justifiable." A "justifiable abortal act" is defined as follows:

"An abortal act is justifiable when committed upon a female with her consent by a duly licensed physician acting (a) under a reasonable belief that such act is necessary to preserve her life, or (b) within twenty-four weeks from the commencement of her pregnancy.

The submission by a female to an abortal act is justifiable when she believes that it is being committed by a licensed physician acting (a) under a reasonable belief that such is necessary to persevere her life, or (b) within twenty-four weeks from the commencement of her pregnancy."

(New York Penal Law, Section 125.05, as amended)

† Speakers included Betty Friedan, author of *The Feminine Mystique*; Cindy Cisler of New Yorkers for Abortion Law Repeal; who spoke against the New York reform bill, demanding total repeal of all laws; Ruth Ann Miller, prime organizer of the demo; and Florence Rice of the Harlem Consumers Education Council.

Bellevue Hospital was chosen in response to growing demands for community control by several of the women's groups and health collectives. (St. Vincent's Hospital, St. Luke's, Lincoln Hospital, and others were fast becoming focal points for community control struggles. Specifically, in the area of abortion, St. Vincent's, in Greenwich Village, had a stated policy of refusing to perform abortions.)

A mini-rally was held on the steps in front of St. Patrick's Cathedral, two hours before the main demo at Union Square. During the speeches an Irish Catholic sympathizer, co-founder of the Ebony and Emerald Society, handed out wire hangers, lacquered blood-red. A woman's guerilla theatre group performed. Excerpts were read from the play, *What Have You Done for Me Lately?*, which shows how a man's mind changes about the "moral" issues surrounding abortion, when he finds out that he, himself, is pregnant.

In the larger demo, thousands of women marched through midtown, with a crowd streaming from near Bellevue Hospital, up First Avenue, across 34th Street to Seventh Avenue, chanting: "Out of the house! Out of the stores! Up from Under, Women Unite!" There was surprisingly little hostility expressed toward the exuberant marchers, although there were some hecklers, usually men, including one who wore a sign: "Thanks, Mom. You didn't flush me down the toilet." For such hecklers the women had a special chant: "Male chauvinists better start quakin'; today's pig is tomorrow's bacon!" The march ended in Union Square where numerous speakers addressed a large and enthusiastic crowd. This was the first time in many decades that New York had seen masses of women in the streets on women's issues.

On April 3, only a few days after the rally, the New York Legislature voted to amend the abortion laws; the amendment was to become effective approximately three months later.

It is our contention that there should be no criminal statutes that deal with abortion in any way. That was the thrust

of the affirmative action brought in the Federal court. The plaintiffs and the women who gave the depositions in this case hoped they would raise as a national issue the constitutionality of state penal abortion laws. This was the first case in which large numbers of women were in the vanguard of attack against the oppressive police and government actions, for a declaration of women's rights to control their own bodies and destinies.\* Reform bills in state legislatures had raised the hopes of women, but they in no way dealt with our demand that the male-dominated legislature be precluded from regulating the private matters of women and their reproductive lives.

Although the liberalization of New York's abortion law is regarded generally as a victory, legislative reform by no means resolves the issues. Problems that remain in implementing new abortion laws (either in states where reform legislation has been passed or in states where courts have declared abortion laws to be unconstitutional) have been exhibited in states such as Oregon, California, and Washington, D.C.† In New York the requirement of a death certificate for each fetus is typical of the official red tape surrounding abortions.

A set of guidelines was issued in New York in June, 1970, forbidding Roman Catholic physicians and nurses from participating in abortions, under penalty of excommunication.‡ (It is reported that one-third of the non-governmental hospital beds in the country are in Catholic hospitals.)

Opponents of freedom for women have, as an unstated major premise in their argument against repeal, the fear that women could correct or conceal "promiscuity." Moreover, this freedom weakens the husband's control over a wife in a case

\* Heretofore, most attacks on state laws were defensive, usually involving a male doctor's defense to a criminal prosecution for having performed an abortion.

† See *Manhattan Tribune* (Special edition, subtitled "New York Feminist").

‡ Issued by the Most Rev. Walter P. Kellenberg, Bishop of the Rockville Center Diocese, as reported in the *New York Times*, June 18, 1970.

where a marriage is doing badly and when a woman, on her own, can avoid the trap of an unwanted child. Women are frequently less sanguine about another child in the "can-this-marriage-be-saved" situation.

On July 15, 1970, a hearing was called by the New York Board of Health to consider its proposed amendment to the City Health Code. The amendment would restrict abortions to (1) hospitals, or (2) highly equipped clinics. These clinics would cost at least \$250,000 to set up, were the Board of Health's proposal to become law. Moreover, an abortion in a doctor's office—or even in a clinic that did not have the required equipment—would be illegal in New York City, and a doctor performing one could be sent to jail for one year and be fined \$1,000.

As one writer, who had followed the abortion case, commented:

Understandably, some of the crusaders for abortion repeal are fuming at the fact that some of what women won from their elected representatives in the state legislature may be lost by decree of five unelected city administrators who have the power to declare law.

. . . Some of the Board's proposed rules governing clinic abortions seem already outmoded by recent abortion techniques. The article, if it becomes law, would permit abortions in clinics only during the first 12 weeks of pregnancy and only if the clinics had blood banks, x-ray laboratories, chemical laboratories, supervision by an obstetrician-gynecologist or a surgeon, an elevator large enough to accommodate a stretcher (if the clinic is not on the ground floor), and other equipment including anesthetic equipment in every room where abortions are performed.

This equipment is required even though doctors using the vacuum aspirator "suction" method on early pregnancies use only a local anesthetic or no anesthetic at all.\*

\* Robin Reisig, "What Women Won May Be Lost: Aborting the Abortions" *Village Voice*, July 23, 1970.

Limitation of facilities, in addition to tending to maintain the price for an abortion at \$400 to \$1,000, also further aggravates the very serious problem of delay. As Miss Reisig put it:

If you want to get an abortion in a New York City hospital during the easiest, safest period, the first eight weeks of pregnancy, you'd better make an appointment for your abortion well in advance—in fact, you'd better make it before you get pregnant.

Representatives of the Women's Abortion Project (WAP) testified at the Board of Health hearing that six-week delays were commonplace at municipal hospitals in New York. They said that an eighteen-year-old girl, twenty weeks pregnant, was told by one hospital early in July that its first available bed space would be in September. (In that month their group received from seventy-five to one hundred calls a day for abortion referral.)

The women's statement, "The Health System's Abortion Fiasco," which was read at the hearing, included the following information:

*Harlem Hospital* has a six-week backlog. (Some women come three times a week to register, often as early as 6:30 A.M. in order to be in a line before 8 o'clock).

*Bellevue Hospital*. On July 14, the first available bed space was August 10th.

*Coney Island Hospital*. As of July 14, this hospital is booked into the middle of August.

*Cumberland Hospital*. Five hundred women were registered as of July 2nd with a one month minimum wait.\*

\* Their representatives further testified that the city's clearinghouse is a "nonfunctioning myth," and that no one beyond seventeen weeks is handled at the clearinghouse. They gave some early statistics: Only 509 abortions had been performed at municipal hospitals since July 1st, 1970. (To meet projected needs for municipal hospitals of 35,000 abortions per year, they needed to do 700 abortions a week.) As of July 15, the city was 900 abortions short of their goal. On July 14, 679 women were registered and awaiting abortions. There were another 1,325 awaiting screening for appointments. Kings County Hospital had 465 women awaiting this screening.

The women also pointed out that some proprietary hospitals, e.g., Park West and Park East, are charging from \$625 to \$800 per abortion. (At the 30,000 projected abortions per year, this becomes a substantial income.)

The WAP opposed the guidelines promulgated by New York State and City Health Departments as contrary to the welfare of women, and charged that those guidelines protect doctors while preventing women from getting abortions. They suggested that price ceilings for abortions be set, and also proposed the following: a mass educational campaign; training classes for doctors by experienced abortionists; a complaint bureau; a Health Research Council to study safe techniques, facilities, and cost reduction methods, and free abortion clinics.

Manhattan Borough President Percy Sutton, in his testimony, expressed the feelings of many critics of the proposed rule when he said:

... The high cost of the facilities the board is demanding might force the very people the law was originally intended to help to go back to the illicit backroom parlors for an abortion. . . .

I am concerned that abortions may still be a right for the rich and an unobtainable privilege for the middle class and the poor.

On the other hand, Dr. Robert Hall, associate professor of obstetrics and gynecology at Columbia Presbyterian Medical Center, feared that:

... the entire abortion reform movement could be set back ten years if non-residents are permitted to have abortions outside of hospitals.

Dr. Hall, although a plaintiff in the companion case, was criticized for his position by various members of the Women's Liberation movement.

Dr. Michael Bergman, who had performed more than one hundred low-cost abortions on women referred to him by the Women's Abortion Project and who believed that doctors

should be allowed to perform abortions in their offices, testified about using smaller, more flexible plastic instruments to perform abortions with minimum danger.

Another witness was a young girl who had recently had an abortion in a doctor's office:

"This amendment would leave the woman open to the same kind of mental, financial, and social exploitation which she was subjected to in the old days," said 21-year old Lynn Biederstadt, who told the hushed audience about her abortion performed in a physician's Greenwich Village office on July 1.

"I just want to dispel all the horror stories you've heard and try to convince you that this can be done safely, cheaply, comfortably, and even happily without going to a hospital." (As reported in the *New York Times*, July 16, 1970.)

Outside the hearing, seventy-five women expressed their views by picketing, carrying signs demanding "Rent Control for the Uterus" and others that said "Raped by the Medical Bureaucracy—Legal Abortions at Criminal Prices."

Dr. Christopher Tietze stated that the danger caused by delay in getting a hospital bed is greater to a woman's health than any danger that might be entailed in having the abortion performed outside the hospital in a medical office.

The chaos, confusion, and controversy that arose in the few weeks following the effective date of the New York abortion law have borne out the worst fears of those of us who urge repeal or a court decision of unconstitutionality, as opposed to reform. Even though a finding of unconstitutionality would not eliminate conflict, it would surely minimize the proliferation of government regulations, guidelines, amendments, and rules. This would leave the women's groups to contend with only the medical bureaucracy, the church groups, and the various other assorted opponents of free abortions!

Many of the women organizers tried to emphasize the point that abortion is just one part of the struggle for Women's Liber-

ation.\* They also had predicted that the law, even if changed, could be subverted and that implementation of the law would probably be more difficult to achieve than a mere change of the law. They emphasize that abortion is one area where middle-class women come into contact with a health system that poor women encounter as a matter of course on a daily basis.

It cannot be too strongly stressed that the very plaintiffs in this case might soon have to fight the politically conservative, predominantly WASP contingent of the Zero Population Growth (ZPG). There are numerous signs that oppression of women can easily be reversed into enforced limitation on reproduction. This has already been felt by the nonwhite, and the urban and rural poor.

\* The August 26, 1970 Women's Strike for Equality, for the 50th anniversary of the ratification of the 19th Amendment (Women's right to vote), called to demand an end to sexism, focused on 3 specific demands: free 24-hour community controlled child care centers, free abortions on demand, and equal opportunity for jobs and education.

# Epilogue: Full Circle

It should be made clear that the Federal court, as of July, 1970, had failed and refused to decide the *Abramowicz* case. The three-judge panel stalled the trial until after the legislature had passed the reform statute. The depositions included in this book were never heard by any member of the three-judge panel.\* We had the distinct impression that the court was pleased to have the hot potato removed from its hands.

On Monday, June 29, two days prior to the date the new abortion law became effective (i.e., approximately three months after it was enacted), three detectives, all armed, appeared at the private clinic of a New York physician. According to motion papers filed by Roy Lucas (counsel in the *Hall* case), a search warrant had been issued by Judge Gerald

\* An application (in May, 1970) to the court in behalf of Dianne Donghi, imprisoned in the Women's House of Detention and in the third month of her pregnancy, was batted back and forth from the Federal to the state courts. She was finally freed on more than \$15,000 bail, all through the efforts of the women's collective at *Rat*, with assistance from journalist Gloria Steinem.

Culkin \* authorizing a search for medical and business records pertaining to illegal abortions. There ensued a four-hour search of the entire premises. After completing the search, the "detectives left the [doctor's] office with numerous files, an appointment book, and a sheet of miscellaneous notations."

And so, as we began, we end—with a police raid.

\* The Judge of watermelon fame, who allegedly said of the Harlem Six, (when William Kunstler was arguing for their right to have counsel of their own choosing): "Those boys wouldn't know a good lawyer from a good watermelon."



# Appendix

*This section presents a sampling of the legal papers used in Abramowicz v. Lefkowitz.\**

## **THE COMPLAINT— FOR DECLARATORY AND INJUNCTIVE RELIEF**

A complaint is the legal paper that begins a law suit. In it the parties to the suit are identified; the jurisdiction of the court to hear the suit is stated; and the causes of action are described. The statute whose constitutionality is being attacked is set forth. Finally, the complaint indicates the relief that is requested.

A supporting affidavit is attached to the complaint as an exhibit showing that a violation of constitutional rights has occurred.

\* Deletions have been made in most of the following documents for editorial purposes. The names of most of the plaintiffs have also been deleted.

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

HELEN ABRAMOWICZ, M.D.; MARK ABRAMOWICZ, M.D.; TI-GRACE ATKINSON, *et al.*, Plaintiffs,

against

LOUIS J. LEFKOWITZ, Attorney General of the State of New York; BURTON B. ROBERTS, District Attorney, City of New York—Bronx County; FRANK HOGAN, District Attorney, City of New York, New York County, in their official capacities, Defendants.

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COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

I. PARTIES

*A. Plaintiffs:*

1. TI-GRACE ATKINSON [and 108 plaintiffs] are women who are citizens of the United States and of the State of New York. Collectively, some of the plaintiffs are married, some are unmarried; some of them have no children, others have had one or more children or grandchildren; some have had abortions, both inside or outside of the State of New York at great psychological, physical and financial hardship; some have borne and in some cases given up children because of their inability to obtain an abortion; others have been forced to raise children they could not afford. Plaintiffs are aware of the imperfections and/or physical dangers of existing birth control methods. They are also aware of the difficulty and extreme expense involved in obtaining speedy and competent medical assistance in terminating unwanted pregnancies because of the existence of the unconstitutional New York abortion laws. Plaintiffs are not able to afford the tremendous expense involved in obtaining a legal abortion in New York State or elsewhere.

Plaintiffs either have in the past or at some time in the future may become pregnant and not wish to bear the child which would result from that pregnancy because of financial, psychological,

personal, or physical considerations. The alternatives thus presented to plaintiffs are bearing an unwanted child or being forced to undergo the emotional trauma, physical hazards, and/or extreme financial burden of an illegal abortion, the threat of subpoena or prosecution under the unconstitutional New York abortion laws. Plaintiffs are therefore chilled and deterred in the exercise of their constitutional rights of privacy, association, and sexual and family relations. Plaintiffs seek to freely exercise their rights "of every individual to the possession and control of his [or her] own person," *Terry v. Ohio*, 392 U.S. 1,8-9 (1968), and to assert their "right of privacy" or "liberty" in matters related to marriage, family and sex, "the fundamental right of the woman to choose whether to bear children." *People v. Belous*, 71 Cal. 2d (Cal. Sup. Ct. Crim. 12739, Sept. 5, 1969).

Plaintiffs sue on their own behalf and on behalf of all others similarly situated.

2. [Eighteen plaintiffs] are citizens of the United States and of the State of New York. They all have a deep concern for the health and welfare of women who suffer unwanted pregnancies and are not able physically, psychologically, or financially to raise the child. They believe that women have the fundamental right to control their own person and choose whether to bear children. In accordance with their beliefs, these plaintiffs wish to exercise their rights under the First Amendment to inform such women, or persons inquiring on their behalf, where they can obtain safe and speedy medical assistance concerning the termination of pregnancy. Plaintiffs sue on their own behalf and on behalf of all others similarly situated.

(a) Plaintiffs Krassner and Schaef have been subpoenaed by the Grand Jury currently sitting in the City of New York, Bronx County, to hear and consider information concerning possible violations of Penal Law §§ 125.05, 125.40, 125.45, and 125.55. On information and belief, Plaintiff Krassner is a target of that Grand Jury. (See Krassner affidavit, Exhibit A.) Plaintiff Schaef, who is the Minister of the Washington Square Methodist Church, appeared before the Grand Jury and refused to answer questions put to him on the grounds of the Fifth Amendment, his right as a minister to counsel people in confidence (his pastor-confidant priv-

ilege), and the unconstitutionality of the New York penal laws regulating the performance of abortions as indicated by the recent decision in *People v. Belous, supra*. Reverend Schaef has been referred to the Supreme Court of the State of New York to determine whether he must answer the questions put to him before the Grand Jury and may face punishment for contempt if he refuses to testify. If forced to testify before the Grand Jury, Plaintiffs Krasner and Schaef will be deprived of their rights guaranteed by the First, Fourth, Fifth, Sixth, Eighth, Ninth, and Fourteenth Amendments. Because of this they are chilled and deterred in the exercise of their rights of free speech and of privacy as guaranteed by the Constitution.

(b) [Eight plaintiffs] are professionals in the fields of social and psychological work. They have in the past and will in the future be consulted by their clients, in the course of their professional services, concerning where to obtain safe, speedy, and adequate medical care to terminate unwanted pregnancies. Plaintiffs wish to provide their psychiatric and counseling services in accordance with the highest standards of their professions. They further wish to fully and freely exercise their rights under the First Amendment to the Constitution to offer information to their clients concerning where they may obtain needed medical care. Plaintiffs are chilled and deterred in the exercise of their constitutionally guaranteed rights because of the operation of the unconstitutional New York abortion laws.

(c) [Nine plaintiffs] are attorneys who are members of the Bar of the State of New York. In the course of their professional careers, they have been and will continue to be consulted by their clients concerning the availability and legality of safe, speedy, and adequate medical care for the termination of unwanted pregnancies. Plaintiffs wish to counsel and advise their clients in a manner consistent with the highest standards of their profession, as guaranteed by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments and their attorney-client privilege. However, they are chilled and deterred in such exercise by the fear of subpoena and/or prosecution under the unconstitutional New York abortion laws and/or professional censure.

3. New Yorkers for Abortion Law Repeal (NYALR) is a mem-

bership organization in the State of New York which supports repeal of all abortion laws, so that no woman will be compelled to bear a child against her will. NYALR works for its goal by educational campaigns to inform its members and the general public of the need for such repeal. By its activities it has demonstrated its special interest in the furtherance of the public interest in abortion law change and the challenge to the constitutionality of the current laws in the courts of the United States.

4. [Twenty-one plaintiffs] are doctors and nurses who are licensed to practice in the State of New York. Plaintiffs are all medically qualified to perform or assist in the performance of medical procedures to terminate unwanted pregnancies. On numerous occasions plaintiffs have been asked by pregnant women either to terminate their pregnancy or to refer them to a competent physician who would give them the needed medical assistance. Because of the vagueness of the unconstitutional Penal Laws controlling the medical termination of pregnancy, plaintiffs have been chilled and deterred from practicing their profession, in accordance with the oath taken as medical practitioners, to give their patients the benefit of their best medical knowledge as guaranteed by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments to the Constitution. Plaintiffs sue on their own behalf and on behalf of all others similarly situated.

5. Medical Committee for Human Rights (MCHR), New York Chapter, is a nonprofit educational organization whose goal is the provision of comprehensive health care for all of the people and the elimination of the dual system of medical care favoring the rich over the poor. MCHR defends and supports the struggle for human rights throughout the country. MCHR participates in research and educational attempts to insure excellence in health care for all. As such, MCHR further wishes that its members and other members of the medical profession be able to exercise their profession, in accordance with the highest responsibilities of that profession, by providing the best possible medical knowledge and care for their patients. MCHR also wishes to be able to inform women where they can obtain safe and speedy medical assistance concerning the termination of pregnancy without fear of prosecution under unconstitutional laws. As a national and local organiza-

tion, MCHR has taken the position that all abortion laws should be repealed. Because of all of the above facts, MCHR has reason to fear that medical professionals will be deterred from becoming members of the organization for fear of subpoena or prosecution under unconstitutional New York State laws regulating the performance of abortions.

6. *Class action*—Plaintiffs sue on behalf of themselves and on behalf of all others similarly situated. The members of their class are so numerous that joinder of them all is impracticable. The relevant questions of law and fact are common to all and are shared by them with their representatives. As the claims are common to them all, they will be fully and effectively asserted by the named representatives. An adjudication of the rights of the individual representatives would, as a practical matter, be dispositive of the interests of all other members of the class.

#### **B. Defendants:**

7. LOUIS J. LEFKOWITZ is a citizen of the United States and of the State of New York. Defendant Lefkowitz is the Attorney General for the State of New York and is charged with administering and enforcing Penal Law §§ 125.05, 125.40, 125.45, 125.50, 125.55, and Education Law §6514(2) (e), throughout the state.

8. BURTON B. ROBERTS is a citizen of the United States and of the State of New York. Defendant Roberts is the District Attorney of Bronx County and is charged with administering and enforcing the above Penal and Education Laws throughout Bronx County. Defendant Roberts is currently conducting a Grand Jury investigation into violation of those sections of the Penal Law.

FRANK HOGAN is a citizen of the United States and of the State of New York. Defendant Hogan is the District Attorney for New York County and is charged with the administration and enforcement of the above Penal and Education Laws throughout New York County.

Defendants are sued in their official capacity.

#### **II. JURISDICTION**

9. Plaintiffs invoke the jurisdiction of this court under the First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Fourteenth Amendments to the Constitution and Title 28 U.S.C. 1381, 1343,

2201, 2202, 2281 and 2284 and 42 U.S.C. 1983. The amount in controversy, exclusive of interests and costs, exceeds \$10,000.

### III. FIRST CAUSE OF ACTION

10. On information and belief thousands of abortions are performed in New York (City and State), only a minuscule percentage of which are legal. Nearly one-half of the maternal deaths in New York result from illegal abortions.

11. In New York State the performance of abortions is regulated by Penal Law §§ 125.05, 125.40, 125.45, and Education Law §6514(2) (e) which provide in pertinent part:

#### Section 125.05

"The following definitions are applicable to this article:

"1. 'Person' when referring to the victim of a homicide, means a human being who has been born alive.

"2. 'Abortional act' means an act committed upon or with respect to a female, whether by another person or by the female herself, whether she is pregnant or not, whether directly upon her body or by the administering, taking or prescription of drugs or in any other manner, with intent to cause a miscarriage of such female.

"3. 'Justifiable abortional act.' An abortional act is justifiable when committed upon a female by a duly licensed physician acting under a reasonable belief that such is necessary to preserve the life of such female. . . ."

#### Section 125.40

"A person is guilty of abortion in the second degree when he commits an abortional act upon a female, unless such abortional act is justifiable pursuant to subdivision three of Section 125.05. . . ."

#### Section 125.45

"A person is guilty of abortion in the first degree when he commits upon a female pregnant for more than twenty-four weeks an abortional act which causes the miscarriage of such female, unless such abortional act is justifiable pursuant to subdivision three of Section 125.05. . . ."

#### Section 125.50

"A female is guilty of self-abortion in the second degree when, being pregnant, she . . . submits to an abortional act upon her-

self, unless such abortional act is justifiable pursuant to subdivision three of Section 125.05."

#### Section 125.55

"A female is guilty of self-abortion in the first degree when, being pregnant for more than twenty-four weeks, she . . . submits to an abortional act upon herself which causes her miscarriage, unless such abortional act is justifiable pursuant to subdivision three of Section 125.05."

#### Section 6514(2) (e)

"2. The license or registration of a practitioner of medicine . . . may be revoked, suspended or annulled or such practitioner reprimanded or disciplined . . . in the following cases:

" . . . (e) That a physician . . . did undertake or engage in any manner or by any ways or means whatsoever to perform any criminal abortion or to procure the performance of the same by another . . . or did give information as to where or by whom such a criminal abortion might be performed or procured."

12. As a result of said unconstitutional statutes, plaintiffs enumerated in paragraph 1 and the class they represent can only obtain a legal abortion if they have sufficient financial resources to obtain the assistance of psychiatric and medical assistance and convince a physician and then a therapeutic abortion committee in the hospital where that physician practices that an abortion would be necessary to preserve their lives.

13. The challenged statutes are unconstitutional on their face and as applied in that they:

(a) invade plaintiffs' right of privacy or liberty in matters related to marriage, family, and sex; the sacred right of every individual to the possession and control of her own person; and the right to be left alone as guaranteed by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments to the Constitution;

(b) chill and deter plaintiffs in the exercise of their rights of association, privacy, and sexual and family relations, as guaranteed by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments;

(c) deprive plaintiffs of the fundamental right of a woman to choose whether to bear children, as guaranteed by the Fourth, Fifth, Eighth, Ninth, and Fourteenth Amendments;

- (d) deprive plaintiffs of the right to safe, speedy, and adequate medical care on the basis of wealth in violation of the constitutional guarantee of equal protection of the laws;
- (e) deny plaintiffs life and liberty without due process of law, despite a lack of compelling State interest and despite the fact that "Childbirth involves risks of death," *People v. Belous*, in that they force them to expose themselves to the hazards and risks of illegal abortion in order to terminate an unwanted pregnancy;
- (f) deprive plaintiffs of safe and adequate medical care on the basis of the religious beliefs of others in violation of the First Amendment guarantee against the establishment of religion;
- (g) deny plaintiffs access to information concerning their health, safety, and welfare and the availability of safe, speedy, and adequate medical care in violation of the guarantees of the First Amendment;
- (h) deprive plaintiffs of guarantees of due process of law in that the only criterion for a legal abortion is the preservation of the life of the mother which is unconstitutionally vague and without standards;
- (i) deprive plaintiffs of what little access they might have to a legal abortion without due process in violation of the Fourteenth Amendment in that they chill and deter doctors and hospitals from performing such medical procedures because of fear of prosecution under the unconstitutionally vague statutes;
- (j) constitute cruel and unusual punishment in violation of the Eighth Amendment in that they force plaintiffs to bear and raise unwanted children;
- (k) deny plaintiffs their right to pursue a career in violation of their rights of liberty and property as guaranteed by the Fifth and Fourteenth Amendments by forcing them to give birth to a child when they do not wish to;
- (l) deprive plaintiffs, most of whom are taxpayers, of equal access to both public and private medical facilities which on information and belief receive substantial Federal and State funding, such equal access guaranteed by the Fifth and Fourteenth Amendments to the Constitution.

**IV. SECOND CAUSE OF ACTION**

Plaintiffs enumerated in paragraphs 2 and 3 repeat and reallege each allegation specified in paragraphs 10-13 and in addition allege that:

14. The challenged statutes are unconstitutional on their face and as applied in that:

(a) the threat of grand jury subpoena and /or prosecution under statutes which are void for vagueness under the First and Fourteenth Amendments chills and deters plaintiffs from exercising their rights of free speech guaranteed by the First Amendment to the Constitution in that they are unable to inform women or others, seeking information on their behalf, where they can obtain safe, speedy, and adequate medical care for the termination of an unwanted pregnancy.

**V. THIRD CAUSE OF ACTION**

Plaintiffs enumerated in paragraphs 4 and 5 repeat and reallege each and every allegation specified in paragraphs 10-14 and in addition allege that:

15. The challenged statutes are unconstitutional on their face and as applied in that:

(a) they are unconstitutionally vague in violation of the Fourteenth Amendment in that they require plaintiffs, as persons charged with the health of their patients, to determine whether an abortion is necessary to preserve the life of the mother, an incorrect judgment subjecting them to possible criminal prosecution and loss of license to practice medicine;

(b) they chill and deter plaintiffs from exercising their profession in accordance with the oath taken as medical practitioners to give their patients the benefit of their best medical knowledge and from fulfilling their sworn duties and responsibilities in the highest traditions of their professions, as guaranteed by the First, Fifth, and Fourteenth Amendments to the Constitution.

16. Plaintiffs have no adequate remedy at law.

WHEREFORE, plaintiffs respectfully pray that:

1. Pursuant to Title 28 U.S.C. §§ 2282 and 2284 a three-judge District Court be convened to hear and determine this proceeding; and that:

2. A permanent injunction issue restraining defendants, their agents, and successors from enforcing or threatening to enforce New York Penal Law §§ 125.05, 125.40, 125.45, 125.50, 125.55, and New York Education Law § 6514(2) (e); and that:

3. A declaratory judgment issue declaring that New York Penal Law §§ 125.05, 125.40, 125.45, 125.50, 125.55 on their face and as applied violate the Constitution of the United States and are therefore null and void and of no effect; and that:

4. Pending the hearing and determination of the prayers for permanent relief, the Court enter an interlocutory injunction restraining the defendants, their agents, and successors from in any way enforcing or threatening to enforce the aforementioned statutes;

5. And for such other relief as may seem to this Court to be appropriate.

Respectfully submitted,  
ATTORNEYS FOR PLAINTIFFS  
By  
NANCY STEARNS  
By  
FLORYNCE R. KENNEDY

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK  
ABRAMOWICZ v. LEFKOWITZ AFFIDAVIT

PAUL KRASSNER, being duly sworn, deposes and says:

1. I am a plaintiff in the instant action. I am editor of a national periodical, "The Realist." I have written articles concerning abortion for "The Realist" and for "Cavalier" magazines.

2. On September 4, 1969, I was served with a subpoena to appear, on September 5, 1969, before the Grand Jury sitting in Bronx County, New York.

3. While at the courthouse on September 5, 1969, Burton B. Roberts, District Attorney of Bronx County, speaking of the abortion prosecution under investigation by the Grand Jury, said to me:

"You may be a target, that is, a possible defendant in this case."

4. On September 5, 1969, my appearance was adjourned to October 8, 1969.

5. I believe women who become pregnant and do not want to have a child should be able to have an abortion if they choose and, therefore, I wish to be able to write and speak freely concerning abortions. I further wish to be able to give information concerning abortions to women who seek such information. But because of the unconstitutional New York abortion laws and particularly because of the threat of imminent prosecution under those laws, I am chilled and deterred from exercising my rights of free speech.

**ORDER TO SHOW CAUSE FOR  
A TEMPORARY RESTRAINING ORDER**

Where the plaintiff can show there will be irreparable damage if the defendant is not restrained from its present course, a court can issue a temporary restraining order pending a determination of the case.

Here, Jane Doe, a pregnant woman who sought an abortion, requested that the defendants be restrained from enforcing the penal abortion statutes of New York pending the outcome of the case. She could not wait that long for her abortion.\*

The other supporting affidavits are by: Florynce Kennedy, attorney, and June Finer, M.D.

At the time of the temporary restraining order application, attorneys also sought the addition of 163 new plaintiffs. This brought the total number of plaintiffs in this case to 314.

\* This request was withdrawn when Jane Doe had a miscarriage. But a similar application, in the community case, was denied by the court.

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

ABRAMOWICZ v. LEFKOWITZ

ORDER TO SHOW CAUSE FOR  
A TEMPORARY RESTRAINING ORDER

Upon the verified complaint, the affidavits of Florynce R. Kennedy, Esq., of June Finer, M.D., of Jane Doe, a pregnant woman, requiring immediate relief from this Court, and all proceedings heretofore had herein let defendants herein show cause at a motion term of this Court, held at the United States Courthouse, Foley Square, New York, New York, in Room 506 thereof on the 23rd day of October 1969 at 10 o'clock in the forenoon thereof, or as soon thereafter as counsel can be heard, why an order should not be entered, pursuant to Rule 65 (A) (B), Federal Rules of Civil Procedure, restraining the defendants from in any manner enforcing Penal Law, Sections 125.05, 125.40, 125.45, 125.50, and 125.55, and Education Law, Section 6514(2) (e), why a three-judge Court should not be convened to hear and determine the constitutionality of the issues herein and for such other and further relief as the Court may deem necessary.

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

ABRAMOWICZ v. LEFKOWITZ

AFFIDAVIT

FLORYNCE R. KENNEDY, being duly sworn, deposes and says:  
I am one of the attorneys for the plaintiffs in the above action.  
I am admitted to practice in the United States District Court for  
the Southern District of New York and maintain offices at 8 E. 48  
Street in the Southern District of New York.

This affidavit is submitted in support of the attached order to  
show cause for injunctive relief and for the addition of parties  
plaintiff.

The need for moving by orders to show cause is reinforced by the action reported in the *New York Times* of Friday, October 17, 1969. A copy of that article is attached as Exhibit A. Upon information and belief the Bronx District Attorney Burton Roberts who purports to see the necessity for the modification and liberalization of the abortion law has nevertheless indicated that as long as the abortion law is on the books he will make arrests in accordance with the spirit and letter of the law. Roberts is a defendant in this action.

In May, 1969, the defendant Roberts conducted a raid after a three months' investigation and arrested four persons and held as material witnesses seven persons including a professor's wife and students. Roberts arraigned material witnesses in a private post-midnight proceeding. Subsequently, many persons were called before the Grand Jury some of whom, including Plaintiffs Paul Krassner and Reverend Finley Schaef, were excused. However, the threat of future harassment and/or indictment remains.

As to the motion to add parties, requests have come from women and men concerned about the continued existence in the law books in the State of New York of the unconstitutional, illegal abortion laws. They have indicated their interest in becoming plaintiffs in this action. Accordingly, it is hereby requested that the Court permit the addition of their names as parties plaintiff to this action. No previous application for the relief sought herein has been made.

Plaintiffs or some of them may suffer irreparable harm if this Court does not enjoin prosecutions and other proceedings pursuant to the penal abortion laws of the State of New York.

## EXHIBIT A

*6 Indicted on Charges  
of Performing 3,000 Abortions  
in Riverdale*  
BY WILL LISSNER

An abortion ring in Riverdale performed abortions on 3,000 women over two years for sums ranging between \$400 and \$1,500

and grossed upward of \$1.2-million, the Bronx District Attorney reported yesterday.

District Attorney Burton B. Roberts described the scope of the ring's operations in announcing that a grand jury had handed up four indictments covering 38 cases involving four men and two women.

The ring's activities were shown in records seized in a raid last May 23 in an apartment at 5800 Arlington Avenue, one of two locations where the group maintained operating rooms, the prosecutor said. Additional information, he said, was developed in a 10-month police investigation and a five-month grand jury inquiry that heard 60 witnesses.

The 3,000 patients came from various parts of the country and were from the middle- and upper-income groups, Mr. Roberts said. The 4½-room apartment in the luxury high-rise building on Arlington Avenue and the 3½-room apartment at 750 Kappock Avenue a mile away were described as sterile facilities for minor surgery, with the latest operating room equipment.

#### *Clergymen Witnesses*

Asked about his previous statement that *clergymen had made some of the referrals to the abortion ring*, Mr. Roberts said that if the grand jury had found sufficient evidence of this, it would have brought in indictments.

Under questioning he admitted that clergymen had been among the witnesses and that several had refused to sign waivers of immunity.

One of those accused in the indictments surrendered yesterday. Dr. Alexander Sos, 60 years old, of 500 East 77th Street. Accused of having performed seven abortions, he pleaded not guilty and was released on parole for a hearing Nov. 19 in Bronx Supreme Court.

Another, James Vance, 64, of Waldorf, Md., who was charged with having performed seven abortions although he is not a physician, was arrested there last Tuesday and released in \$2,000 bail. He is fighting extradition.

Of the four others arrested last May, one, Leo Berner, retired director of corrective therapy at the Veterans Administration Hospital in the Bronx, had been a leader in his profession.

*Therapist Seized*

Mr. Berner, 56, of 2818 West Eighth Street, Brooklyn, was editor of the professional journal of the Association for Physical and Mental Rehabilitation and served as the association's president in 1951 and 1952. Mr. Roberts called him the organizer of the ring.

Another, Miss Marguerite Keller, 52, of 799 South Court, Baldwin, L.I., a school teacher, had served as educational therapist at the Veterans Hospital for more than 10 years and had won awards and commendations for her services. Both she and Mr. Berner pleaded not guilty.

Also pleading not guilty were the two others, Dr. Luis Limardo, 44, of 20 West 182d Street, the Bronx, a Dominican physician who Mr. Roberts said was not licensed in the United States, and Mrs. Rose Gonzalez, 34, of 75-05 150th Street, Flushing, Queens, accused of serving as an unlicensed nurse.

The raiders had charged that Dr. Limardo was performing an operation on a 17-year-old girl when they broke in on him at 5800 Arlington Avenue.

The four were released on bail for the Nov. 19 hearing.

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

ABRAMOWICZ v. LEFKOWITZ

AFFIDAVIT

JUNE FINER being duly sworn, deposes and says:

1. I am 34 years of age and reside at 664 West 163 Street, New York, New York.

2. I received my medical degree in 1959 in London, England, at the University of London, Middlesex Hospital Medical School. I am a physician licensed to practice medicine in the State of New York.

3. I am presently employed full-time by Judson Memorial Church to direct the Judson Mobile Health Unit which gives health care to the adolescent population of the Lower East Side.

4. Scarcely a day goes by without a young woman in the early

stages of pregnancy coming into the trailer, which serves as my office, to consult me about her problem. The majority of these young women are unmarried, without friends, without stable housing or occupation. Many of them are young women, alienated from their families, who have dropped out of their middle-class environment, and are in no condition to become a mother at this point. Some have a drug problem, a few have a drinking problem. Most of these young women do not wish to continue their pregnancy. They are seeking desperately a way to terminate the pregnancy, understanding that at this time they would be unfit mothers.

5. One particularly bad incident occurred recently when a young woman, without friends, came to see me in the fourth month of pregnancy. She had made a very real suicide attempt during the second or third month of her pregnancy. Following the attempt, she was hospitalized in the Bellevue psychiatric ward. During this hospitalization she made repeated requests to obtain an abortion, implying that, should she be refused, she would find it necessary to commit suicide. Her requests were ignored. This typifies, in a dramatic way, the dilemma with which we are continually confronted.

6. A more typical case is that of a woman who has not made a suicide attempt but who desperately wants to terminate her pregnancy and who, in my opinion, for her own health as well as the well-being of society, should be permitted to do so. It is rarely possible for a woman without access to large amounts of money to get to the initial stage of consulting the two psychiatrists whose letters, in this state, are required to obtain a legal abortion.

7. The dilemma that doctors are faced with is that the law prohibits this simple medical procedure (abortion) which could resolve the conflict for poor women and women of modest means. The choices available to a doctor are either to break the law or leave a woman in a desperate condition. It is a tragedy that, although frequently it is my best medical judgment that the woman have the pregnancy terminated, I cannot arrange for this to be done legally. The woman is forced into the hands of the criminal abortionist or to her own devices or into having an unwanted child, any of which may lead to death, invalidism, or permanent

psychic damage. The health and welfare of the child (or her other children) are thereby damaged as well.

8. It has come to my attention that new indictments have been handed down in recent days and, despite public pressure to the contrary, the laws are being strictly enforced.

Accordingly, I urged the Court to issue, a Temporary Restraining Order against further prosecutions under this law.

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK  
ABRAMOWICZ V. LEFKOWITZ AFFIDAVIT

JANE DOE, being duly sworn, deposes and says:

I make this affidavit under the name Jane Doe to protect my identity, for reasons that shall be made clear in the course of this affidavit.

As of this date I am pregnant. A medical examination has revealed that my pregnancy is of nine weeks' duration. Obviously, time is of the essence in terminating my pregnancy.

I suspected I was pregnant at the end of August. Between that date and September 10, I was making casual inquiries of friends concerning doctors.

I customarily use a contraceptive device known as a cervical cap which was prescribed by my physician. On the occasion when I became pregnant I had inserted the device, but several hours later discovered that it had become dislodged. Since it was during a particularly fertile period of my menstrual phase, I feared the worst.

Then, when on September 10, I missed my period, I began frantically to seek help. The first thing I did was to go to a library with my girl friend to do some research on the Swedish "M" pill. I learned that the pill was highly effective in terminating pregnancies during the first six weeks, and was used in Sweden, but I could not learn where to obtain it in the United States.

I learned that there was one doctor who reportedly had taken some interest in the "M" pill. I went to see him, but he was unable to help me in any way.

I was then recommended to another doctor. He told me to go to Poland or England and have a legal abortion. This was the bitterest of ironies, since if I had had money to go to Poland or England, I would probably be able to solve the problem in the United States by paying a psychiatrist who would have certified my need for an abortion. The fact of the matter is that I have no money. I have the usual number of debts. My family is in no position to assist me financially.

In recent weeks, I have been provided with a device that can induce an abortion. It is very dangerous, however, and is occasionally fatal. Yet, at times, I have been tempted to use it.

I have been frantically seeking some source of assistance. But my friends have indicated that the doctors are very scared now, because of a crackdown on those doctors who perform abortions.

I went to see a priest. He tried his best to be helpful. He told me that it was possible to obtain a legal abortion if, in addition to having letters from two psychiatrists, I had sufficient funds to pay \$100 a day in a hospital, for 3 to 5 days, plus a surgeon's fee. At this point, I broke down in tears, as I had on all the other occasions when the stone wall of money stood between me and the termination of this unwanted pregnancy.

My only hope now is that this Court will issue an injunction to end this reign of terror that continues to prevail.

Can there be any doubt that I will be irreparably damaged if I am forced to bear an unwanted child?

I do not wish to become a welfare statistic. But, if I am forced to go through this pregnancy, I will be unable to work and I will have to be supported by the state. Thus, I will have been forced into the position of requiring public assistance because of my inability to avail myself of a minor medical procedure which has been described as being "simpler than a tonsillectomy," and which in Japan has been known to cost as little as \$5.

I feel, further, that I am being oppressed by a church-imposed duress being carried out by the police power of the state.

No previous request has been made for the relief sought herein.

WHEREFORE, I urge that the Court grant, immediately, the injunctive relief sought herein.

## PLAINTIFFS' BRIEF

The Brief, which ran to eighty-eight pages, presented the arguments of the plaintiffs in support of their contention that the abortion laws were unconstitutional. This brief, written by Nancy Stearns, Esq., is particularly interesting in that it attacks the abortion laws from the vantage point of discrimination against women generally.

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

HELEN ABRAMOWICZ, M.D., *et al.*,  
on their own behalf and on  
behalf of all others similarly  
situated, PLAINTIFFS

69 Civ. 4469

v.

LOUIS J. LEFKOWITZ, *et al.*, DEFENDANTS

### PLAINTIFFS' BRIEF

#### *I. The New York Abortion Laws Violate Plaintiff Women's Rights to Life, Liberty, And Property Guaranteed by the Fourteenth Amendment to the Constitution.*

Under the Fourteenth Amendment to the Constitution, no State may ". . . deprive any person of life, liberty, or property, without due process of law." The Courts have not yet, however, begun to come to grips with the fact that approximately half of our citizenry is systematically being denied these guarantees of the Fourteenth Amendment. However, that is exactly the effect of the New York abortion laws. The Federal courts must not shrink from redressing the constitutional wrongs perpetrated on women.

For the first time, the Federal Courts have the opportunity to give serious and full consideration to the degree to which laws such as those challenged herein, which deny a woman the control

of her reproductive life, violate her most basic constitutional rights.

In the past six months the Supreme Court of the State of California, the United States District Court for the District of Columbia, and the Municipal Court of Central Orange County, California, recognized that it is "the fundamental right of the woman to choose whether to bear children. . . ." *People v. Belous, supra* at 359; see, also, *District of Columbia v. Vuitch, supra* at 4 and *People v. Robb, supra* at 9. The decision by a woman of whether and when she will bear children may be the most fundamental decision of her life because of its far-reaching significance, affecting almost every aspect of her life from the earliest days of pregnancy. Plaintiffs hope to show that to deny them, and all women, control over their own lives and bodies constitutes the most grievous denial of constitutional rights.

#### A. THE RIGHT TO LIFE

In arguing that the challenged abortion laws are constitutional, the defendants have argued that the State has a compelling interest in protecting human life. Plaintiffs could not agree more. But plaintiffs argue that the responsibility of the State runs to *persons who are living* and that the State may not maintain laws which effect the most serious invasions of constitutional rights of its citizens.

From the very fact, as noted by the California Supreme Court in *Belous*, that "childbirth involves risks of death" 80 Cal. Rptr. at 359, it should be most obvious that laws which force women to bear every child she happens to conceive raises the most severe constitutional questions under the Fourteenth Amendment. Furthermore, if a woman truly believes she should not continue an unwanted pregnancy and give birth to and raise an unwanted child, she will not be deterred by the fact that an abortion in her circumstances would be illegal. (Tr. Robert E. Hall, M.D.) She will do this despite the great hazards to her physical and mental health and the great financial expense involved. She will do this, even though she knows that under New York law she is performing a criminal act. (Tr. Liz Burnett: Peritonitis, perforated uterus and hospitalization resulting from illegal abortion.)

The very fact that legal abortion is unavailable for most New York women forces many of plaintiff and other women into an additional hazard to their health and life. Aware of the failure rate of most contraceptives, and afraid of an accidental pregnancy which they will be unable to terminate, hundreds of thousands, if not millions of New York women daily expose themselves to the known and as yet unknown dangers of the pill \* even though they would prefer not to. (Tr. Joan Rossini.) The fear of accidental pregnancy is so great that even women who have medical histories that indicate they should not take oral contraceptives feel compelled to do so.† (Tr. Mimi Sharman.)

Thus, while the State of New York (and the intervening defendants) profess their overwhelming concern for human life, they force their female citizens into the intolerable dilemma of choosing between what, in many instances, would be a totally irresponsible act of bearing and casting off, or even "raising" an unwanted

\* Although there are not yet definitive conclusions concerning the dangers of oral contraceptives, their safety and general effects on women are sufficiently in question to have warranted a full-blown set of Senate hearings by the Senate Select Committee on Small Business which began in January, 1970, and have recently continued. The testimony at the hearing has not yet been published. Although there has been a conflict of medical and scientific opinion expressed at the hearings, the response of the government to the question seems to be markedly casual in contrast with its swift action on a somewhat related matter—cyclamates. It certainly leads women to believe that their government is less concerned with their health and safety than with curbing population or with health matters which also affect men. This feeling by women is only slightly diminished by the belated decision of the Food and Drug Administration to ensure that a leaflet listing the dangers of oral contraceptives is enclosed in each package. The FDA apparently made this decision because of their conclusion that doctors are not now giving their patients sufficient warnings. *New York Times*, 3/5/70, 1:7.

† It may be reassuring to note that a high use of abortion is generally coupled with a high use of contraception. That is, women who use contraceptives have "a higher motivation toward fertility control. They are likely to resort to abortion when contraceptive efforts fail. The greater the expectation of avoiding pregnancy (through contraception), the greater the likelihood of an induced abortion, once pregnancy occurs." . . . "What is more, liberalization of abortion laws tends to accompany an increase in the use of contraceptives." (Tr. "Induced Abortion and Contraception," paper delivered by Emily Moore at workshop of National Institute of Child Health and Human Development and National Institute of Mental Health, December 15-16, 1969, p. 12.

child or jeopardizing their life and health, both physical and mental, by obtaining an illegal abortion or attempting to self-abort. What is more, this professed concern for life in fact results in a hazard to women's life, forcing her into the hands of often unskilled and unscrupulous persons \* directly in the face of the guarantees of the Fourteenth Amendment.

#### B. THE RIGHT TO LIBERTY

If the Fourteenth Amendment and its guarantees are to have any real meaning for women, they must not be read to protect only her physical existence. The Fourteenth Amendment speaks not merely of life, but of life and liberty. For the framers of our Constitution recognized well that it is not life alone which must be protected, but also personal liberty and freedom. Because of that fact, the Constitution has established requirements that neither life nor liberty may be denied a person without the guarantees of due process. For, as the Court of Appeals for this circuit recently stated, in *Madera v. Board of Education of the City of New York*, 386 F.2d 778, 783-4, (2nd Cir., 1967), invoking a long-standing constitutional principle:

... the "liberty" mentioned in (the Fourteenth) Amendment means, not only the right of the citizen to be free from the mere physical restraint of his person by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation. . . ." *Allguyer v. State of Louisiana*, 165 U.S. 578, 589, 17 S. Ct. 427, 431, 37 LEd 832 (1897).

This important understanding of the liberty provided by the Constitution developed in the context of protecting the right to contract. Certainly, the nature and quality of a major part of a

\* Among the options available to women who must get abortions outside of the law, is the following: "[O]ne was a nurse in the Bronx who, for \$50 would give me a knitting needle abortion and put me in a taxicab and send me to the hospital bleeding and, hopefully, I would arrive there still alive and get a hospital D and C for a started abortion. If you arrive at a hospital bleeding, they will complete the abortion but they won't start it." (Tr. Rossini.)

woman's life is as important as the right to contract and as worthy of protection. The United States Courts agreed, in upholding legislation which protected the lives of women, though such measures infringed the right of contract. In upholding a law of the State of Washington, which set a minimum wage for women, the Supreme Court emphasized the existence of "oppression" of women. *West Coast Hotel v. Parish*, 300 U.S. 379, 394 (1937).

In light of this understanding of the meaning of the guarantees of the Fourteenth Amendment, it is even more critical that this Court carefully examine the ways in which women are systematically deprived of their rights by the New York abortion laws.

It should be obvious that from the moment a woman becomes pregnant her status in society changes, as a result of both direct and indirect actions of the State and because of social mores. Except in very rare cases (primarily among the wealthy), she is certainly no longer "free in the enjoyment of all (her) faculties; . . . free to use them in all lawful ways; to live and work where (she) will; to earn (her) livelihood by any lawful calling; to pursue any livelihood or avocation. . . ." *Madera v. Board of Education of the City of New York, supra*, at 783-4.

From the earliest stages of pregnancy a woman's liberty is sharply limited. Under the New York State Civil Service law, Rule 3, a female employee must report her pregnancy to the appointing authority not later than the fourth month. The appointing authority then may in his discretion ". . . place the employee on leave at any time when in its judgment the interest of either the department or the employee would be best served" (emphasis supplied). There is no indication that the employee's medical condition is the critical factor and there are no standards on which the decision is made. What is plain is that, regardless of whether the woman wishes and/or needs to continue working, regardless of whether she is physically capable of working, she may nonetheless be required to stop working solely because of her pregnancy.

The Equal Employment Opportunities Commission does not find it discriminatory to require that a pregnant woman take leave of absence after she begins to "show." Caroline Bird, *Born Female*, p. 168. That, of course, is just the policy of innumerable employers (for example, Tr. Blanche Seidel). As a result, women who wish to

keep their jobs, either for financial or other reasons, may injure their own health (as well as that of the fetus) by eating less than their bodies require in order to stay thin and hide their pregnancy as long as possible.\*

One plaintiff was compelled to do just this and described her efforts as follows:

Well, it was a real challenge not to look pregnant for five months, so I didn't eat very much and I continued to work at Eastern Airlines, again, standing on my feet all day and vomiting and feeling faint, and so forth. But nobody ever suspected I was pregnant. I managed to look very thin [Tr. Kathleen Donovan].

Here we see how inextricably the rights to life and liberty are mixed; even more, how the New York abortion laws deny both to the plaintiffs and all other women.

Once a woman has given birth, according to the Court of Appeals for the Fifth Circuit, she may still be barred from employment, as long as she has preschool children. *Phillips v. Martin Marietta Corp.*, 411 F.2d 1 (5th Cir. 1969). Furthermore, if she needs or merely wishes to work while she has preschool children, she cannot unless she is fortunate enough to have family who will care for the children or is wealthy enough to hire help. For, even where some day-care facilities are provided for working mothers, ". . . many services now have a policy of not admitting such children (under three years of age)." New York City Health Code, Art. 47.01. This, according to the Code, is because ". . . it is recognized that as an ultimate goal it is not desirable to permit children under three years of age in a day-care service." New York City Health Code, *supra*.

Thus, as long as a woman has young children, she is denied the

\* It is now widely accepted that there is a link between inadequate prenatal care, including inadequate diet, and brain damage, neurological disability and mental retardation in the resulting child. Hostetler, Zona F., *Sub-project on Children Suffering From Mental Disorders, Preventative Aspects, Prevention of Mental Damage to Newborn Infants; Prenatal Care in the District of Columbia*, Judicial Conference Project on Laws Applicable in the District of Columbia Pertaining to Mental Disorders, Washington, D.C., unpublished paper, p. 1.

right to obtain employment, though her ". . . power to earn a living for [herself] and those dependent upon [her] is in the nature of personal liberty." *Smith v. Hill*, 285 F. Supp. 556, 560 (D.N.C. 1968).

A further denial of liberty results from the fact that women are generally forced to arbitrarily end their education because of pregnancy. Until recently, girls who became pregnant were forced to drop out of public school in New York. In New York City, in Central Harlem, more than 40 per cent of the girls who leave school before graduation do so because of pregnancy. [Tr. Judith Bruce; Haryou, 1964, *Youth in the Ghetto*, N.Y.: Orans Press, p. 185.] In 1967-68, 1,568 girls dropped out of New York City schools because of pregnancy.\* Many women are also deprived of higher education because of college rules requiring that pregnant women leave school (Blanche Seidel, Joan Rossini).

One plaintiff had the following experience:

I was in school . . . taking a full program and I was working . . . about twenty-four hours a week and on week-ends and in school, in order to pay these debts which I didn't want in the first place.

After that term, I found it impossible to go back to school, since I had also lost my scholarship [when forced to leave school due to pregnancy].

So I left school at that point . . . and I took a full-time job for a while. Since then I have been in and out of school and I have not been able to finish school [Tr. Seidel].†

The importance of education in modern society has been stressed and restressed in recent years, since Chief Justice Warren stated in *Brown v. Board of Education*, 347 U.S. 483, 493 (1954):

\* [DOE v. LEFKOWITZ, Appendix to brief] Official correspondence from director of The Board of Education of the City of New York.

† Where a woman is not financially independent, forcing a woman to take a leave of absence from school because of her pregnancy further decreases the likelihood that she will ever obtain a high degree. For New York State Regent's scholarship is terminated with a leave of absence and the woman will only be eligible for minor scholar-incentive assistance of \$50 or \$100 [Tr. Seidel].

Today, education is perhaps the most important function of state and local governments. . . . It is required in the performance of our most basic public responsibilities. . . . It is the very foundation of good citizenship. Today it is a principal instrument in awakening . . . cultural values, in preparing . . . for later professional training and in helping . . . to adjust normally to the environment.

It has also been recognized, more recently, that there are special problems for women in obtaining education; though "men and women are equally in need of continuing education . . . at present women's opportunities are more limited than men's." *American Women: Report of the President's Commission on the Status of Women*, 1963, p. 11. Nonetheless, women are robbed of their education and opportunity for any development and self-fulfillment, robbed of their rights to be "free in the enjoyment of all (their) faculties," *Madera, supra* at 783-4, by chance and unwanted pregnancy.

The incursions on the liberty of an unmarried woman who becomes pregnant are even more severe. She too may be fired from her job and is even more likely to be compelled to discontinue her education. Unable to terminate her pregnancy, she is often forced into marriage against her will and better judgment in an attempt to cope with the new economic and social realities of her life.

One plaintiff described such a situation as follows:

When I realized . . . the one person I thought I could depend on couldn't help me, I just sort of completely broke down and the next thing I knew was that twenty-four hours later I was married to this guy who I didn't want to marry [Tr. Seidel].

Such marriages are forced on women despite the fact that the right to marry or *not to marry* may not be invaded by the state. *Loving v. Virginia*, 388 U.S. 1 (1967).\*

\* The reaction of forcing a pregnant girl or woman into marriage as a "solution" to an unwanted out-of-wedlock pregnancy is exemplified by the ruling of a Maryland court in 1955, waiving the marriage-age requirements to permit a thirteen-year-old pregnant girl to marry. Harold Rosen, M.D., "Psychiatric Implications of Abortion, A Case Study of Social Hypocrisy," *Wes. R. L. Rev.* 454, at 454.

MR. FORD: I object to that.

MS. KENNEDY: They are objecting because you are drawing a conclusion about his emotional state.

THE WITNESS: Could I answer that?

MR. LEWITTES: Yes.

**A:** He seemed quite afraid when I was pushing the matter, when I said, "You must give me the name of a doctor. I am sure you know the name of a medically competent abortionist."

I'm sure you will object to this, but it seemed to me that he was terrified. He acted as though I was pushing him to say something that he didn't want to say. I really felt that he didn't trust me, that perhaps he thought I was a government agent or that I could get him into trouble. I mean, he certainly terminated all conversations that I initiated.

**Q:** As a result, he made no attempt to determine whether or not your case could arguably come within the New York State statute? He didn't ask you any questions as to your emotional state? He didn't ask you any questions as to your physical state, to see whether or not an abortion would be necessary to preserve your life in the terms of the New York State statute?

**A:** No, he tried very fast to send me out of the office with the assurance that I would be able to take care of myself, but there was nothing he could do . . . that I should be understanding enough to understand his position.

**Q:** What did you do after that?

**A:** I had, through the grapevine, always known that there was this famous East Coast abortionist named Dr. Robert Spencer in Ashland, Pennsylvania. So I picked up the phone and got the Ashland operator, and got the number of Doctor Spencer and called him.

Dr. Spencer told me that at this time he was not in practice. I think he said there was nothing he could do and I hung up. I

In conclusion the Plaintiffs' Brief \* stated:

Throughout this action both the defendants and the intervenors have contended that the only relevant legal question is that of vagueness. Their legal approach is both consistent with and characteristic of the gross constitutional infirmities of the laws challenged herein. Neither the legal posture of the defendants and the intervenors, nor the laws themselves, in any meaningful way consider the rights of those to whom they are directed. The New York abortion laws have disrupted and even destroyed the lives of more women than any other single law or group of laws on the books. They are both a result and symbol of the unequal treatment of women that exists in this society. They constitute both reason for, and character of, the fact that women are not permitted to control their own lives and bodies.

As such, the challenged New York abortion laws violate the most fundamental rights of plaintiff women and all other women and must be struck down as violative of the United States Constitution.

\* Complete copies of the plaintiffs' Brief can be ordered from: Nancy Stearns, Esq., c/o Law Center for Constitutional Rights, 558 Ninth Ave., New York, N.Y.

## RESEARCH PAPER

Five New York University Law School students did background research for the Brief. They received credit for it, in their law school seminar, "Women and the Law," where it served in place of a term paper.

Debora Ginsburg, a second-year law student, prepared an essay concerning the pressure brought to bear by the Catholic Church to oppose the changing of the abortion laws in New York State.

*The Catholic Church, and Abortion Legislation  
in New York*

The Catholic Church has not been the only religious institution campaigning each year against the New York State abortion reform bills. But its opposition to reform has been the most organized and persistent. People who were involved in the 1967 and 1968 fights to pass a reform bill credit the church with playing a decisive role in defeating reform. Through a variety of pressures, church representatives succeeded in discouraging any wavering antireform legislators from changing their minds. Thus, according to Father Robert F. Drinan:

There is no doubt whatever that countless individuals and several opinion-molding groups in America are convinced that the Catholic Church is using its persuasion, its prestige and its political power, to fight any change in the abortion laws. These individuals and associations are sometimes afraid to speak openly about the role of the Church lest they deepen the Church's antagonism to the causes they espouse.<sup>1</sup>

If the church were just using persuasion, prestige, and political power in the ordinary sense of these words, the public would still have reason to suspect that concerns other than their health, welfare, and safety were affecting the success of abortion legislation. The church has become a powerful institution. It has managed to keep its members toeing the line, publicly at least, on issues such

as birth control and divorce. But many Catholics clandestinely practice birth control. It is very important for them not to publicly contradict church edicts; but, if they can give the appearance of being good Catholics while tending privately to their own needs, they need not worry about being condemned. Unfortunately, the church's frequent and unrealistic stands have turned many Catholics into hypocrites. Abortion reform has fallen heir to this kind of split behavior.

Like any other group, the Catholic Church can try to affect public opinion in a number of ways. It can take a stand on important causes, communicate its position to the faithful, and confidently expect them to adhere to its position. The church seems to have had a powerful and pervasive effect on its members, though it has been documented that many do not agree with the church position on abortion.

A New York State survey made in 1968 by Oliver Quayle and Company shows that 72 per cent of the Roman Catholics polled favored liberalization of the New York State abortion law.<sup>2</sup> And a nationwide survey taken in 1965 by the Association for Abortion Reform revealed a relatively slight difference between Catholics and Protestants in their views on abortion. Sixty-four per cent of the Catholics surveyed favored abortion to protect the mother's health, as compared to 73 per cent of the Protestants. Regarding abortion after rape, 47 per cent of the Catholics were in favor, compared to 57 per cent of the Protestants. Finally, 48 per cent of the Catholics felt that abortions should be allowed for a deformed fetus, as compared to 57 per cent of the Protestants.<sup>3</sup> This is not the profile of a brainwashed Catholic membership.

But few Catholics, either clerics or laymen, speak openly in favor of abortion reform or against their Bishop's decrees. The reason for this, according to Father Drinan, may be:

... the timidity, the ignorance, the loyalty or the subservience of Catholic clerics and laymen. But the impression that non-Catholics receive is that, when a Bishop or group of Bishops make a pronouncement on a complex legal-moral-political matter, Catholics must accept it as binding on their minds and on their votes.<sup>4</sup>

It is one thing when Catholics in general conform their opinions to Church dogma. However, it is quite another when legislators allow their judgment about the issues, in which the state might have an interest, to be affected by religious principles. For example, in 1968, Governor Rockefeller appointed a special committee to recommend changes in the state's abortion law. According to the *New York Times*, four members of the committee were already opposed to any major change in the abortion law. Three of them actually signed a minority report condemning abortion on all the proposed grounds.

Those committee members were Robert M. Byrne, Esq., associate professor at Fordham Law School, Dr. John Grant Harrison, former president of the Catholic Physicians Guild of New York State, and Msgr. William F. McManus, director of the Family Life Bureau of the Archdiocese of New York.<sup>5</sup> Governor Rockefeller's directive to this committee to consider various points of view and recent developments in other states and nations could hardly have been taken seriously by these dissenting members. The committee took testimony from a large number of people on both sides of the abortion question. Thus, the Catholic committee members served merely as rubber stamps for those presenting the anti-abortion view.

The governor's committee, however, was only advisory, though Senate Majority Leader Brydges said a lot would depend on its recommendations.<sup>6</sup> But the legislature itself has a number of members, some of them powerful, who, because they are Catholic, can be expected to have closed minds on the question of abortion reform. Former Democratic Assembly Speaker Anthony Travia, Republican Senate Majority Leader Earl Brydges, and Lieutenant Governor Malcolm Wilson are all Catholics. Speaker Travia was blamed for the death in committee of the 1967 reform bill. But it was known in 1968 that, even if Travia allowed the bill to come up for a vote in the Assembly and it was approved, Senate Majority Leader Brydges was still opposed to any change in the law. He commented: "I approach change with an open mind, but with deeply held reservations about how far we should go."

Brydges' reservations are most likely internalized Catholic dogma.

was pointed out that the states in which reform bills had been passed had far fewer Catholics than in New York. Even though opinion polls show that Catholic opinion on abortion is similar to Jewish and Protestant opinion, answers to a survey are not tantamount to votes in an election.<sup>13</sup>

Fear of rejection by the voters seems like a rather poor excuse, however. If a legislator represents his district on the theory that he knows what is best for them, he will vote according to his conscience and take his chances at election time. He can probably assume that his district will humor him on a few important issues. But if his theory is that legislators should be responsive to the wishes of their districts, he must have some way of finding out what his district wants before election time. Very few legislators bothered, however, to find out exactly what their districts felt about abortion reform. Most of them took the church representations literally, without checking, concluding that they would be voted out of office if they voted for abortion reform.

According to Elizabeth Elkind, executive secretary of the Abortion Reform Association, a pastoral letter issued by Catholic Bishops in 1967 and 1968 was crucial in the church's fight against abortion. The Bishops directed this letter to be read in every Catholic Church during the Sunday sermon.<sup>14</sup> The *Times* reported that this letter was to be read, for example, in the Brooklyn diocese. Its purpose was to remind Catholics of the church's position on abortion with specific reference to the reform legislation then being considered in the legislature. Part of the letter said:

Each man must form a right conscience on this question. Every Catholic, in forming his conscience, should be guided by the teachings of the Church.<sup>15</sup>

This admonition, of course, applied to legislators as well as to everyone else. It was just part of a persistent campaign to defeat the reform bill, but it represented the definitive statement on the issue by prestigious members of the church hierarchy.

The reform bill's defeat in the Assembly was a shock to its supporters, who thought they had three or four votes more than the seventy-six necessary for passage. Twelve legislators, all Catholic,

spoke against the bill, charging that it would legalize murder. When assemblymen on both sides of the aisle raised their hands to vote for sending the bill back to committee and effectively killing it for the year, there was an audible gasp in the room. Assemblyman Al Blumenthal was quoted: "The pressures were just too great in an election year. We had four votes we needed and they backed out." When he was asked the source of the pressure that caused the bill's defeat, Blumenthal said: "[he had] noticed Mr. Tobin sitting in the back with a roll call sheet."<sup>16</sup>

Mr. Tobin, according to Senator Seymour Thaler and Ms. Elkind, is the church's Albany lobbyist. In describing his activities against abortion, Tobin said that he often engaged in public debates and planned to set up meetings, early in 1970, for people interested in opposing abortion. Of course, he did not mention his Albany lobbying. He was uncomplimentary about the opposition he meets in abortion debates. Most of his opponents get overexcited and cloud the issues with appeals to the emotions.<sup>17</sup>

Senator Thaler's recent picture of the church's opposition to abortion coincided with the newspaper accounts, but was more detailed. He said that the church gave out memoranda profusely and had individuals write their legislators to vote against the bill. Many legislators received an onslaught of mail opposing reform. Senator Thaler heard that church representatives made personal visits to legislators whom they thought would be open to influence. Many priests devoted their weekly sermons to the subject of abortion and afterward encouraged their parishioners to write their representatives about opposing abortion reform. The letters were obviously the result of write-in campaigns because, parish by parish, they were all written with the same emotional reference to "killing babies."

Senator Thaler said that, of course, there were strong pressures both for and against abortion reform. But, unfortunately, the opposition is usually more enduring than the support on any one issue. The church has moral fervor and can stick with an issue. It has the resources to wage a long campaign against abortion. But groups in favor of something have a tendency to organize around a single issue and then break up. The pressure was never so blatant as an outright threat that a legislator's constituency would no

longer vote for him. Rather, it took the form of great quantities of memos and letters. Those who were wavering about which way to vote were visited by church representatives and told that they would be put on the church's political blacklist if they voted the wrong way.<sup>18</sup>

Ms. Elkind saw 1967 as the year of a holy war from which we never recovered. She, too, said that Mr. Tobin was the church's official Albany lobbyist, but that his presence in the legislature was not remarkable because he had other business there. However, she pointed out that before the vote on the 1968 reform bill was taken, calls were made by church representatives to individual Catholic legislators to influence their votes. One man got so angry about the pressure that he decided to vote for the bill.

A widespread practice in 1968, according to Ms. Elkind, was that specific legislators, who were either for reform or were wavering, were denounced by name during church services. Priests actually told their congregations that a particular legislator should be voted out of office if he voted contrary to the church stand. After services, priests handed out mimeographed postcards for the parishioners to mail to their representatives. Ms. Elkind said it was obvious that the mail received by many legislators was the product of a campaign because much of the mail had the same postmark.

But there were not many collars visible in Albany. Most of the church's opposition, carried on in various communities, were efforts to mobilize the Catholic electorate into deluging their representatives with mail.

Ms. Elkind said she does not know how many legislators were affected by church pressure. She was aware of the problem because some of the scared legislators came to her to complain. She said that having their names read in Church often had the desired intimidating effect on many legislators. Moreover, the fear that they would be voted out of office by their Catholic electorate was powerful. People who were vacillating and considering a pro-bill vote were effectively discouraged by the Church campaign from changing their votes.<sup>19</sup>

*References*

1. Drinan, Robert F., S. J.: "The Morality of Abortion Laws," *Catholic Lawyer*, Vol. 14, No. 3, Summer, 1968.
2. *New York Times*: Jan. 10, 1968, at 1, col. 7.
3. *New York Times*: Jan. 8, 1968, at 28, col. 1.
4. *New York Times*: Jan. 21, 1968, at 1, col. 2.
5. *New York Times*: Jan. 23, 1968, at 23, col. 3.
6. *New York Times*: Jan. 10, 1968, at 1, col. 7.
7. Interview with Elizabeth Elkind, executive secretary of the Abortion Reform Association, Jan. 23, 1970 (tel.).
8. Interview with Charles Tobin, secretary of New York State Catholic Committee. Jan. 16, 1970.
9. Drinan: see ref. 1.
10. *New York Times*: Jan. 10, 1968, at 1, col. 7.
11. *New York Times*: Jan. 14, 1968, Art. 4, at 8, col. 1.
12. *New York Times*: March 31, 1968, at 1, col. 2.
13. *New York Times*: March 24, 1968, Sec. 4, at 11, col. 1.
14. Elkind: see ref. 7.
15. *New York Times*: Feb. 25, 1968, at 56, col. 6.
16. *New York Times*: April 4, 1968, at 1, col. 2.
17. Tobin: see ref. 8.
18. Thaler, Seymour: senator from Queens; interview on Jan. 23, 1970.
19. Elkind: see ref. 7.

DEBORA GINSBURG, New York University Law School. Submitted in partial fulfillment of seminar: Women and the Law, January, 1970.

**AMICUS BRIEF**

An *Amicus* Brief is submitted when, on questions of public importance, "friends" present their point of view to the court. The following *Amicus* Brief, written by Emily Goodman, Esq., presented the theory that enforced, unwanted pregnancy is the equivalent of involuntary servitude and is therefore prohibited by the Thirteenth Amendment which outlaws slavery.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ABRAMOWICZ v. LEFKOWITZ

Motion for Leave to File a Brief as *AMICI CURIAE* and Brief of  
*AMICI CURIAE*

Before a three-judge District Court pursuant to Title 28USC,  
2282, 2284

Emily Jane Goodman

Attorney for:

Percy E. Sutton, Borough President, Manhattan

Women in City Government,

United Liberal Party, State of New York

Liberal Party, New York County

Citizens' Committee for Children of New York, Inc.

National Medical Committee of Human Rights

*Amici.*

**SUMMARY OF ARGUMENT**

The challenged statute violates the Thirteenth Amendment to the United States Constitution which prohibits slavery and involuntary servitude.

THE NEW YORK ABORTION LAW  
VIOLATES THE THIRTEENTH AMENDMENT  
TO THE UNITED STATES CONSTITUTION

"Amendment 13—Section 1, Slavery prohibited. —Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

Compulsory pregnancy<sup>1</sup> is a violation of the Thirteenth Amendment to the United States Constitution. A law which forces a woman to offer her body as an incubator makes her a victim of slavery and involuntary servitude.

. . . (T)he word servitude is obviously of much broader meaning than slavery; and although the idea of abolishing and preventing African slavery was in the mind of the Congress when they proposed this Amendment, it certainly embraces within its prohibitory power all kinds of involuntary servitude, except as a punishment for crime after conviction.

. . . As long as this Amendment exists, there can never be in this government any description of slavery or involuntary servitude, whether serfage, villanage, vassalage, peonage or apprenticeship.<sup>2</sup>

Or unwanted pregnancy:

"When the continuance of service under a contract of personal service is compelled under the threat of a statute which makes it a punishable crime to break the contract, such service is involuntary servitude."<sup>3</sup>

"It must follow on principle and from analogy. . ." *Michałowski v. Ey*, 4 N.Y. 2d 277, 282, 174 N.Y.S. 2d 4, 150 N.E. 2d 399 (1958) . . . that the expanding social and legal concepts may make a law or a constitutional amendment applicable to causes which perhaps were not contemplated at their inception. *Plessy v. Ferguson*, 163 U.S. 537 (1896).

*Brown v. Board of Education*, 394 U.S. 294, (1954). *Slaughter*

*House Cases*, 16 Wall 36 (1872), *Miranda v. Arizona*, 384 U.S. 436 (1966), *Mapp v. Ohio*, 367 U.S. 643 (1961).

" . . . [T]reat a statute . . . as both a declaration and a source of law, and as a premise for legal reasoning." [Historically] . . . the statute was looked upon as in the law but not of it, a formal rule to be obeyed, it is true, since it is the command of the sovereign, but to be obeyed grudgingly, by construing it narrowly and treating it as though it did not exist for any purpose other than that embraced within the strict construction of its words. L. Hand, *The Common Law In The United States*, 50 Harvard L. Rev. 4, 13 (1936).

Although the absence of slavery does not necessarily imply freedom, the presence of slavery precludes freedom. What is desirable, is "freedom from" and "freedom to." (Fromm, *Escape from Freedom*, 1941, Holt, Rinehart and Winston, p. 121.) In the present context, the end of slavery and involuntary servitude of a woman requires that she have freedom from childbearing at a time when that is her preference, and freedom to plan her personal life and the role that pregnancy may or may not play.

Where a woman is under the compulsion of the abortion laws to retain the status of unwanted pregnancy, there is a punitive, tragic denial of self; that human female is a slave to an embryo in as compelling and torturous a way as Dred Scott<sup>4</sup> was to his master. The state is now in the position of master of the individual, dictating *individual* breeding habits and patterns. *Griswold v. Connecticut*, 381 U.S. 479 (1965). It is indentured slavery, labor in payment of a debt. And this, at a time in man's history when the species is in no danger of extinction from lack of reproduction.

" . . . (T)he very idea that one . . . may be compelled to hold [her] life, or the means of living, or any essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself." *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). A pregnant woman who does not wish to remain pregnant is faced only with a choice of evils.<sup>5</sup> "On either hand, servitude is to be [her] lot." *Phoebe v. Jay*, 1 Ill. 268 (1828).

"While the immediate concern of the 13th Amendment was with African slavery, the amendment was not limited to that. It was a charter of universal civil freedom for all persons of whatever race, color or estate. . . ." See *Bailey v. Alabama*, *supra*. Or sex.

Even under the narrowest construction of the Thirteenth Amendment, New York's abortion laws would still be violative of the Constitution because of the continued enslavement of Black women for purposes of breeding. Despite the Thirteenth Amendment's abolition of slavery, this use of women continues today because of the abortion laws, the effects of which are most painfully felt by nonwhites.<sup>6</sup>

The Mann Act ("the White Slave Act") legislated against transportation of human females in order *to use their bodies* "(for the purpose of prostitution, or debauchery, or for any other immoral purpose . . .) *with or without their consent.*"<sup>7</sup> It seems apparent that Congress viewed such misuse of women's bodies as slavery, even where the initial act may have been voluntary but resulted in the use of another person's body.

There can be nothing more degrading than a human female being shackled to an embryo for purposes of involuntary breeding.<sup>8</sup>

"Every human being of adult years and sound mind has a right to determine what shall be done with [her] own body. . . ." *Schloendorff v. New York Hospital*, 211 NY 125, 129, 105 N.E. 92 (1914). "No right is more sacred . . . than the right of every individual to possession and control of his own person. . . ." *Terry v. Ohio* 392 US 1, 8-9 (1968).

Slavery implies involuntary servitude—a state of bondage; the ownership of mankind as a chattel, or at least the control of the labor and services of one man for the benefit of another, and the absence of a legal right to the disposal of his own person, property and services. *Plessy v. Ferguson* 163 U.S. 537, 16 S.Ct. 1135 (1896), *Slaughter House Cases*, 16 Wall 36 (1872).

In a Federal court opinion on restrictive baseball contracts the court stated:

It possesses characteristics shockingly repugnant to moral principles that, at least since the War Between the States have been

basic in America as shown by The Thirteenth Amendment to the Constitution, condemning "involuntary servitude. . . ." *Gardella v. Chandler*, 172 F2d 402, 409 (2nd Cir. 1949)

Although the *Chandler* court did not have to decide the case on Thirteenth Amendment grounds, it made clear that our expanding concepts would include forms of slavery and involuntary servitude other than the traditional.

"There is no difference in principle between [this] the system of servitude [with] consent and the system of peonage brought into the United States from Mexico" . . . I may add that, if the players be regarded as quasi-peons, it is of no interest that they are well paid; only the totalitarian-minded will believe that high pay excuses virtual slavery. *ibid.*, at 410

"It is the compulsion of the service that [the statute] inhibits for when that occurs the condition of servitude is created, which would be not less involuntary because of the original agreement to work out the indebtedness." *Bailey v. Alabama* 219 US 219 (1911).

"This Amendment denounces a status or condition, irrespective of the manner or authority by which it is created. . . . The Thirteenth Amendment names no party or authority, but simply forbids slavery and involuntary servitude. . . . The Amendment is not a mere prohibition of State Laws establishing or upholding slavery but an absolute declaration that slavery and involuntary servitude shall not exist in any part of the United States." <sup>9</sup>

No less eminent a jurist than Benjamin Nathan Cardozo saw fit to ask the question: "Does liberty mean the same thing for successive generations?" <sup>10</sup>

Courts know today that statutes are to be viewed not in isolation or *in vacuo*, as pronouncements of abstract principles for the guidance of an ideal community, but in the setting and the framework of present-day conditions, as revealed by the labors of economists and students of the social sciences in our own country and abroad. . . . To speak of an exclusively correct interpreta-

tion of the statute from the beginning to the end of its day, is altogether erroneous.<sup>11</sup>

The same can be said of a constitutional amendment.

#### CONCLUSION

Slavery exists wherever the law recognizes a right of property in a human being; but slavery cannot exist in any form within the United States. *Robertson v. Baldwin* 165 US 275 at 292; Harlan, J., dissenting (1897).

It is the position of the *Amici* that the free opportunity of choice to control their bodies and their lives by terminating unwanted pregnancies without interference from the State is a fundamental constitutional right guaranteed to all women, regardless of economic condition.

*Amici* urge this Court to aid history in making the present free from slavery, involuntary servitude, and, for the reasons presented, to declare the New York Abortion Law unconstitutional.

Respectfully submitted,

EMILY JANE GOODMAN  
Attorney for *Amici*

#### References

1. Hardin, *Abortion—or Compulsory Pregnancy?*, *Journal of Marriage and the Family*, Volume xxx, No. 2, 1968, at p. 249.
2. Shelby, *The Thirteenth and Fourteenth Amendments*, 3 *Southern L. Rev.* 524, at 525 (1874).
3. Stevens, *Involuntary Servitude by Injunction. The Doctrine of Lumley v. Wagner Considered*. 6 *Cornell L. Q.* 235, at 247 (1920-21).
4. *Dred Scott v. Sanford* 19 *How.* 393 (1857).
5. *People v. Belous*: "It is now safer for a woman to have a hospital therapeutic abortion during the first trimester than to bear a child." 71 *Cal 2d*, 458 *P 2d*, 194, 199, 80 *Cal Rptr.* 354 (1969), *cert. den.*, (1970).

MR. FORD: I object to that.

MS. KENNEDY: They are objecting because you are drawing a conclusion about his emotional state.

THE WITNESS: Could I answer that?

MR. LEWITTES: Yes.

**A:** He seemed quite afraid when I was pushing the matter, when I said, "You must give me the name of a doctor. I am sure you know the name of a medically competent abortionist."

I'm sure you will object to this, but it seemed to me that he was terrified. He acted as though I was pushing him to say something that he didn't want to say. I really felt that he didn't trust me, that perhaps he thought I was a government agent or that I could get him into trouble. I mean, he certainly terminated all conversations that I initiated.

**Q:** As a result, he made no attempt to determine whether or not your case could arguably come within the New York State statute? He didn't ask you any questions as to your emotional state? He didn't ask you any questions as to your physical state, to see whether or not an abortion would be necessary to preserve your life in the terms of the New York State statute?

**A:** No, he tried very fast to send me out of the office with the assurance that I would be able to take care of myself, but there was nothing he could do . . . that I should be understanding enough to understand his position.

**Q:** What did you do after that?

**A:** I had, through the grapevine, always known that there was this famous East Coast abortionist named Dr. Robert Spencer in Ashland, Pennsylvania. So I picked up the phone and got the Ashland operator, and got the number of Doctor Spencer and called him.

Dr. Spencer told me that at this time he was not in practice. I think he said there was nothing he could do and I hung up. I

twenty states and a membership of over 5,000, that said committee passed the following resolution without dissent:

The Medical Committee for Human Rights strongly urges the repeal of all abortion laws in every state. We support the position of repeal for the following reasons: (1) It is a basic human right of every female to determine her own reproductive life. (2) Repeal would not involve the law and society in the business of selecting those persons whose unwanted pregnancies may be legally terminated. Elimination of abortion laws would not direct any woman to violate her own moral code. (3) Presently the state can force a woman to carry a pregnancy to term, but no state can force that woman to love her child. (4) Liberalization of abortion laws in those states which have enacted such statutes has not lessened the problem. Limited legislation merely codifies what hospitals are already doing. (5) Approximately 1,200,000 women per year obtain illegal abortions. The consequences of this tragedy are well known to all. There must be medical freedom to help panicky women make rational choices—and, if need be, have safe, early, and inexpensive abortions.

The Physicians Forum, another national organization of approximately 1,000 physicians, has been a pioneer in its concern about distribution and delivery of medical care for over 25 years. Of my own knowledge, in 1967, the Physicians Forum promulgated a statement on induced abortion in favor of repeal of the present New York State abortion laws. I point this out in order to correct Dr. Leslie Hugh Tisdall's testimony to the effect that no group of doctors has supported such a sweeping change.

The Group for the Advancement of Psychiatry, Inc., (comprised of) 280 psychiatrists who have achieved distinction in their chosen field, engaged a committee in the study and application of psychiatric knowledge to social and legal problems and has also come to the conclusion that abortion should be entirely removed from the domain of criminal law. Attached hereto as Exhibit A \* is a release issued by said group regarding this subject.

From my education, study, and experience, I would like to

\* Group for the Advancement of Psychiatry, Inc., "The Right to Abortion: A Psychiatric View," GAP Report No. 75.

point out that a woman who seeks an induced abortion when she is unprepared to have a child is seeking to insure that her child will be brought into this world under conditions propitious to its growth and development. These conditions range from economic ones of adequate income and living quarters to more important and less tangible conditions of affection, protection, and nutrition, which should be afforded by a family to a newborn.

The introduction of a new child into a family, even when it is planned and desired, calls for delicate adjustments by all members of the family. When the newcomer is undesired by its parents, the potential is great for overt rejection, "scapegoating," or other distortions in the mother-child relationship and in the family equilibrium. Dr. Karl Menninger, one of the deans of American psychiatry, stated in simple terms what we all know well: "Nothing is more tragic, more fateful in its ultimate consequences, than the realization by a child that he is unwanted." It should be added that the "realization" of which Dr. Menninger speaks can be of covert attitudes and feelings on the part of parents, as well as the explicit communication that the child is unwanted.

Children are often ambivalent about the new child introduced into the family. When the "newcomer" is undesired by its parents, this natural ambivalence is heightened and can be less controllable.

Children born of undesired pregnancies often are given up for adoption and remain in hospitals, institutions, or foster homes until adoption can be arranged. Some are never adopted from these places. There is a wealth of literature, from investigations in the past quarter century, attesting to the severely damaging psychological and even physiological effects on infants and young children of prolonged hospital institutionalization. Those functions which are most impaired by prolonged institutionalization are verbalization, social interaction, the constructive use of the physical environment, and problem solving, that is, those functions which make us most human.

Similar damaging effects occur when there are frequent shifts in surrogate parents, as may occur with shifts from one foster home to another. This interferes with the development of a trusting relationship to an adult care-taking person, and with the development

of warm and trusting relationships with other people in general. Individuals with early life experiences of institutionalization or foster-home care make up a disproportionately high share of the psychiatrically ill in later childhood and adult life. The evidence is especially strong that they often become antisocial personalities.

There is recent evidence, too, that factors in the adoptive family situation may complicate the adopted child's emotional development. Some authorities state that there is a greater incidence of emotional disturbances in adopted than in nonadopted children.

In summary, a truly loving mother will choose to bear her child when she and her family are prepared, in all ways, to offer her offspring an optimal environment in which to grow and develop. The young child is vulnerable to the hostility of parents who did not wish the pregnancy, the maternal deprivation of an institutional upbringing, or the inconsistent mothering often associated with foster-home placement. These psychiatric data argue strongly for the mother to be able to decide when she should bear her child.

From my studies, education, and experience, I have concluded that abortion as a contraceptive measure is used by mature and psychologically healthy women. They are aware of the enormous responsibilities of motherhood, their responsibility to their husbands, the children they have already had, and to society at large.

I have seen many cases where abortion is indeed the only rational solution to the problems of pregnant women. Attached hereto as Exhibit B \* is a copy of "Who May Have an Abortion?" . . . which more fully explicates my position.

The current abortion statutes of this State interfere with my rendering optimal care to my patients.

The psychiatric data I have introduced, and my own clinical experience, lead me to conclude that the pregnant woman should be able to decide when she should bear her child. A truly loving mother will choose to bear her child when she and her family are prepared in all ways to offer her offspring an optimal environment in which to grow and develop.

\* Eli C. Messinger, M.D., "Who May Have an Abortion?" *American Journal of Orthopsychiatry*, Nov. 17, 1967.

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\* Eli C. Messinger, M.D., "Who May Have an Abortion?" *American Journal of Orthopsychiatry*, Nov. 17, 1967.

## *About the Authors*

Diane Schulder, a graduate of Columbia Law School, originated and taught the first course in a United States law school on Women and the Law—first at the University of Pennsylvania Law School and then at N.Y.U. Law School, where, after considerable pressure from women students, it was first taught as a credit course. Her writings include "Does the Law Oppress Women?" in the anthology *Sisterhood Is Powerful*.

Her six years at the Bar began with a one-year stint with a federal district court judge. Her trial practice later ranged from working with Leonard Boudin on the trial of Dr. Benjamin Spock to the pressured trials in the New York State criminal court where, as a Legal Aid attorney, she handled over a thousand arraignments and sentences and approximately a hundred trials. Dismayed by the lack of equity for persons accused of crimes, she left the criminal court.

She has worked in support of anti-war GIs and is currently in Cambridge, Massachusetts, doing research on conspiracy laws.

Florynce Kennedy writes: "Born 54 years ago, 11 February 1916, to groovy parents . . . I went to Columbia University undergrad school, bullied my way into Columbia at night Law School, was graduated at or near the bottom of the class. . . . I've decided to try for a hustle outside the law whorehouse. I'm into the lecture and writing bag to augment the law hustle and reduce the frustration, whereby lawyers can't affect the institutionalized oppression of a corrupt, racist, genocidal, sexist society. Lawyers are reduced to getting asses out of the injustice wringer one at a time but can't stop the wringer."