MEDICAL SCIENCE AND THE LAW

Revised

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Preface

A wit once defined law as "that which lags." If this is so, then medical science may properly be described as "that which advances." Medical science has both simplified our lives and made them more complicated by presenting new options for how we may live and die. As these new choices become available, the law has tried to keep pace in order to channel these decisions into socially acceptable forms. In this process, frequent conflicts have developed among physicians, lawyers and various political groups.

Traditionally, the law reserved to the government the power to decide life and death issues. The Judicial branch could condemn to death, and the Executive branch could pardon. No private person was allowed such power. However, as the Massachusetts Supreme Judicial Court recognized in the *Saikewicz* case, "advances in medical science have given doctors greater control over the time and nature of death." In addition, legal doctrines which have been developing independently since the early years of this century—such as the constitutional "right" to privacy—have given individuals more of a voice in the manner of their lives, deaths and medical treatment.

The law attempts to redefine, in light of new options, how life and death decisions may be made, who may make them, and the standards according to which they should be made. In the process, issues raised by medical choices have become the focus of political controversy. As courts resolve these conflicts inconsistently, or in a manner not to the liking of some, legislative solutions are proposed in attempts to override or reconcile judicial resolutions. Thus the interface of medical science and the law has been, and will continue to be, a field of great controversy.

Many issues recur throughout the topics covered in this volume. Not only is informed consent by patients an ethical issue in medical treatment generally, it is the source of legal controversy in cases that involve sterilization, the right to refuse treatment, products liability and access to new drugs. Likewise, privacy issues arise in abortion, contraception, sterilization, access to new drugs and right to refuse treatment cases.

This volume is based largely on weekly reports on world affairs by Facts on File, with cases and public reports included to complete coverage of the field. We have tried to cover all areas completely and without bias, in order to make this volume an accurate reference tool that will be useful to lay persons as well as to medical and legal professionals.

Paula F. Goulden
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Introduction

The connection between medicine and law began to be defined as early as the third millenium B.C. in Egypt and Mesopotamia. In Egypt, it is said, this connection was personified by Imhotep (*circa* 2980–2900 B.C.), who was believed to have served simultaneously as chief justice and personal physician to Pharoah Zoser. Sumerian laws of the late third millennium and early second millenium B.C. were believed to have included ordinances of the payment of physicians and on punishment for unsuccessful medical treatment. These laws presumably were the inspiration for similar legislation in Hammurabi's Code of Laws (*circa* 1700 B.C.). Rome's *leges duodecim tabularum* (449 B.C.) provided that the fetus *in utero* had the same rights as a child already born to inherit its father's estate, and it gave the *pater familias* (the chief of a clan) the right to decide whether it was necessary to kill a seriously deformed child.

The Greek physician Hippocrates of Cos (*circa* 460–377 B.C.) is generally regarded as the "father of medicine." Hippocrates and his school produced major works on medical practice and medical law, and the so-called Hippocratic Oath is still the basic ethical guide for the medical profession.

The graduating physician, on taking the Hippocratic Oath, swears; ". . . I will prescribe regimen for the good of my patients according to my ability and my judgment and never do harm to anyone. To please no one will I prescribe a deadly drug, nor give advice which may cause his death. Nor will I give a woman a pessary to procure abortion. . . . In every house where I come I will enter only for the good of my patients, keeping myself far from all intentional ill-doing. . . . All that may come to my knowledge in the exercise of my profession or outside of my profession or in daily commerce with men, which ought not to be spread abroad, I will keep secret and will never reveal. . . ."

Religious qualms about abortion and birth control have played a major role in modern laws prohibiting or controlling such practices. Religion has also been one of the important factors in controversy involving the propriety of some modern scientific experimentation, especially in regard to research on human reproduction. But other considerations have also become increasingly important in the issue of how far medical science should—or should not—go.

Walter F. Mondale, then a Democratic Senator from Minnesota, pointed out to the U.S. Senate March 24, 1971 that it had become necessary "to consider and study the ethical, social and legal implications of advances in biomedical science and technology." Among developments motivating this concern, he said, were such breakthroughs as heart transplants, "test-tube fertilization of a human egg" and the prediction by Dr. James D. Watson "that we will soon see the day when a baby will be conceived in a test tube and placed in a woman who will bear the child."

Sen. Edward M. Kennedy (D, Mass.) discussed the issue in the Senate Aug. 1, 1972. "Advances in modern medical sciences have lengthened the span and changed the quality and very meaning of human life," he said. "But at the same time, these advances have opened a Pandora's box of ethical, social and legal issues in areas such as heart transplants, artificial kidneys, test-tube babies, genetic intervention, behavior modification and experiments on human beings."

The problems brought up by Mondale and Kennedy are part of a many-sided topic that in recent years has been dubbed "bioethics." This "life and death" subject is much involved with the "right to life," a term used in opposition to abortion. But it is equally concerned with "the right to die" or "death with dignity," expressions that question the medical profession's right to prolong life by extraordinary means after all hope for recovery—or even for consciousness or lucidity—has gone. Bioethics is also involved in the controversies over medical, surgical and psychological experiments with living human beings, in the disputes over birth control and in the issue of recombinant DNA research, in which genetic material is transferred from one organism to another.

These issues are the subject of this book, which is intended to serve as a record of the "life and death" topics as controversy over them gathered momentum during the 1970s. The material that follows is based principally on the account presented by FACTS ON FILE in its weekly reports on world affairs. A conscientious effort was made to record all events without bias and to make this volume a balanced and accurate reference tool.

Abortion

Basics of the Controversy

The controversy over abortion in the U.S. is largely viewed, rightly or wrongly, as a dispute between a religious viewpoint that insists on completely prohibiting the practice and a secular stand that abortion should be a private matter left to the option of women desiring abortions and their physicians. Although opponents of abortion include Protestants and Jews (and probably atheists as well), the general view appears to be that Roman Catholics and Evangelical Christians comprise the principal force working for a ban on abortion. The opinion prevails despite frequent statements by Catholic political figures that they will obey the law—regardless of whether it is pro- or anti-abortion.

Strong anti-abortion laws had been the rule throughout the U.S. until the end of the 1960s, and it was said by authorities as late as the middle-1960s that there was little chance of change. But, as Prof. Gilbert Geis of the University of California noted in "Not the Law's Business?" (a monograph produced in 1972 for the National Institute of Mental Health), "the rapidity of alterations in public attitudes and official policies in regard to abortion has been extraordinary." By 1970 Hawaii had enacted a law permitting "abortion on demand," and other states seemed ready to follow.

"The enhanced vigor . . . of the feminist movement played a very large role in the change," Geis asserted. Other factors, he said, included "Malthusian fears of overpopulation disaster," the increased ease of birth control methods and "the declining hold of theological orthodoxy on the minds and allegiances of Americans."

According to Geis, "it was a single sensational case, however, which thrust the abortion issue into public awareness. The case—that of Sherri Finkbine . . . —involved the use by a pregnant woman of a drug, thalidomide, that appeared 'likely' to cause her to give birth to a deformed child. Once the issue had been raised, it was but a short polemical jump from matters of physical deformity to those of psychic aberration, and from concern with the baby's well-being to concern with the mother's. Inevitably . . . the fundamental question appeared: Should the state have any right at all to dictate that the pregnant woman had to carry her child to term?"

(Mrs. Finkbine ultimately had an abortion in Sweden, where the fetus was found to be deformed.)

In 1973, the United States Supreme Court legalized abortion in a landmark case, *Roe v. Wade*. The Court declared all state and local laws which prohibit abortion during the first trimester of pregnancy unconstitutional, while permitting state and local governments more latitude to restrict abortion during the second trimester and prohibit it entirely during the third trimester. The basis of the Court's opinion was recognition of constitutional protection against government in-

terference in a woman's right to privacy in matters that pertain to childbearing. The Court balanced the woman's interest in privacy against the state's interest in protecting the lives of the mother and the unborn child, and ruled that the woman's privacy rights were paramount during the first trimester—when abortion is safe and the fetus is not yet viable—but that the state's interest becomes controlling during the second trimester, when abortion procedures are less safe for the mother and the fetus may be able to survive outside the mother's womb.

The Court's recognition of a woman's constitutional right to privacy in deciding whether or not to carry a pregnancy to term was based on a long line of previous Supreme Court decisions in which the Court accorded expanding constitutional recognition to the "right" of privacy in making decisions which pertain to the home and family.

Definition. A "discursive" definition of the term "abortion" was prepared by the staff of the U.S. House Commerce Committee's Subcommittee on Health & the Environment. The definition:

abortion—termination of a pregnancy before the fetus has attained viability, i.e. become capable of independent extrauterine life. Viability is usually defined in terms of the duration of pregnancy, weight of the fetus, and/or, occasionally, the length of the fetus. A recent inquiry by WHO [World Health Organization] revealed considerable variation in the definitions used in different countries. It has traditionally been assumed that viability is attained at 28 weeks of gestation, corresponding to a fetal weight of approximately 1000 g. This definition is based on the observation that infants below this weight have little chance of survival, while the mortality of infants above 1000 g. declines rapidly. A variety of different types of abortions is distinguished: early—less than 12 completed weeks of gestation; late—more than 12 weeks; induced—caused by deliberate action undertaken with the intention of terminating pregnancy; spontaneous—all abortions other than induced ones, even if externally caused, for instance by trauma or treatment of an independent condition; therapeutic—caused for the treatment of the pregnant woman.

State Legislative Controversy Prior to Supreme Court Decision

Hawaii legislature legalizes abortions. The upper house of the Hawaii State Legislature Feb. 25, 1970 adopted a bill that would legalize abortions in Hawaii performed by licensed physicians or osteopaths in a hospital sanctioned by the state or the federal government. Gov. John A. Burns let the bill become law March 11 without signing it.

The new measure repealed Hawaii's 101-year-old statute that permitted abortions only if the woman's life was in danger. Under the new law, any woman who had lived in Hawaii for at least 90 days would be allowed to have an abortion within the first four or five months of her pregnancy simply because she did not wish to have a baby.

The eligibility clause permitting the operation only within the first four or five months of pregnancy was inserted after the Roman Catholic Church had waged a long struggle to block the passage of the new bill. The requirement was viewed by some Hawaii legislators as a compromise measure to secure the bill's passage.

The residency requirement was included after Hawaii's House of Representatives voted down the same bill which lacked any residency clause. The requirement was written in after a conference committee between members of both Houses.

State Sen. Vincent H. Yano, who played a key role in having the bill adopted, indicated that he and Gov. Burns agreed that any abortion should be left up to the indi-

vidual mother and her physician. Opponents of the measure argued that the new law could create "an abortion mill" in Honolulu.

Administrators of hospitals in Hawaii reported a considerable rise in the number of abortion operations March 22.

At the Kapiolani Maternity and Gynecological Hospital in Honolulu, officials reported 46 abortions were performed in the first full week since the new law went into effect. Kapiolani administrators said this compared with a total of 70 abortions (under regulations of the old law) in a one-year period from 1968–1969. At Queen's Medical Center, the largest in Hawaii, 13 abortions were performed in the first week. This compared with the hospital's previous rate of about two a month.

Richard Davi, the chief administrator at Kapiolani, said the hospital could perform only 32 abortions a week because "we have so many other surgical cases to handle." Davi said that most of the women who had applied for abortions at Kapiolani appeared to be very young.

N.Y. also legalizes abortions. New York Gov. Nelson A. Rockefeller April 11, 1970 signed into law a controversial abortion reform bill that increased a woman's control over the medical termination of her pregnancy.

Under the new law, a woman and her physician could decide to terminate a pregnancy for any reason at any time up to the 24th week of pregnancy. After the 24th week an abortion could be performed only if the pregnancy jeopardized the woman's life. Under New York's old law, in effect since 1830, an abortion was permissible only to save a woman's life. The new law took effect July 1.

Stormy and emotional debate over the reform bill dominated nearly the entire session of the State Legislature. The State Senate voted March 18, 31–26, to replace the state's old law with what would have been the most liberal abortion reform bill ever passed in the U.S. Under the Senate version, there were no time limits on abortions, no residency requirements nor any provisions specifying how many times a woman could obtain an abortion. State assemblymen in the lower house predicted that the Senate version would not pass the Assembly unless some of those restrictions were written into the bill.

The Assembly March 30 rejected the Senate version of the bill, 71–73, three votes short of the 76 required for passage.

The bill was saved, however, when a Republican congresswoman in the early morning hours March 31 used a parliamentary maneuver to erase the unfavorable vote and table the bill for further discussion.

After a last-minute switch during a new roll call April 9, the Assembly passed a bill, 76–73, that would have removed all but one restriction on abortions in New York. The one provision written into the bill by the Assembly provided that an abortion could be performed for any reason up to the 24th week of pregnancy and after that only to save a woman's life. During the vote, Assemblyman George M. Michaels, an upstate Democrat, interrupted the roll call to announce that he was changing his "no" vote to "yes." "I realize, Mr. Speaker, that I am terminating my political career, but I cannot in good conscience sit here and allow my vote to be the one that defeats this bill." (Michaels failed to obtain the endorsement of his party for re-election April 19.)

The Senate voted 31–26 April 10 to accept the Assembly's version of the reform bill. The archbishop of New York, Terence Cardinal Cooke, issued an unsuccessful plea to Gov. Rockefeller on behalf of the Roman Catholic bishops of the state to veto the bill.

The Vatican published a message from Pope Paul VI Oct. 12 denouncing legalized abortion and euthanasia (mercy killing) as barbarism.

The letter was intended for a meeting of the International Federation of Catholic Medical Associations in Washington, D.C.

Vatican sources said the Pope's indictment of legalized abortion as counter to "centuries of civilization" clearly alluded to

the new abortion law adopted in New York. The Pope said that "mercy killing" without the patient's consent was murder, with his consent was suicide.

Drop in deaths ascribed to new law—A former New York City health official said Oct. 12, 1971 that the liberalized abortion law had cut the city's maternal death rate by more than half since its inception.

Dr. David Harris, a former New York deputy commissioner of health, attributed the current low rate of two deaths for every 10,000 live births to the new, safe abortions which made criminal abortions unnecessary. The rate was the lowest in the city's history.

Harris made his report to the American Public Health Association, meeting in Minneapolis.

Harris said that through the years, abortion—mostly criminal abortions—had been the single leading cause of maternity-related deaths, accounting for about a third of such deaths each year.

According to medical figures, there were 15 abortion-related deaths in New York City in the first year the law was in effect. One year before the liberalized law was adopted, 24 deaths were tied to abortion-related causes.

Rockefeller for tightening abortion law—Gov. Rockefeller said April 25, 1972 that he favored amending New York's new abortion law by shortening the period during which a woman could legally obtain an abortion.

Rockefeller's remarks came amid renewed efforts by some organizations, predominantly Roman Catholic groups, to have the state legislature repeal the liberalized abortion law.

Under the liberalized law, a woman was allowed to have a legal abortion for any reason up to the 24th week of pregnancy.

Rockefeller recommended that the law be amended to reduce the 24-week period for permissible abortions to a 16-week limit. He said he believed "a modification in the present law is desirable" and if the legislature adopted such an amendment, "I will give it my approval."

Rockefeller vetoes repeal bill—Resisting pressure intensified by President Richard M. Nixon's intercession on the side of antiabortion forces, Gov. Rockefeller May 13, 1972 vetoed a bill that would have repealed New York's liberalized abortion law.

Rockefeller said: "I can see no jusitfication now for repealing this reform and thus condemning hundreds of thousands of women to the dark age once again."

The repeal bill would have restored New York's old abortion law under which a woman could only obtain an abortion when her life was in jeopardy.

Rockefeller had been under pressure from the Roman Catholic Church and groups across the state which had organized under the "right-to-life" banner to sign the repeal bill.

The pressure was increased when the Archdiocese of New York released a letter from President Nixon to Archbishop Terence Cardinal Cooke expressing support for the campaign to repeal the liberalized law.

Rockefeller took note in his veto message that the state legislature was under heavy election-year pressure to repeal the reform law. He said he respected "the moral convictions of both sides" in the issue, but he addded that "personal vilification and political coercion" surrounding the issue "raised doubts" that the legislature's votes "represented the will of a majority of the people of New York State."

Nixon had projected himself into the legislative fight in New York over abortion legislation by sending a letter to Cardinal Cooke enunciating his support for the repeal effort.

The text of Nixon's letter was released by the Archdiocese of New York May 6.

In his letter, Nixon said "I would personally like to associate myself with the convictions you deeply feel and eloquently express." Nixon called the drive of the antiabortion forces "truly a noble endeavor."

Following disclosure of Nixon's letter, there was a rising tide of criticism over Nixon's decision to intervene in a local issue. Rockefeller, who had tried to head off the

repeal campaign by vowing that he would veto any antiabortion bill, was reported May 8 to be "very upset" over Nixon's letter. Rockefeller's office said "we are referring all calls [on Nixon's letter] to the White House on this."

The White House moved quickly to assuage emotions stirred by the President's letter.

John D. Ehrlichman, Nixon's top advisor on domestic affairs, said May 10 that the letter to Cooke was intended as private correspondence and was not meant to intentionally embarrass Rockefeller. Erlichman attributed the White House's decision to give the archdiocese permission to publicize the letter to "sloppy staff work."

N.Y. law upheld—The New York State Court of Appeals July 7, 1972 upheld the state's liberalized abortion law by rejecting an argument that fetuses were legal entities having constitutional rights.

That argument, made in a case brought by Prof. Robert M. Byrn of Fordham University, was dismissed by the court, 5–2.

Byrn had claimed that the law, enacted in 1970, violated the 14th Amendment of the Constitution, which held in part that no state shall "deprive any person of life, liberty or property without due process of law."

Judge Charles B. Breitel, writing for the majority, said "unborn children have never been recognized as persons in the whole sense." Acknowledging that some religions and philosophies might see a conceived child as a person, "it is not true, however, that the legal order necessarily corresponds to the natural order."

Wisconsin law invalid. A three-judge federal court ruled in Milwaukee March 6, 1970 that part of the Wisconsin law forbidding abortions was unconstitutional. According to the ruling, a woman could have an abortion on demand of an "unquickened" child. The judges defined unquickened to mean a fetus before the first recognizable states of movement. In effect, the court's ruling liberalized Wisconsin's laws on abortion despite the fact that a coalition of conservatives and Roman Catholics had twice before beaten down attempts by liberals in the state legislature to ease the statutes on abortions.

The main opposition to the court's ruling was reported to have come from Roman Catholics, who comprised nearly 38% of the state's population. They were in great part responsible for turning back an attempt by liberals in the legislature to have a liberalization of Wisconsin's abortion laws in January.

The Most Rev. William E. Cousins, archbishop of Milwaukee, said "our reaction [to the court's decision] must be one of disappointment and dismay." He said the ruling was "clearly against a generally acknowledged principle that a fetus has a right to life."

One of the community groups which opposed the court's ruling was the Wisconsin Citizens Concerned for the Unborn, a group that received strong backing from the Roman Catholic Church. The association denounced the decision as a "disaster" and demanded an immediate appeal.

State Rep. Kenneth Merkel, a member of the John Birch Society, said that the decision "was typical of the sickness that is contagious in our federal courts. . . ."

An appeal of the decision was dismissed by the Supreme Court on procedural grounds Oct. 12.

Vermont law voided after repeal effort loses. After bitter debate, Vermont's State Senate March 18, 1970 killed a bill that would have repealed the state's 124-year-old abortion statutes. The 20–10 vote came after the Senate March 17 voted 15–14 to give the measure preliminary approval.

Nearly two years later, however, the state Supreme Court ruled unanimously Jan. 14, 1972 that the old antiabortion law was unconstitutional.

The law, which was enacted in 1846, permitted a doctor to perform an abortion only if a woman's life was in danger.

The court upset a lower court decision which dismissed a request by a welfare re-

cipient for a declaratory judgment to block prosecution if she obtained an abortion.

Michigan law unenforceable. Michigan State Judge Clarence A. Reid Jr. ruled March 31, 1970 that the state's abortion law was unenforceable because of its vagueness. Reid dismissed the charges against a Detroit physician and his wife who were charged with conspiracy to commit an illegal abortion. Reid said he found the language incorporated in the state law that permitted a physician to terminate a pregnancy only when "necessary to preserve life" so vague as to deny the accused due process of law under the 14th Amendment of the U.S. Constitution.

Michigan rejects liberalization—In the Nov. 7, 1972 elections, Michigan voters defeated a proposal to liberalize abortion. The vote followed an intensive campaign that the two sides agreed would have national implications.

Pro-abortion forces in Michigan had succeeded in getting the issue on the ballot by having 300,000 persons sign petitions calling on the voters to override legislative refusal to liberalize a tough abortion law on the books since 1846. In its last four sessions, the legislature had failed to reach agreement on abortion reform.

Under the proposed law, physicians licensed by the state could terminate pregnancies at the patient's request during the first 20 weeks of pregnancy in a hospital, state-owned clinic or similar facility. Existing law allowed abortions only when a woman's life was in danger.

Virginia enacts liberalized law. Gov. Linwood Holton of Virginia signed into law during the week of April 5, 1970 a new and liberalized state abortion bill that was approved during the opening weeks of the 1970 legislative session. The new law would allow therapeutic abortions if the continuation of the pregnancy was "likely to result in the death of the woman or substantially impair the mental or physical health of the woman." The new law also provided for abortions if pregnancy resulted from rape or incest. The new law revised a 123-year-old statute that permitted abortions only if the life of the mother was endangered by continued pregnancy. The revision went into effect June 26.

Texas abortion law held invalid. A three-judge federal panel in Dallas declared Texas' abortion statutes unconstitutional June 17, 1970 on the ground that they abridged the right of women to choose whether they wanted to have children.

The three U.S. judges said in their decision that the fundamental right of a single woman or a married couple to choose whether to have children was protected by the Ninth through Fourteenth Amendments. The judges acted on a suit brought by a pregnant, unmarried woman, a married couple, and a physician facing two charges of criminal abortion.

Texas law held that any person instrumental in causing an abortion with the woman's consent could be jailed for two to five years. Murder charges could be filed, under the state's statute, when death occurred during an abortion attempt.

The judges ruled that the Texas laws were "overbroad" and "vague" and did not properly define for doctors what constituted criminal abortion liability.

N.J. law voided. A federal court in Trenton, N.J. Feb. 29, 1972 invalidated New Jersey's 122-year-old abortion law. The law was held unconstitutional on the grounds that it was vague and an invasion of privacy.

In a 2–1 decision, the court held that the wording of the law "provides not a glimmer of notice" as to what one could or could not do. The New Jersey statute had prohibited abortions performed "without lawful justification."

The court added that the application of the law had not been clear. Some courts had found that it allowed abortions only to save the life of the mother, while prosecutors had agreed not to take action against abortions needed to safeguard the mother's life or her health.

The court added that the law also "chills"

doctors' exercise of their constitutionally-guaranteed free speech rights and violated their 14th Amendment rights to "freely practice" the profession of their choice. On the issue of privacy, the court held that the constitutionally protected "right of privacy" extended to abortion and that the reasoning behind the laws prohibiting abortions was not "compelling enough" to justify the invasion of that right. In a key passage of the decision, the court said that "we hold that a woman has a constitutional right of privacy cognizable under the 9th and 14th Amendments to determine for herself whether to bear a child or to terminate a pregnancy in its early stages, free from unreasonable interference by the state."

Connecticut abortion laws upset. A panel of three federal judges in New Haven, Conn. struck down as unconstitutional April 18, 1972 Connecticut's 112-year-old statute prohibiting abortion.

In a 2-1 decision, the court held that the state could no longer prevent a woman from deciding "whether she will bear a child."

According to one report, Connecticut's abortion reformers interpreted the ruling to mean that the state would no longer be able to prohibit doctors from performing abortions, or preventing women from having abortions, or stop persons counseling in favor of abortion.

Under the stricken laws, abortions were permitted in Connecticut only to protect the life of the mother.

Judge J. Edward Lumbard, of the 2nd Circuit U.S. Court of Appeals, writing for the majority, said: "what was considered to be due process with respect to permissible abortions in 1860 is not due process in 1972."

Concurring with Lumbard was District Judge John O. Newman. The dissenter was District Judge T. Emmett Clarie.

The old law was replaced by a new one enacted in May.

The new law, which was stronger than the one it replaced, allowed an abortion only when the "physical" life of the mother was threatened. The law was worded in that manner to prevent physicians from performing abortions to preserve what doctors said was the mother's mental health.

But the new law was also struck down as unconstitutional. The three-judge U.S. court in Hartford ruled Sept. 20, 2–1, that the law abridged the rights of a woman "to privacy and personal choice in matters of sex and family life."

In the September ruling, Judges Newman and Lumbard rejected the state's contention that a fetus was a legal person entitled to constitutional rights. Judge Clarie objected that the majority view represented federal judicial intrusion into the legislative sphere.

The U.S. Supreme Court Oct. 16 granted Connecticut a stay of the ruling voiding the new law. The stay would keep the new law in force until the High Court decided on its constitutionality.

The court's 8–1 ruling, with Justice William O. Douglas dissenting, came two weeks after Justice Thurgood Marshall refused to grant the stay. After Marshall's ruling Oct. 3, Connecticut succeeded in having the full court take up the stay question.

Florida liberalization. Gov. Reubin Askew April 13, 1972 signed into law Florida's liberalized abortion bill.

Under the new statute, abortions would be permitted to protect a mother's life or health, in case of rape or incest or if it seemed certain that the mother would give birth to a retarded or deformed child.

California birth rate down. A University of California demographer said July 28, 1972 that California's five-year-old liberalized abortion law was curtailing the state's birth rate and also beginning to reduce the number of children on welfare.

Kingsley Davis said "the facts clearly show that rates are down for both legitimate and illegitimate births and among both blacks and whites." Davis, chairman of the International Population and Urban Research Center at the Berkeley campus, made his claims at a hearing on family planning and illegitimacy by a state social welfare board.

Davis told the board that California births

declined by 11.5% from 1970 to 1971. The nationwide birth rate dropped 6%. According to Davis, abortions in California rose in 1970 to 65,000, nearly quadruple the number in 1969.

Some of new California law ruled too vague—The California Supreme Court held Nov. 22 that certain requirements in the state's abortion law were too vague to enforce, clearing the way for women to obtain hospital abortions on demand.

Among the provisions ruled unconstitutionally vague was a requirement that abortions be approved by local hospital committees. The court also said the medical criteria for an abortion were unconstitutionally vague.

The court's 4–3 decision meant that a woman in the first 20 weeks of her pregnancy could obtain a legal abortion if it were performed by a licensed doctor in an accredited hospital. The judgment for an abortion would now rest solely with the woman and her doctor.

Pennsylvania abortion law vetoed. Pennsylvania Gov. Milton J. Shapp Nov. 30, 1972 vetoed an antiabortion bill that would have been among the nation's strictest. In vetoing the bill, Shapp termed it "so restrictive that it is unenforceable."

Under the bill, an abortion could be performed only when a panel of three hospital-based physicians decided that the continued pregnancy would endanger the life of the mother.

The bill was sent to Shapp's office Nov. 20 after the House of Representatives backed it, 127–50. Shortly after Shapp vetoed the bill, the House failed to override his action by 34 votes.

A three-judge federal panel ruled in Pittsburgh that Pennsylvania's medical assistance program for welfare recipients unconstitutionally discriminated against recipients who chose to have abortions, it was reported May 8, 1974.

The ruling voided state regulations requiring agreement by two doctors that a woman's life would be endangered by giving birth, evidence of rape or incest, or evidence of potential infant deformity before a welfare recipient could receive state reimbursement for an abortion.

Alaska liberalization vetoed. Gov. Keith Miller of Alaska April 18, 1970 vetoed a bill that would have given Alaska a reform abortion law almost without restrictions. Miller, a Methodist, said his decision to veto the measure was based on "the right to life."

He also said he disagreed with those who said he should not allow his personal convictions to influence his decision. "Any man who does not follow his personal convictions in conducting state business," he said, "is not worthy of the office of governor." Miller based a third objection to the bill on what he termed the bill's serious legal deficiencies.

The measure, passed by both houses of the legislature the week of April 13, would have allowed abortions to be a matter between the mother and her physician while the fetus was incapable of sustaining life independent of the mother, generally regarded to be until the 26th week of pregnancy.

Maryland liberalization vetoed. Maryland Gov. Marvin Mandel May 26, 1970 vetoed a liberalized abortion bill that would have erased all state restrictions on abortions. The bill was sent to the governor's office after it passed the General Assembly March 31.

Mandel emphasized that he had vetoed the bill on legal rather than ethical grounds. He said he was particularly concerned that the bill contained no residency requirements, that an unmarried minor girl could have an abortion without parental consent, and that the bill failed to include any time limit on when an abortion could be performed.

Mandel's veto could not be overridden by the General Assembly because 1970 was an election year for the legislature. The state constitution provided that a new legislature could not overturn the veto of a previous administration.

The veto left in effect a law enacted in 1968 that permitted abortions up to the 26th

week of pregnancy in cases involving rape or incest, where there was a likelihood of a deformed baby or when the pregnancy endangered the mental or physical health of the mother.

Minnesota law held valid. A Minnesota district court judge Nov. 20, 1970 upheld as constitutional the state's 77-year abortion law in a test case involving a physician's deliberate violation of the statute. The judge gave the defendant, a woman gynecologist, a suspended sentence for violating the law.

In handing down the verdict, Judge J. Jerome Plunkett praised Dr. Jane Hodgson for her "forthrightness and courage" in testing the statute. He also said that she could "take solace from the esteem" in which fellow physicians held her.

Dr. Hodgson, 55, was convicted Nov. 19 of violating the abortion law and Judge Plunkett sentenced her Nov. 20 to 30 days in jail but suspended it pending the outcome of an expected appeal.

Dr. Hodgson had admitted performing an abortion on a woman who had contracted German measles early in her pregnancy. (Medical evidence had shown that the illness increased the risk that a baby would be born deformed.) Under Minnesota law, an abortion was permitted only when the life of the mother was in danger.

Illinois ruling overturned. The Illinois Supreme Court Jan. 27, 1972 vacated a lower court ruling that would have permitted a 15-year-old girl who had threatened to kill herself the right to have an abortion.

By a 4–3 vote, the court threw out the ruling of a Cook County circuit court judge who said the girl could have an abortion because of her suicidal tendencies.

D.C. abortion law upheld. The Supreme Court, by a 5–2 vote April 21, 1971, upheld the constitutionality of a 70-year-old district of Columbia law that permitted abortions only to protect the life and health of the mother. It was the court's first decision on the constitutionality of abortion laws.

The opinion, by Justice Hugo L. Black, reversed the November 1969 ruling of a U.S. judge who held that the D.C. statute was unconstitutionally vague.

The court held that the statute was not vague. But Black in his opinion used what was regarded as qualifying language that was expected to limit enforcement of the D.C. law and others like it.

Black said "health includes psychological as well as physical well-being," a distinction not made in the D.C. law. He also declared that in future abortion prosecutions the government would have to prove not only that an abortion took place, but that the woman's life or health was not in danger.

(Officials of an abortion clinic in Washington, indicating that the decision gave them considerable latitude to perform legal abortions, said April 21 that their clinic would continue to perform them.)

Black was joined by Chief Justice Burger and Justices Blackmun, Harlan and White. Justice Stewart dissented, declaring that if a licensed physician performed an abortion the law should accept that the woman's health made it necessary. In another dissent, Justice Douglas agreed with the federal judge who said that the law was unconstitutionally vague.

Justices Brennan and Marshall did not paticipate in the decision because they felt that the court lacked jurisdiction to hear the case upon direct appeal from a lower district court.

In the original case, Dr. Milan Vuitch, a Washington physician, was indicted under th D.C. anti-abortion statute. The law was declared unconstitutional and the indictment quashed by Federal District Judge Gerhard A. Gesell, who held that the law's language was too vague. Writing that the word health provided "no clear standard to guide either the doctor, the jury or the court," Gesell dismissed the case. The Justice Department appealed directly to the Supreme Court, charging that Vuitch operated an "abortion mill," without taking into account the patient's health.