

House Judiciary Committee Meeting
Wednesday, March 20, 1963

The House Judiciary Committee met Wednesday, March 20, 1963, in Room 529 at 8:30 A.M. with Chairman Clyde Hill presiding. Sixteen members were present. Members Arthur, Briggs, Krug and Tillotson were absent. Present to speak concerning Senate Bill No. 343 were Emmet Blaes, Dr. Albert J. Rattenmaier and Drew Hartnett.

Chairman Hill called the meeting to order.

The opponents 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. Opponents of the measure attacked the moral aspects of the measure. They also questioned legal aspects of the bill.

Emmet A. Blaes, Wichita attorney, was the first speaker. He said this bill would provide for a child being tried for his life with no offense charged against it. This would be based on predictions and prophesies of the future. No court of law has ever passed this judgment. He argued that the bill is contrary to all judicial procedure. He asked where is the authority to take a life under this bill. He asked what jury there is. He also questioned who there is to speak of the constitutional rights of the unborn child. He called the determination provided for under the bill "strictly a Star chamber procedure." He stated that we have the anomaly here of a child being tried for his life with no offense charged. The decision is made by one abortionist and two other physicians. Blaes also said the bill runs completely contrary to the tide of progress in medical development. What was considered a reason for abortion a few years ago is regarded today as no reason at all. He cited the case of the late physicist, Charles Steinmetz, as a reason for not aborting malformed babies. Steinmetz was a hunchback. He said that it is not a stretch of the imagination at all to say that he would have been a prime suspect to be aborted. He presented another example of such a person, omitting the name of the person who is presently living. He said that if you are going to do this, we might just as well quit talking about the acts of Hitler. This is a complete usurpation of the power of life and death. Mr. Blaes told the members of the committee that it is their moral duty to kill a bill which would authorize expansion of Kansas' law covering abortions.

Mr. Griffith asked if the constitutionality of these abortion laws has been tested. Mr. Blaes stated that he does not think they have. He said they haven't because there is no one to raise the question. The injured party is the life that has been aborted. He asked where this child can appeal.

Mr. Griffith asked if he refers to the moment of conception or back to viability in regard to this. Mr. Blaes stated that in this bill no point is drawn between viability and conception.

Mr. Smith gave reference to line 22, "Justification of abortion is an affirmative defense." He asked what is meant by this statement. Mr. Blaes said that he didn't exactly know. He asked if it might mean that if the abortionist is sued in a civil action, they can raise as an affirmative defense, this statute.

Chairman Hill asked if there were any other questions. He asked the people attending the hearing to sign their names on the pad being passed around.

The next speaker was Dr. Albert J. Rattenmaier, a Kansas City, Kansas, surgeon. He said there is no way of telling whether a child will be deformed before it is born. He asked what doctor is so stupid that he thinks he can tell when he sees a mother four or five months in gestation that her baby will be born malformed. He stated that this life principle belongs to me or to you only. You do not have the right to say to any doctor, any three doctors or any 10,000 doctors they have the right to decide this.

Dr. Rattenmaier also argued strongly against proponents of the bill, who testified Monday that no ill effects are suffered from abortions. There are just as many psychoses after abortions as there are after pregnancies he said. And, these psychoses are apt to be deeper and harder to treat.

Dr. Rattenmaier said that some diseases can cause malformed children, but wholesale abortion of these women who have these diseases is not justified. He stated that even if a child is born deformed, any baby is better off live than dead.

Mr. Euler asked if Dr. Rattenmaier believes abortion is justifiable in the case of a child conceived through forceable rape. Dr. Rattenmaier said it is permissible for doctors to scrape the walls of the uterus before life begins if there has been rape. He said that a question of rape is for the court to decide and not a doctor. Mr. Skoog questioned this same area in regard to incest. Dr. Rattenmaier said that the same principle holds there.

Mr. Griffith asked in regard to a case of rape, when is the egg fertilized. He asked when does this life begin. Dr. Rattenmaier said that it begins within 4 or 5 hours. He went on to explain the process of conception. According to statistics, it takes about 4 or 5 hours. When the egg is fertilized, then that is when life begins.

Mr. Euler asked if that is accepted in the medical field. Dr. Rattenmaier said that many, many men entertain this same idea. He went on to confirm his statement and said that he thinks this is the concept.

Mr. Crossan asked if in the case of rape or incest if there is any significant reason to show that the baby, who didn't cause this, has less chance of being a useful citizen. Dr. Rattenmaier said no.

Mr. Edwards asked if there is some kind of drug or something that can keep a woman from becoming pregnant. Dr. Rattenmaier stated that it is unlawful to his way of thinking and to some people of other religious beliefs.

Chairman Hill asked if there were any further questions.

Mr. Blaes said that if there were no further questions, he has a statement to pass out. He presented the members of the committee with copies of a statement against Senate Bill No. 343 signed by Catholic Laymen's Conference of the Archdiocese of Kansas City, Kansas; Archdiocesan Council of Women of the Archdiocese of Kansas City; Catholic Youth Organization of the Archdiocese of Kansas City; Wichita Diocesan Council of Catholic Men; Wichita Diocesan Council of Catholic Women; Catholic Youth Organization of the Diocese of Wichita; Salina Diocesan Council of Catholic Men; Salina Diocesan Council of Catholic Women; Catholic Youth Organization of the Diocese of Salina; Dodge City Diocesan Council of Women; Kansas State Council of the Knights of Columbus; and the Fourth Degree of the Knights of Columbus, District of Kansas. A copy of this statement is attached to these minutes.

Mr. Skoog addressed Mr. Blaes. He said that in Mr. Blaes' original presentation, he discussed the fact that there was no judicial function here. He asked if it would be satisfactory to him if there was one put in. Mr. Blaes said that there is none. He went on to say that if this was put into the contest of a judicial proceeding, we cannot take an innocent human life. We are duty bound to try to save both lives.

Mr. Euler stated that we presently have on the statute books a law which certifies abortion. He asked if this proposed law isn't an improvement. Mr. Blaes said no. You cannot improve that which is already bad. This is broader. He went on to state that we get back to the fact that there is no way to condone the taking of the innocent life, period. Mr. Blaes declared that assertions by proponents of the bill that the measure, if passed, would not result in an increase in abortions is the most naive thing he can imagine. Illegal abortions would not stop he said. They would become much more available, much more easily used and more condoned.

The next speaker was Drew Hartnett, a Salina attorney and former state representative. He pointed out that the Kansas Medical Society has not endorsed this bill, so it is apparent they do not favor such a law. He said that if you invade this field in any aspect, then the door is open for the full leverage of the law. He said that he does not think this bill should be dignified by being reported out of the committee and taken to the floor.

The next speaker was Francis Donally, practicing attorney. He spoke briefly concerning this bill in regard to the question of rape and incest. He said that he has seen many young girls claiming rape

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just to cover up things they had done and were trying to hide. He said this would just give them more of an opportunity to do this. He also related cases in regard to incest. He said that this law would just add to the present problem.

Chairman Hill asked if anyone else wished to speak concerning Senate Bill No. 343. Several people attending the hearing voiced their opposition to the bill.

Chairman Hill thanked everyone for appearing and stating their views. He said the committee will vote on the bill Thursday morning.

The meeting adjourned at 10:00 A.M. The next regular meeting will be Thursday, March 21, 1963, at 8:30 A.M. in Room 523.

Respectfully submitted,
Clyde Hill, Chairman

Minutes approved:

20 March 1963

TO THE MEMBERS OF THE JUDICIARY COMMITTEE,
HOUSE OF REPRESENTATIVES, STATE OF KANSAS,
1963 GENERAL SESSION

Honorable Dear Sirs:

This statement is addressed to your body in an effort to assist you in constructively evaluating the legal, medical, sociological and moral implications of Senate Bill 343 which is aimed to remove almost all restraint upon the direct abortion of innocent unborn children. The statement is prepared on behalf of, and is an expression of the earnest convictions of, nearly a quarter million Catholic lay men, women, and youth, and their respective organizations federated with the Diocesan Councils and others groups of men, women, and youth.

In addition, we confidently believe that this statement is also expressive of the convictions and consciences of the great majority of all thoughtful citizens regardless of whether they are of our religious persuasion.

Since your Committee is especially charged with responsibility for matters pertaining to the judiciary, we deem it appropriate to discuss first the legal implications of the Bill. In this regard, it is ironic indeed that, while the Bill is in the hands of the Judiciary Committee, it actually attempts to make the taking of an innocent life a non-judicial act. It attempts to divest entirely from any judicial control the legal execution of countless human beings.

Law and medicine recognize that a child in the womb is a living person. Courts and doctors alike consider the life of an unborn child as a separate and distinct life from that of the mother. The abortionist himself acknowledges that the life of the child can be snuffed out while the separate life of the mother continues. Vice versa, there are numerous cases in which, after the death of a mother, the separate life of the child continued and was able to be saved with the help of immediate surgical delivery.

Every tradition and pronouncement of our legal structure stresses our solicitude for the protection of every innocent life. No distinction is made between born or unborn lives. Our Declaration of Independence, the proudest document of our history, declared:

"We hold these truths to be self evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, among these are Life, Liberty, and the pursuit of Happiness."

Our founding fathers declared in our Bill of Rights, Amendment 5,

"No person shall . . . be deprived of life, liberty, or property without due process of law."

Our own State of Kansas ratified the Fourteenth Amendment with its prohibition:

". . . Nor shall any state deprive any person of life, liberty, or property without due process of law."

The Kansas Bill of Rights in its first section declares:

"All men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness."

In Section Five it states:

"The right of trial by jury shall be inviolate."

Section Eighteen then declares:

"All persons, for injuries suffered in person, reputation, or property, shall have remedy by due course of law, and justice administered without delay."

Under an almost identical Constitutional provision in Ohio, the Supreme Court of that State held that:

"Injuries wrongfully inflicted upon an unborn viable child capable of existing independently of the mother are injuries 'done him in his . . . person' . . . and, subsequent to his birth, he may maintain an action to recover damages for the injuries so inflicted." (Williams vs. Rapid Transit, 152 Ohio St. 114, 87 N.E. 2d 334, 10 A.L.R.2d 1051)

Our own Supreme Court in Hale v. Mannion, 189 Kan. 143, 368 P. 2d 1, arrived at the same result in holding that there is a cause of action maintainable for injuries negligently inflicted upon an unborn child. It said in part:

"The rationale of the decisions supporting the right of a child to maintain an action for its prenatal injuries appears to be that an unborn viable child is capable of independent existence and hence should be regarded as a separate entity . . ." (l.c. 145, Emphasis supplied)

What does S.B. 343 do to preserve the "inalienable natural right to life" of the unborn child? What "due process of law" does it establish? What "trial by jury"? What offense does it charge against the child?

The answers are obvious. The Bill repudiates the right to life. For due process, it substitutes the mere "belief in the justifying circumstances" of the abortionist himself and two other friendly and cooperative physicians. Though a human life is balanced on the scales opposite such "belief", no judge presides, no advocate speaks the muffled protest of the babe in the mother's womb, and no jury stands to be "convinced beyond a reasonable doubt" before the sentence of death is pronounced. Neither Indictment nor Information is required. The child is a defendant but under the anomaly of not being charged with an offense, yet having no defense!

It is no accident that the law has always shown such great solicitude for the preservation of innocent human life. Every legislator who recognizes that Almighty God is a Divine Lawgiver strives to make society's rules and regulations conform to the laws of God. Thus, the Declaration and the Constitutions all recognize that the "inalienable rights" are not man made--they come from "the Creator", together with all the consequences that flow from them. The conscientious lawgiver will recognize the invalidity of whatever denies those inalienable rights. Above all, he will recognize that society never has been, and never will be, able to flaunt those inalienable rights that come from the Creator without doing inestimable harm to the entire structure of human society. Man's finite

wisdom is no match for the infinite wisdom of Almighty God.

Thus it is with the Commandment "Thou shalt not kill". To say that it does not explicitly and unequivocally prohibit the taking of an innocent life is to say that it does not exist. But, in fact it does exist, as attested to not only by the tenets of revealed religion, but also in the hearts and consciences of men of every race and clime throughout all human history.

Theologians recognize that every human body is infused with an immortal soul made to the image and likeness of God. Thus, when God forbade the taking of an innocent life, He merely made a law for the protection of the souls He had created and which He had destined for a life eternal with Him. Just as He had created them, He reserved to Himself the power to take away the physical temples in which they dwell. This primacy of the Law of God is an absolute essential to the right formulation of all laws pertaining to life or death for innocent human beings.

True medicine, either ancient or modern, does not contradict these concepts. As early as 400 B.C. the traditionally honored father of medicine, Hippocrates, in the so-called Hippocratic Oath formulated the doctor's pledge: "I will not give to any woman anything to produce an abortion". And in our present day the Third General Assembly of the World Medical Association meeting in London in 1949 included in the International Code of Medical Ethics the requirement that the "Doctor must always bear in mind the importance of preserving human life from the time of conception until death".

From what has been here said, certain principles must be taken as absolutes. Firstly, every living person, born or unborn, is a creature of God possessed with an immortal soul and also the Creator-endowed inalienable rights guaranteed by our Constitutions. Secondly, the direct taking of an innocent life, that is, by an act solely designed and intended for that purpose, is an act clearly forbidden by the Laws of God and by our Constitutions. Thirdly, the direct abortion of an unborn baby is such a violation regardless of any other purpose that it may be intended to serve.

We recognize that there are those persons who, heedless of the mandates of Divine Law and the directives of our Constitutions, are critical of these principles. They will give evidence of their failure to grasp them by their efforts to rationalize around them. In order to be of maximum help to your Committee, we will attempt to anticipate some of the objections.

It will be said that we are callous of life since we "would gravely impair the physical and mental health of the mother" just to save an unborn child. Instead of our position reflecting callousness, on the contrary callousness is reflected by the abortionist who would crush the skull of the baby in the womb, or by some other technique snuff out its life. The abortionist stands for the destruction of human life, we stand for its inviolability. The abortionist condemns a child to death, we proclaim its right to live. The excuse the abortionist uses to justify the act is wholly beside the point. Regardless of the excuse, he shows the extreme of callousness towards life by **usurping** unto himself the power to destroy it.

This is not to say that we are not completely solicitous of the life and health of the mother. We must be equally solicitous for both mother and child and do all that reasonably lies within our power to save both. We will neither condemn an innocent mother to die in order to save her child, nor can we condemn an innocent child to death to save the mother. As long as both live, our efforts must be to save both.

It is to be noted that we are speaking of a direct abortion. There is no moral objection to an indirect abortion, that is, an abortion which indirectly results from an act intended and necessarily performed to accomplish some other life saving objective without a direct attack upon the unborn child. As a simple example, the surgical removal of a pregnant but cancerous uterus, which seriously threatens the life of the mother, even though it necessarily involves the termination of the pregnancy, is not prohibited. The distinction is clear. In this instance, the death of the infant is unavoidable but not intended. The surgery is directed against the cancer, not against the innocent child.

Another criticism will be that our position refuses to recognize that a child which "would be born with grave physical or mental defect" would be better dead than alive. Who is to be the judge of this? Whose rights would be violated by such abortion? The unborn child's! At this point we might well ask "Who is it that is being really callous?" But, again, this is beside the point since even such a child has the inalienable right to life from its Creator.

Assume for a moment that the jurisdiction over such a judgment were actually ours. Who is there that possesses the slide rule to determine the worth of the malformed body or the below average mentality? Charles Steinmetz, probably the greatest physicist of the past one hundred years, was born horribly, almost repulsively, malformed. Yet the legacy he left to the world of science in the fields of electricity and in applied industrial chemistry is incalculable and beyond dispute. Would the world have benefited from the application of an S.B. 343 to him?

It is completely gratuitous to say that no good, or not enough good, can come to society from the existence of persons less capable than ourselves, or who do not measure up to some man-made standard of physical or mental completeness. In passing, we point out that even the setting of any such standard is a badge of the rankest totalitarianism. It is exactly what Hitler did in his extermination of the Jews. But our point at the moment is that man's compassionate care for the incapacitated and the suffering is actually enobling and refining. Christ's sufferings on Calvary have been the source of Divine Grace for the entire world. The afflictions of a Helen Keller inspired a nation. No one ever guides a blind person across the street, nor wipes a fevered brow, but what he feels a little closer to God for having done so.

No doubt it will be said that our position represents an adherence to unprogressive and unscientific dogmatism. The exact contrary is true. S.B. 343 would run against the tide of modern medical research and discovery. A decade or two ago many reasons were thought to exist for the termination of pregnancies in order to preserve the health of the mothers. Today, by reason of devoted and inspired research and study, many of the former reasons are no longer regarded as reasons at all. Who knows how many more will evaporate in the light of tomorrow's discovery?

The intellectual and social implications of S.B.343 would be disastrous. It is an affront to a dedicated medical profession whose aim is to save life by every presently known technique, and to find new techniques to meet the baffling situations that still confront us. S.B. 343 would be an acknowledgement of utter defeat. In effect it says "We are licked. We can go no further. The malformed or defective child is beyond the scope of our possible saving or helping. We quit!" If Pasteur had said the same thing when he was impelled, from observing the hideous deaths of persons who contracted rabies, to delve further into the possible existence of micro-organisms, the entire field of bacteriology, as we know it today, would probably still be beyond the pale of man's knowledge. It is impossible to evaluate how far man advanced by this single inspired discovery.

Much of the world's progress is directly attributable to the efforts that were motivated out of difficult, burdensome,

or distressing situations. Their existence brought the solutions. The intellectual and scientific challenge is to relieve, not to destroy; but once destruction is adopted as a technique of escape, there will be no reason to try to relieve.

There will also be the criticism of our position that we are attempting to foist our moral convictions upon those who do not share them. It will be said that those who do not believe in abortion are not compelled to resort to it, but why deny it to those with less sensitive consciences? This criticism implies that as citizens we do not have the duty to try to stem by every legitimate means any and every assault upon the inviolability of human life. No greater disservice could be done by us as citizens than to stand idly by while a misguided effort is unleashed to condone the taking of the lives of innocent persons, and to subvert the whole basis of our law and government. It is precisely because we love this land so much that we make these representations.

The sanctity of human life makes for a duty which is incapable of compromise. No nation can condone the taking of innocent lives without meriting God's condemnation rather than His blessings. S.B. 343, or any other legislation, actual or prospective, which is subject to the same moral objections should be decisively repudiated.

Respectfully submitted,

CATHOLIC LAYMEN'S CONFERENCE OF THE
ARCHDIOCESE OF KANSAS CITY, (Kansas)
ARCHDIOCESAN COUNCIL OF WOMEN OF THE
ARCHDIOCESE OF KANSAS CITY
CATHOLIC YOUTH ORGANIZATION OF THE
ARCHDIOCESE OF KANSAS CITY

WICHITA DIOCESAN COUNCIL OF
CATHOLIC MEN
WICHITA DIOCESAN COUNCIL OF
CATHOLIC WOMEN
CATHOLIC YOUTH ORGANIZATION OF
THE DIOCESE OF WICHITA
SALINA DIOCESAN COUNCIL OF CATHOLIC
MEN
SALINA DIOCESAN COUNCIL OF CATHOLIC
WOMEN
CATHOLIC YOUTH ORGANIZATION OF THE
DIOCESE OF SALINA
DODGE CITY DIOCESAN COUNCIL OF
WOMEN
KANSAS STATE COUNCIL OF THE
KNIGHTS OF COLUMBUS
FOURTH DEGREE OF THE KNIGHTS OF
COLUMBUS, DISTRICT OF KANSAS