

Law Aborted

Lynn Slameka

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An exciting decision came down recently in the Southfield District Court. Judge Clarence A. Reid, Jr. declared Michigan's abortion law unconstitutional during a pretrial examination of Dr. Jesse Ketchum and his wife Judith, March 30th. The two had been charged with conspiracy to perform abortions, following Ketchum's arrest January 5 at the Northland Inn in Southfield, as he prepared to perform an abortion on an undercover State policewoman, Mrs. Kay McEntee. Ketchum's wife was later implicated following Mrs. McEntee's testimony that Mrs. Ketchum had been the original contact in setting up the abortion.

Dr. Ketchum must also stand trial in Detroit Recorder's Court on similar charges. While awaiting trial in the Southfield case, Ketchum was arrested January 30th at the Belcrest Hotel, 5440 Cass, as he was preparing to perform an abortion on a 17-year-old girl.

The incidents were dramatically portrayed in the straight media, and the Ketchums were credited with playing a major role in a sinister abortion ring of international scope.

In dismissing the charges against Dr. Ketchum and his wife, Judge Reid appeared to be well aware of his responsibilities and limitations as a district court judge, as is evidenced by his introductory comments. "This court recognizes that issues raised in this matter have far-reaching moral, theological and 'medical' implications. But this court will deal only with the legal issues," Reid said.

Present Michigan abortion law permits abortion only when "it shall have been necessary to preserve the life of such woman." Reid asserted that the words "necessary," "preserve," and "life" are exceedingly vague and may be interpreted in a variety of ways. He concluded that the state law "is vague and indefinite in its terminology and possible applications as to constitute a denial of due process as protected by the 14th Amendment of the United States Constitution and the Michigan Constitution..." The due process clause in the 14th Amendment states that a law must use "clear, explicit and unambiguous terminology so that men of common intelligence may not differ as to its meaning and application."

Reid's second determination was that the law "infringes on the basic rights of privacy of the woman (undergoing abortion), and the basic right of life of the unborn person, and infringes upon the right to privacy between physician and patient, without a sufficient state interest in abridging the right of privacy and right of life." Reid also expressed concern that the present state law may prohibit a woman from being accorded the right to safe and adequate medical advice and treatment.

The real issue here is whether or not the state has a "compelling interest," or an interest so important to the state that a woman's right to privacy must be sacrificed. The public interest would have to be quite seriously threatened to justify governmental intervention in the sexual lives of its citizens. It must be remembered that a constitutional policy has been established which protects individual liberty from unduly restrictive state legislation. The 14th Amendment protects the "fundamental rights" of citizens against state encroachment.

Furthermore, the right of individuals to govern the destiny of their own bodies is a well established fact in our society—except with regard to obtaining an abortion. An individual is free to eat and sleep as they

please, seek or reject medical attention, smoke tobacco, consume alcoholic beverages, and so forth at will. These rights are protected by the 9th Amendment which states: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." Why then has this protection not been extended to women who merely want to gain control of their bodies? What kind of government forces a woman to bear a child against her will?

In 1965, as a result of the *Griswold v. Connecticut* case, the 9th Amendment was interpreted to extend the right to use contraceptives as a method of birth control to all citizens. In a concurring opinion, Justice Goldberg declared that anti-birth-control laws are "totalitarian." There would seem to be an obvious contradiction then with respect to the fact that a woman is granted absolute control over her reproductive capacities to the extent that she is able to successfully utilize contraceptives, but that this right is denied should her methods of birth control fail. It is also evident that the distinction between contraception and abortion is exceptionally arbitrary due to the fact that some forms of contraception, such as "Lippes loop," actually abort the fertilized egg, rather than prevent conception.

The constitutional validity of state abortion legislation is further threatened by the fact that the states have made a subjective value judgment with respect to abortion, and have forced this judgment — upon citizens protected by the Constitution. Abortion did not become illegal in this country until the 1860s, largely as a result of religious pressure and widespread beliefs that a woman's proper role was that of mother and homemaker. Furthermore, it was not until 1869 that the Pope declared abortion to be murder.

Therefore, when the state declares that a fetus ought to be considered a human being, it is making a blatant subjective moral judgment with intense religious overtones. In a supposedly free society, value judgments of this nature should be left to the decision of the individuals-concerned. They should not be dictated by the state.

When one considers the logic inherent in the state abortion law, it proves to be quite inconsistent with the penalties prescribed for the crime of abortion. If the argument that abortion is murder is to be taken seriously, then why aren't those charged with conspiracy to perform abortions charged with first degree (premeditated) murder? Why isn't a death certificate necessary for a fetus which has been aborted? And why have the lawmakers made it a far more serious crime to abort a fetus than is "quick" (16 to 20 weeks old) than one that is in its early months of development?

Current Michigan abortion laws prohibit abortions under two separate provisions: 1) The first prohibits efforts to induce a miscarriage and authorizes penalties up to four years in jail and a \$2,000 fine; 2) the second declares it is manslaughter (negligent homicide) to deliberately cause the death of a fetus that is "quick" and thus authorizes penalties of 15 years and \$7,500 in fines. The laws and the mentality behind them speak for themselves.

An additional constitutional challenge to the abortion law, not applicable in the Ketchum case but of potential significance, utilizes the Equal Protection requirement of the 14th Amendment. When a state denies "to any person within its jurisdiction the equal protection of the laws" as ultimately construed by the highest court of the nation, that person may act to relieve the inequity by a suit for injunction, relief from prosecution, or in many cases for civil damages. And; "where fundamental rights and liberties are asserted under the Equal Protection Clause, classifications which might invade or restrain them must be closely scrutinized and carefully confined."

Therefore, the 14th Amendment is applicable to the rights of women, rich and poor, black and white, to equal protection of the law—that is, to get proper medical treatment without discrimination on the grounds of race, color, or income. It is a matter of record that indigent ward patients are systematically discriminated against with respect to obtaining abortions, while financially able private patients are given top priority in their requests for legal hospital abortions.

The abortion "quota" systems of most hospitals insure that a limited amount of abortions are performed each month, without regard to the health interests of pregnant women. We would think it quite absurd if hospitals were to place quotas on the number of tonsillectomies or gall bladder operations they would perform each month! The abortion "quota" system then clearly denies the fundamental rights of women. An additional discriminatory practice which violates equal protection is that many hospitals do not even

inform ward patients of their legal right to an abortion, so that they may reserve this service for their more wealthy private patients.

Having examined the various constitutional considerations, it appears almost certain that the Michigan Supreme Court will uphold Judge Reid's decision that Michigan abortion laws are unconstitutional, unless the state legislators decide to repeal our abortion laws this Spring. I personally would favor a strong judicial posture on this matter for I feel strongly that the legislators originally had no right to make laws abridging the constitutional, as well as the natural rights of women. And I resent having to place the fate of women's rights in the hands of CongressMEN, who concentrate first and foremost on securing their re-election.

In conclusion, I hope I have not conveyed the impression that the judicial system will be the source of our salvation, or that it is beyond reproach, and that it is even just. My intention has merely been to show that there clearly is no basis, constitutional or otherwise, for state abortion laws; that these laws have been a significant aspect of the oppression of women; and that until we make our revolution, there is some reason to believe that the courts may begin to serve the people more justly in protecting our fundamental rights.

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