

# Abortion: The Need for Rational Policy and Safe Standards

By Warren M. Hern, M.D., M.P.H.

THE DENVER POST Sunday, May 27, 1972

*Perspective*

“I TRY NOT TO SHOW resentment toward my baby, but sometimes I can’t help it. It just comes out, and I know he feels it.”

These are the words of a young mother who was denied an abortion at Denver General Hospital last year. She applied for an abortion early in pregnancy, but bureaucratic delays and legal constraints caused her to go past the 13-week time-limit. She had just been divorced and now has three children to support. She has no marketable skills to help her make a living for herself and her children. She feels trapped.

Even though more than 5,000 legal abortions were performed in Colorado in 1972, the situation above was repeated many times.

Abortion has become a leading social issue in Colorado and elsewhere. To some, it is a symbol of freedom from suffocating social customs. To others, it is a dangerous example of galloping moral deterioration. To the public health physician who studies the reports of septic (infected) abortion and battered children, it is a matter of determining rational policy and safe standards to cope with a procedure which women all over the world seek regardless of its safety or legality.

In 1967, COLORADO made history when it passed the nation’s first liberalized abortion law in response to pressure from citizen groups. Rep. Richard Lamm, D-Denver, shepherded the bill through the parliamentary procedure and Governor Love signed it into law.

In early 1971, the U.S. Supreme Court was asked to declare a Washington, D.C. abortion law unconstitutional. The court refused to do so, but said that abortion is strictly a medical matter.

Later that year, two women lawyers, one from Texas and the other from Georgia, carried challenges of their state abortion laws to the Supreme Court. In January of this year, the court rendered a historic decision which surprised both proponents and opponents of liberalized abortion laws.

Writing for the 7-2 majority, Justice Harry Blackmun concluded that the “right of personal privacy” includes the abortion decision, but that the right is not absolute. He recognized that the state has some interests in regulating abortion at certain stages of pregnancy – in order to protect maternal health, for example. But he also concluded that the word “person,” whose rights may be at issue under the 14<sup>th</sup> Amendment, does not include the unborn. In the decision summary, Justice Blackmun said that statutes of the

Texas kind which only allow abortion as a life-saving procedure for the mother, without regard to the stage of pregnancy or other considerations, violate the due process clause of the 14<sup>th</sup> Amendment.

JUSTICE BLACKMUN went on to recognize three stages of pregnancy and to prescribe the limits of state abortion regulation in each. During the first three months of pregnancy, he said, the abortion decision must be regarded as a matter between the woman and her physician. Since the risks increase during the second three months, or trimester, Justice Blackmun said that a state may, if it chooses, regulate the abortion procedure in ways reasonably related to maternal health. During the last trimester, a state may regulate or even prohibit abortion except where it is necessary to preserve the life or health of the mother.

---

*The writer is a Denver physician and epidemiologist and a member of the American Public health Assn. subcommittee on family planning methods.*

---

In arriving at their decision, Justice Blackmun and his colleagues reviewed an impressive array of historical, Legal and recent scientific data.

Among other things, Justice Blackmun referred to startling evidence that the famous Hippocratic oath, which enjoins doctors from performing abortions, was probably not written by Hippocrates at all but by the followers of Pythagorus; that the performance of abortion was consistent with much of Greek medicine and philosophy.

Blackmun then went on to quote the extensive research of Professor Cyril Means of new York Law School regarding the origins of current U.S. abortion statutes in English Common Law. While preparing research for the New York Abortion Law Commission, Professor means found indisputable evidence that the principal motive behind early 19<sup>th</sup> century abortion laws was the danger of this surgical procedure to the mother. At that time, all surgical procedures were more dangerous than they are today, and abortion under the best circumstances was certainly more dangerous than full-term pregnancy, whatever its risks.

Today, the situation ha been reversed. Under the best of circumstances, full term pregnancy is six to ten times more dangerous than abortion performed under safe conditions during the first three months of pregnancy. The risks of abortion during the second three months of pregnancy, however, are closely comparable to the risks of full term pregnancy.

Justice Blackmun concluded that this new development must inevitably lead us to reconsider the wisdom of our abortion statutes. These facts also led him to make the distinction between the first and second trimesters with regard to the acceptability of state regulation.

In the midst of this discussion, Justice Blackmun called attention to the State of Texas' argument that life begins at conception and therefore, the state has a compelling interest in protecting life from the moment of conception. He pointed out that those trained in medicine, philosophy, and theology are unable to arrive at any consensus about when life begins, and therefore the judiciary is "not in a position to speculate as to the answer." He does note that the unborn have never been recognized in the law as persons "in the whole sense."

FROM A BIOLOGIST'S point of view, life began on earth approximately 600 million years ago and has continued in an unbroken chain ever since. The question with abortion, as it is with contraception, is whether individuals choose at specific times to transmit life to a new generation. *The essence of the abortion controversy is whether the individual or the state is best prepared to make that decision.*

Of the two state laws which the Supreme Court ruled on, the Georgia law was most like Colorado's. Like Colorado, Georgia required the consent of physicians other than the patient's and prohibited abortion with the following exceptions: to preserve the woman's life or health; the likelihood of fetal deformity, and pregnancy resulting from rape.

Georgia also required that a woman be a legal resident of the state and specified that an abortion had to be approved in advance by a medical committee. The court found all these provisions to be unconstitutional.

Technically, this action nullified similar provisions in all state laws. In other words, the Supreme Court decision becomes the "law of the land" with regard to abortion, and state laws which are in conflict with it are unenforceable.

Existing state laws may be brought into compliance by state legislatures, although there is no need for this. Defendants who are prosecuted under state laws which are in conflict with the Supreme Court decision may ask for dismissal on constitutional grounds. Also, citizen groups may ask state Supreme Courts to rule on their respective state statutes in light of the U.S. Supreme Court decision. The latter is what occurred in Colorado.

In early March, the Colorado Supreme Court declared the affected sections of the Colorado abortion law to be unconstitutional and therefore unenforceable.

It upheld the provision in the Colorado law that a licensed physician must perform the abortion. The Colorado court also upheld the right of a hospital to refuse to admit any patient for an abortion and the right of any hospital staff member to refuse to participate in the performance of abortion without fear of disciplinary action. The question of state regulation of abortions occurring in the second and third trimester was left up to the legislature.

WHAT HAVE BEEN the effects of Colorado's 1967 liberalized law, and what effect can we expect from the 1973 Supreme Court decision?

For one thing, the number of legal abortions done in Colorado has increased dramatically since 1967 and will probably continue to increase. During the year prior to passage of the law, less than 50 legal abortions were performed. In the following year, approximately 470 legal abortions were done. The number has approximately doubled every year since then. At the same time, the rate of reported hospital admissions for infected (septic) abortion has declined.

Until the 1967 law was passed, both Denver General Hospital and Colorado General Hospital always had at least one or two patients critically ill on the gynecology ward due to the effects of criminal abortion. Now these cases are uncommon, although they still occur, usually among low-income women who cannot afford a safe abortion.

There also has been a decrease in the number of "miscarriage" in states in which abortion laws have been repealed, or reformed in ways similar to Colorado's. Since women who are at high risk of having complications with pregnancy or childbirth tend to benefit more from safe abortions than others, the general death rate due to pregnancy and childbirth has decreased. The babies who are born now are less likely to come from a high-risk mother, and newborn and infant death rates have also decreased.

MOST OF THE BENEFITS of liberalized abortion laws, however, still fall to those with money. The rate of complications in second trimester abortions, for example, is three to seven times as high as in abortions performed during the first three months. Indigent patients are more likely to have to wait for their abortion, more likely to require the more dangerous second trimester procedure, and more likely to be seriously ill or die as a result. Patients who have the money to afford private care usually have an abortion performed on an outpatient basis during the first trimester.

For example, Denver General Hospital performed 685 abortion procedures in 1972, exclusive of patients requiring hysterectomy at the same time. Approximately 40 per cent of these were second-trimester abortions. During the same year, Rocky Mountain Planned Parenthood (RMPP in Denver referred 861 patients for abortion, nearly all to private physicians. Only 16.5 per cent had to have the more dangerous second-trimester procedure. (The author is indebted to RMPP, Denver and Colorado General Hospitals, and the state health department for statistics and other information included in this article.)

Over 500 of the RMPP patients went out of Colorado to have their abortions because it cost less and required less time. It cost an average of approximately \$400 per patient for a first-trimester abortion in Colorado, for example, but those going out of state paid only an average of \$250, including transportation to places like Seattle and Los Angeles. Second-trimester abortions were more expensive both in and out of Colorado, ranging from about \$600 to over \$1,000.

Part of the extra expense in Colorado was due to the need for having a routine psychiatric examination – a totally unnecessary cost of \$50 for each patient. The Supreme Court decision abolished the need for this ritualistic practice, so the average cost will decline by at least that amount.

IT IS OBVIOUS, however, that these costs are still beyond the reach of many women, particularly in rural areas, who cannot afford to come to Denver.

Outside the Denver metropolitan area, a number of sectarian hospitals have policies which prohibit abortion on their premises, even though they may have been built wholly or in part with federal funds.

In communities where the only hospital refuses to permit abortions, the poor are effectively denied safe abortion services because they cannot afford to seek such services elsewhere.

Since 1967, for example, five hospitals have performed most of Colorado's abortions. Four of them are in Denver, and two are overburdened public facilities with other mandated responsibilities and less flexibility. One result is that the number of abortions performed at General Rose hospital in 1972 was more than twice the total performed at Denver General Hospital and Colorado General Hospital, the two institutions with the principal responsibility of providing medical care for the indigent. At least part of this discrepancy lies in the fact that many indigent women just can't afford the trip to Denver.

**The continuing controversy over liberalized abortion laws in Colorado and elsewhere is illustrated by this Pat Oliphant cartoon, which originally ran in The Denver Post in 1971, when the issue was being debated in the General Assembly. The caption read: "Well, if I were pregnant, I certainly wouldn't have an abortion."**

The Supreme Court decision has resulted in a marked increase in the number of abortion requests received at institutions like Denver General Hospital. Although Denver General has doubled the number of abortions it is performing, and asked for budgetary increases to provide this service, it cannot absorb the total demand. Several private hospitals in Denver are considering plans for small, relatively high-volume outpatient abortion units modeled after those which have been so successful on the East Coast. This would bring a significant lowering in the price of a first-trimester abortion in the Denver area, as well as a greater availability to those with \$150 – 200.

In the rural areas of Colorado, however, the availability of safe abortion is not likely to increase soon, due in part to more conservative attitudes among physicians and hospital administrators. In some areas, physicians are willing but reluctant to do abortions until the legislature writes a new law.

COLORADO LEGISLATORS who are most concerned with the issue say this will not happen in the foreseeable future. Both Representative Lamm and Sen. John Bermingham, R-Denver, who have been the primary sponsors of abortion legislation, state categorically that the legislature will not take up this question during the next session, either. Senator Bermingham said, “The Supreme Court has done 95 per cent of the job, and the rest is not urgent.”

Both the U.S. and Colorado Supreme Court decisions give physicians clear authority, however, to exercise their own judgment with regard to performance of abortion. The legislature may, at some time in the future, direct that second trimester abortions be performed in a hospital setting. This is standard medical practice in any case with present technology, so such a law would represent no undue restriction. Technological developments, however, may make this unnecessary sometime during the next few months or years.

Important steps toward implementation of the Supreme Court decision in Colorado could be made by official agencies such as the State Board of Health or the Department of Health.

These agencies, for example, could publicly endorse the Program Standards for Abortion Services set forth by the American Public Health Association (APHA). These standards, published in the December 1972 issue of the American Journal of Public Health, state principles and guidelines for safe community abortion services which are being followed throughout the nation. In accordance with the APHA standards and those set forth by the American College of Obstetricians and Gynecologists, responsible Colorado agencies could adopt regulations for ambulatory gynecological surgery in licensed hospitals and clinics.

Since it is now generally recognized that properly equipped and operated clinics can provide safe, high-quality abortion services on an outpatient basis, the Board of health could prepare to issue licenses for such clinics. By adopting regulations for these and licensed hospital outpatient facilities, Colorado agencies could help support good standards of medical practice in abortion services and help assure that patients receive adequate counseling, social services, contraceptive services, and screening for cancer and venereal disease.

The regulations could also stipulate that facilities operate under a transfer agreement, assuring that patients experiencing complications will be accepted by a licensed hospital that not only provides 24-hour emergency services but has round the clock in-house physician coverage.

Regulations similar to these have recently been formulated and adopted by the Massachusetts health Department. If Colorado agencies pursue the same course of action, it would not only be in the best medical interests of Colorado citizens but would probably decrease the cost of abortions by encouraging the development of such outpatient facilities.

THE MOST IMPORTANT changes which can result from the Supreme Court decision and its implementation are changes in attitudes. The Supreme Court basically has stated that women must be free to choose when and under what circumstances they will reproduce.

Even though a recent Gallup poll showed that 64 per cent of the public believes that the decision to have an abortion should be left solely to the woman and her doctor, some people strongly oppose this view. The Catholic-oriented Right To Life Committee, for example, has deluged members of Congress with brochures covered with pictures of fetuses and letters urging a constitutional amendment overthrowing the Supreme Court decision.

The fact is, however, that abortion is here to stay regardless of our personal views. Women have practiced it for thousands of years and will continue to do so whether it is legal or illegal, safe or unsafe. The American Public Health association has urged that every woman who desires to terminate an unwanted pregnancy be assured "prompt, dignified, and humane access to a medically safe abortion." The Supreme Court's decision should hasten attainment of that goal in Colorado.