

House Judiciary Committee Meeting
Tuesday, March 19, 1963

The House Judiciary Committee met Tuesday, March 19, 1963, in Room 529 at 8:40 A.M. with Chairman Clyde Hill presiding. Seventeen members were present. Members Arthur, Briggs, and Tillotson were absent. Present to speak concerning Senate Bill No. 343 were Dr. Phillip S. Holzman, Dr. Evalyn Gendel, Dr. David E. Gray, Dr. Geoffrey Martin, Donald R. Yount, Reverend Robert R. Crothers, Reverend Henry H. Bruel, Dr. Hubert C. Modlin, Senator Charles F. Forsyth and Dr. William R. Roy.

Chairman Hill called the meeting to order.

The proponents of Senate Bill No. 343, an act relating to crimes and punishments; concerning unjustified and justifiable abortions; and repealing sections 21-409 and 21-437 of the General Statutes of 1949, and section 21-410 of the General Statutes Supplement of 1961, were heard.

Dr. Philip S. Holzman, a psychologist at the Menninger Foundation, was the first speaker. He presented the members of the committee with a copy of his statement concerning statistics and general information concerning abortions. A copy of this report is attached to these minutes.

Mr. Cram asked if his premise would be that there are going to be a lot of abortions anyway and that you ought to make the law to fit it. Dr. Holzman said no, but the death rate will remain high. The psychological consequences can be prevented. Mr. Cram said then the idea is to make the law fit that condition so that it will be legal.

Mr. Crossan asked if he realized that this bill is by its terms limited. He asked if he recognizes that abortions are performed for social and economic reasons. Dr. Holzman said yes, but that it is definitely not permitted for promiscuous reasons.

Chairman Hill asked if there were any further questions.

The next speaker was Dr. Evalyn Gendel, Kansas State Board of Health. She said that much of the background which was presented by Dr. Holzman is similar to that which they found in looking over their figures in their division in the past few years. She presented additional statistics and studies. She said that our present Kansas law seems to be a wide open area to allow illegal abortions. She gave some of the consequences of this.

Mr. Crossan stated that you would still have illegal abortions because many of them are performed for social and economic reasons.

Mr. Van Cleave asked if Dr. Gendel and the Board of Health recommend this bill. Dr. Gendel said that she cannot speak for the Board of Health. She stated that the original proposal by the Board of Health was an amendment to the old law. She presented a copy of

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this amendment to Chairman Hill. She stated that as a physician, not expressing the views of the Board of Health, she personally would be in favor of the kind of legislation proposed in Senate Bill No. 343.

Mr. Edwards asked if she knows of any other states which permit abortion in the case of incest. Dr. Gendel said that as far as she knows, no.

Mr. Skoog stated that this bill provides for three doctors. By the looks of this bill, by themselves, except in the most difficult circumstances, they are going to be very well protected by this bill. With this bill, there would be a very slim number of abortions they would feel authorized to perform. Dr. Gendel said there are about eight performed per year in Topeka. Mr. Skoog stated that the Medical Society said there are two or three abortions performed in Topeka per year. He said that you talk about this big problem, but this bill does not authorize meeting this problem. Dr. Gendel said that it does for a good part of it. Mr. Skoog said there will be much more opposition to how this bill would be legalized.

Mr. Liebert asked Dr. Gendel if she has read Section 2 of this bill. He asked if there is anything new in this section. Dr. Gendel said she didn't know.

Mr. Cram said that there has been an enormous amount of protest to this bill. He said they say there would be an enormous increase in the number of abortions performed. He asked if she thought this would be so. Dr. Gendel said that it seems to stay the same where they are strict concerning the laws and where they are not.

Mr. Davis said that this problem has appeared for a long period of time. He wanted to know what prompted the sudden emergency. Dr. Gendel said that in the past 10 years, there have been some very good vital studies showing what kind of danger exists from this problem.

Chairman Hill asked if there were any other questions.

Mr. Malone asked at what point the doctor can determine if the child is going to be physically or mentally defective. Dr. Gendel said there would be very few cases where this could be done. She said that you would have to present the chances that exist to the parents and then let them make the decision.

Chairman Hill asked if there were any other questions. There were none.

The next speaker was Dr. David Gray, Topeka obstetrician and president of the Kansas Obstetrics Society. He stated that he is appearing as an individual and not proposing to express any official

opinions. He said a physician now is faced with a dilemma when an abortion is needed. He said abortions now are allowed only when the mother's life is involved. He said the physician does not presume to play God, he can only be a medical adviser. He said abortions are technically not easy. He said it is not a desirable thing and no physician does it without a great deal of soul searching. He said that often when the health of the mother is at stake, then often the life eventually is at stake. He said that a physician has a patient which he thinks should not continue with this pregnancy. He then continued to go through and explain the process which must take place according to this bill. He also pointed out that the social and economic factors can have a profound influence on the mental aspect.

Chairman Hill asked for any questions.

Mr. Cram said that the three doctors that are provided could easily be three quacks which could be picked up easily. He said that this danger would be present. Dr. Gray said that these doctors must be specialists in the area where the disability is involved. He said that this isn't the law, but that it is the way it is carried out.

Mr. Skoog stated that he noticed that this bill provides that these certificates would be filed in a licensed hospital "or in such other place as may be designated by law." He asked what the other places might be which may be designated. Dr. Gray stated that he didn't know. Mr. Skoog wanted to know if it wouldn't be a fact that the problem would be much lessened by the requirement that the operation be performed at a licensed hospital. Dr. Gray stated that he would agree with that.

Mr. Liebert asked if he was aware of the recent Kansas Supreme Court case which allowed the unborn child to have a cause for action. He asked at what point Dr. Gray considers the unborn to be a child. Dr. Gray said he would have to rely on the term viability, which is 20 to 24 weeks. Mr. Liebert asked how he distinguished in his point of view a law which allows the destruction of that person. Dr. Gray said he didn't want to go into philosophy. Mr. Liebert said then to keep it at a medical point of view.

Chairman Hill asked for any other questions. There were none.

The next speaker was Dr. Geoffrey Martin, a Topeka pediatrician and former secretary of the State Board of Health. Dr. Martin said current statutes in this area are an exercise in paleontology, rather than law. He called some statutes fossils. He said this is a legal situation that does not have bearing on the fact of life. He said contraceptives are illegal, yet you can buy them in the corner drug-store. This makes them more expensive and less acceptable. He said

the same is true of abortions. If you are rich, you can get an abortion under sterile circumstances. Mr. Crossan asked where you can get them if you are rich. Dr. Martin said in Sweden, Japan or New York. If you are poor, you can get an abortion under unsanitary circumstances. If you are very poor, you can't even get that. Dr. Martin said that in his opinion, this law would not greatly change the number of abortions. He said that he believes that the passage of this law would not greatly change the situation, but it would be a step in the right direction. He said that the younger the person who dies, the less harder it is to place an estimate on the value of the future of that person. As the individual is younger and younger, the penalty becomes less until at some point it will vanish.

Mr. Liebert stated that we will not affirm that last statement by silence. Mr. Crossan too objected strongly to this statement. Mr. Gardner asked where it is in our laws that the penalty is less and less as the age is younger. Mr. Euler pointed out that Dr. Martin probably means in the recovery of money in civil suits. Chairman Hill said that this is getting a little far afield. He asked if there were any other questions. There were none.

The next speaker was Dr. Donald Young, a Methodist clergyman now studying at the Menninger Foundation. He said the abortion problem is also a basis of spiritual concern. It is not alone a matter of medical decision. The conditions of this bill are well thought through. He stated that he thinks there is a moral basis for honest consideration.

Chairman Hill asked if there were any questions.

Mr. Davis asked Dr. Young if he is in favor of this bill. Dr. Young stated that he is.

The next speaker was the Reverend Henry Bruel, rector of St. David's Episcopal Church. He said the bill is not a perfect bill, but that he feels it is a good one. He said that often there are very valid Christian reasons for terminating a pregnancy. Objections to this bill are an example of medieval theology. He said that we never make a perfect action in the world, but we should have the right to use the brains that God has given us. He pointed out that in the case of the mentally ill mother, an abortion might be most desirable. He said this is an important reason and he strongly supports this bill.

Mr. Edwards asked if they have a law like this in Great Britain. Father Bruel said they are trying to get one.

Mr. Malone asked when the soul comes into the body. Father Bruel said that he doesn't know. He said he thinks this is derived from medieval theology.

Mr. Davis stated that he is a Catholic and he knows what that philosophy is. He said he wanted to know what his church feels concerning this bill. Father Bruel stated that he supports this bill and he believes most of his church does.

Mr. Smith stated that most pregnant women at some time during their pregnancy want to get rid of the child and then after it is born are happy about it. He said this fact bothers him concerning this emotional business. Father Bruel said he doesn't know what the answer to this would be.

Mr. Skoog pointed out that no one has mentioned the problem when incest or rape is the cause of pregnancy. Father Brueal said that certainly in rape, there has been no cooperation. He thinks this would be a very valid time for an abortion. Mr. Skoog said that under the present law, the clergyman and doctor are not around when you have an 8 or 10 year old girl pregnant by the father. Father Bruel said that he understood there is a law now on the books to cover this situation. Mr. Skoog said there is not.

Mr. Griffith asked if in the instance of rape if it is possible to eliminate pregnancy immediately. Dr. Gray explained. Mr. Griffith asked if there is any simple method of terminating it at that time. Dr. Gray said there is no simple way. Mr. Davis asked if they could scrape the wall of the uterus. Dr. Gray said that this is an abortion.

The next speaker was Dr. Herbert C. Modlin, Psychiatrist from the Menninger Foundation. He said he is speaking strictly as a physician. He stated that a good case can be made out to substantiate the statement that the most important part of that bill is mental health. He said that mental health is the number one problem in the United States. He said that conception and pregnancy do precipitate mental illness. He gave examples of several cases concerning this. He said that abortion does not produce mental illness. There is no substantial evidence of it causing directly any mental illness. He said that this bill provides some desirable safeguards. He stated that he commiserates with the members of the committee on their task. He said the problem is how much shall you legislate the private lives of people. He said there are many consequences.

The next speaker was Senator Charles F. Forsyth, member of the Senate Judiciary subcommittee, who worked on the drafting of this bill. He explained the bill. He said that this is a criminal law. This will allow a little freedom to the individual. He stated that there was no private authorship in this bill. For that reason, it has a good deal more behind it than the study of one committee. It is taken from the model code. It simply sets out what is justifiable and what is unjustifiable. Contraception could not be tied into this. He told of letters which he had received in regard to this bill. He said he hoped the members of this committee will study where the opposition comes from.

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This bill went through the Senate Judiciary Committee and the Senate with merely a ripple.

Chairman Hill asked if there were any questions.

Mr. Skoog asked what might be included by "or in such other place as may be designated by law." Senator Forsyth said that at the present time, there is no other place, but this is for future use.

Mr. Skoog asked if this bill applies only to medical doctors. Senator Forsyth said yes.

Chairman Hill asked if there were any further questions or comments.

Dr. William R. Roy, Topeka obstetrician, spoke briefly. He said that regarding the mental health of this bill, we can do an abortion now if the mother threatens to take her life. If she does this, the life of the mother is at stake, and an abortion is permitted under these circumstances with the present law.

Mr. Smith moved that Senate Bill No. 343 be reported adversely. Mr. Crossan seconded. Members of the committee fought the motion, saying a decision on the measure should be postponed until after the opponents are heard Wednesday, March 20, 1963. Mr. Williams made a substitute motion to adjourn. Mr. Griffith seconded. Motion carried.

The meeting adjourned at 10:05 A.M. The next regular meeting will be Wednesday, March 20, 1963, at 8:30 A.M. in Room 529.

Respectfully submitted,
Clyde Hill, Chairman

Minutes approved:

Testimony on Senate Bill #343

by Philip S. Holzman, Ph.D.

Mr. Chairman and Members of the Committee:

My name is Philip Holzman and I hold a Doctor of Philosophy degree in psychology from the University of Kansas. I appreciate very much the opportunity to present to you some information about abortions in the United States which may help you in your deliberations about Senate Bill #343.

When abortion laws were written, many biological, psychological, and sociological facts were not known or understood. Even today it is very difficult to obtain reliable figures about the incidence of abortion in this country. Many estimates have been made on the basis of the number of legal abortions and some figure has been added on to that to get a total number. The figures that seem to me to be the most reliable are those published by Dr. Russell E. Fisher in the Journal of Criminal Law, 1951. He estimates that about one million, 300 thousand abortions are performed in the U.S. each year. The number of live births in this country is a little over two million. Thus approximately one third of all pregnancies in this country are terminated by abortion--either therapeutic, spontaneous, or illegal. Of the number of abortions, from 34 to 69 percent are illegal abortions. The lower figure being that for rural areas and the higher figure for urban areas of our country. Thus there are probably between 440,000 to 900,000 illegal abortions performed each year in the U.S. This is compared with about 50,000 therapeutic abortions. The rest of the abortions are considered spontaneously induced. It is interesting to compare the death rate for legal and illegal abortions. The number of deaths from criminal abortions is high. It is estimated at about 5,000 to 6,000 a year, about 5 to 6 per 1000 abortions. This is compared with an insignificant death rate when abortions are performed in hospitals by physicians using modern surgical techniques.

Who are the women who have abortions? All studies have shown that very few young women have abortions. If we turn our attention to therapeutic abortions, the ratio of such abortions to live births increases with the age of the mother. Among women aged 40 to 44 the rate of abortions is ten times that among women under 24 years of age. This rate more than doubles itself again among women over 44 years of age. That is, with women over 44 the rate of abortions is twenty five times that of women under 24.

Another striking statistic is that the rate of abortion has remained relatively constant over a 40 year period in this country. This figure, I believe, indicates that regardless of how strict abortion laws are, they are generally violated. Indeed, there are statistics that show the more stringent the enforcement of strict laws, the more deception is practiced. Figures from the New York Hospital in New York City point this up quite dramatically. An examination of the ratio of legal abortions to live births was made during two four year periods: from 1941 to 1944 and from 1951 to 1954. The ratio of therapeutic abortions to live births remained the same in both periods for private patients. That is, for patients who could afford private hospital rooms the rate of abortions per live births was 8 percent. Yet in wards--that is, in those parts of the hospital that accommodated the economically poorer patients--the rate decreased from 7 percent to .5 percent. The drop among the poorer patients can be attributed to the stricter observance of the letter of the law regarding the poorer patient, while the more affluent patients were not affected at all by stricter enforcement.

Gebhard, Pomeroy, Martin and Christenson in 1958 report from an exhaustive survey that 22 percent of all married women have had at least one abortion by the age of 40. Clearly, most of these women were forced by the

nature of our laws to have their abortions performed illegally and under sordid and potentially dangerous situations.

Are women who have abortions predominantly married or single? All studies indicate that the overwhelming majority of patients who have abortions performed are married. The Scandinavian countries and Finland, where there are liberal abortion laws, report that 85 percent of the abortions are performed on married women. The death rate of abortions in those countries is remarkably low, it is 2/10ths per 1,000 abortions performed.

One may reasonably interpret these data in the following way. Abortions are sought principally by married women for eugenic, medical, or family reasons and not as the consequences of promiscuity. Since these seem to be the reasons for abortion, abortion is clearly a medical and social problem. There are certain instances in which the birth of a child may be injurious to the well being of the mother, to other children in the family, or to the child itself to be born. As a practicing psychotherapist I have seen instances of severe harmful emotional reactions to an unwanted pregnancy and to an unwanted childbirth. I and many of my colleagues have also witnessed the destructive consequences when women, for reasons of stringent abortion laws, have been resigned to throwing themselves at the mercy of illegal abortionists under degrading, threatening, extorting, and frightening circumstances.

The State, social scientists, and most religious groups believe that it is not in society's best interest for a couple to have all of the children that it is biologically possible for them to have. The choice of the number of children should not be made by the State or by society or by any religious group. It should be made by the parents themselves, since the parents themselves are responsible for rearing the child and for making him feel loved, wanted, and consequently to be able to go on to be a productive member of our society.

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