On June 29, 1992 the U.S. Supreme Court in a 5-4 decision re-affirmed Roe v. Wade and held that a women has a constitutional right under the Due Process Clause of the Fourteenth Amendment to choose to have an abortion. Although its result was essentially equivalent to that in Roe v. Wade the rationale for the result was significantly different in a number of important respects.

Prior to viability it was held that a state may regulate abortion but only if the regulation does not "unduly burden" the abortion right. The Court held that an "undue burden" exists if the purpose or effect of a regulation places substantial obstacles in the path of a woman seeking abortion. A state may regulate abortion to ensure that the woman's choice is informed. Regulations may also have as a purpose to persuade the woman to choose childbirth over abortion and a state may also enact health or safety regulations to further the health or safety of the woman seeking an abortion, provided that they do not present a substantial obstacle to a woman seeking an abortion.

Subsequent to viability the state in promoting its interest in the potentiality of human life may regulate and even prohibit abortion except where it is necessary in appropriate medical judgment for the preservation of the life or health of the mother. However, attempts to prohibit abortion after viability would be struck down because of the broad definition of health adopted by the Court which includes psychological health - including distress at being refused an abortion.

The decision upheld a Pennsylvania law requiring a 24 hour waiting period prior to abortion and provisions mandating information on fetal development as well as risks from abortion and abortion alternatives. A provision requiring an informed parental consent with a judicial by-pass provision was upheld, but struck down as an "undue burden" a spousal notification law requiring, with some exceptions that the wife notify her husband prior to undergoing an abortion.

The key opinion in Planned Parenthood v. Casey was the plurality opinion of Justices O'Connor, Kennedy and Souter who together with Blackmun and Stevens constituted the majority of the Court. The Court opined that its decision was a "reasoned judgment", but
this clearly was not the case. The opinion was marked by at least three serious and fatal flaws. (1) It contained numerous erroneous statements of "fact" which were no more than speculation and conjecture exposing a serious lack of understanding about the dynamics of abortion. (2) At critical points in the opinion a clear lack of rational reasoning was most apparent and instead is found a highly subjective or poorly reasoned analysis which appeared to be result oriented. (3) The plurality opinion contained numerous inconsistencies which said one thing at one place and something much different at another. It thus had a serious deficiency in what one might call "internal integrity". Some specific examples follow:

THE ABORTION DECISION WAS HELD TO BE A SPIRITUAL IMPERATIVE

In its misguided attempt to establish abortion as a constitutionally protected liberty, the plurality opinion stated without any supporting evidence that "The abortion decision may originate within the zone of conscience and belief... The destiny of the woman must be shaped to a large extent on her own conception of her spiritual imperatives and her place in society." (emphasis added)

It may be said with confidence that in at least in the vast majority of cases abortion decision-making is clearly not a decision of conscience or spiritual imperatives. The data on abortion decision making indicate that women most often are in the midst of a major personal crisis in the face of an unplanned pregnancy. Great trauma is often associated with the decision to have an abortion. Some of the best evidence of this is found in a comprehensive article entitled Abortion Counselling written by Uta Landy, the former executive director of the National Abortion Federation, one of the foremost advocates of abortion. The article examines the various behavior patterns of women who seek abortion. Ambivalence, guilt, anger and deep confusion are identified as "major themes" that consistently arise in abortion decision-making. These themes are strong indications that, for most women, the decision to abort most likely represents a violation of conscience or ideals.

Women frequently make the decision quickly without much thought, allow others to decide for her or use denial.

Landy identifies four types of reactions of women in a crisis situation are identified. These include the "spontaneous approach" in which the woman makes the decision quickly without thinking too long about it. Landy warns that while this approach produces a quick resolution, the decision and its consequences might result in regret later. A second type of reaction to a crisis is the "rational-analytical" type in where the woman is so occupied with being rational that she fails to take her emotions into account. Ambivalence, guilt, anger and deep confusion are major themes of abortion decision-making.

A third type is the woman who takes the "denying-procrastinating" approach in which she initially denies she is pregnant and once she accepts that she is pregnant has many reasons why she cannot make a decision. Fourth, there is the "no-decision making" approach in which case the woman refused to make a decision herself and instead allows others such as her husband, boyfriend, parents, doctor or counselor to make the decision for her. She consequently refuses to take responsibility for the decision and is prone to blame others for having the abortion. She is also identified as a likely candidate for serious regrets later on. Again, women who make decisions to abort without adequate reflection or are overly rational or who engage in procrastination and denial or let others decide are likely to leave their own moral
or religious values behind in the process.

There is other evidence to support the observations of the women described in the abortion counseling study. For example, in a study of women who had abortions at a Baltimore area clinic in 1983-85 it was found that 2 out of 3 exhibited a histrionic personality, 1 out of 3 were narcissistic and nearly 1 out of 4 had an anti-social personality.\(^2\)

Histrionic individuals are prone to denial, may display rapidly shifting and shallow emotions and will likely over-react to situations when they arise. Usually they tend to show little interest in careful analytic thinking and tend to be easily influenced by others or fads. The narcissistic personality is characterized by extreme self-centeredness or self-absorption. Anti-social personalities frequently engage in unlawful acts, are irritable and aggressive, often fail to plan ahead or are impulsive, lack regard for the truth and are reckless regarding their or others personal safety. Women who over-react to situations, who are easily influenced by prevailing attitudes of others or are extremely self-centered or anti-social do not appear to be exercising their conscience or obtaining abortions as a result of "spiritual imperatives".

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Women tend to recast the moral judgement from a consideration of the good to a choice between two evils.

In another frequently cited study by Carol Gilligan comparing Kohlberg's theory of justice in contrast to the values considered by women both before and after abortion, it was found that nihilism was an important aspect of the thinking process as revealed in their personal stories.\(^3\) She observed that women frequently seemed to want separation but also attachment. They tended to recast the moral judgement from a consideration for the good to a choice between two evils. Moral dilemmas were seen in terms of conflicting responsibilities. Several other studies have also confirmed that the abortion decision may be severely conflicted as indicated by high levels of pre-abortion stress, guilt or anger or self-reproach or anticipatory grief.\(^4\)

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**Contemporary abortion counselling frequently breaks down the ideals of women.**

Another factor in breaking down the ideals of women in found in contemporary abortion counseling techniques. These abortion counseling techniques only exacerbate women's problems without encouraging her to make the effort to examine her conscience. These techniques almost exclusively focus on self-centered concerns of the woman. Potential risks and benefits, if discussed at all omit any reference to moral or religious values. The presence of another being is downplayed or omitted entirely. A review of various informed consent forms of abortion clinics reveal the consistent use of terms such a "tissue" or "products of conception" to attempt to keep the focus of the woman on herself.

Abortionists may also manipulate the women into obtaining an abortion by appealing to her fears. This is done by identifying a predominant fear and then using that fear to gain compliance and "sell" another abortion. Examples may include a fear that parents or husband may find out she is pregnant, fear of interruption of school or career plans or fear of death.

Abortion clinics may also prominently display pro-abortion slogans on their walls in a waiting room and provide literature from groups such as Catholics for Free Choice in a deliberate attempt to erode and undermine any existing religious precepts and idealistic values. This sole appeal to the autonomous self has been criticized as "almost guaranteeing the breakdown of higher ideals into a rationalization of selfishness permeated with narcissism".\(^5\)

Further, recent studies have shown that a large number of U.S. women who have obtained abortions express guilt or regret
particularlly over the long term. A 1989 random telephone interview study conducted by the Los Angeles Times among 2533 women of which 7% admitted to having at least one abortion found that 56% expressed a sense of guilt about having had an abortion. And 26% of the women said they now “most regretted” the abortion.6

The vast majority of women express guilt feelings from abortion over the long term

Non-randomized long term studies have found even higher percentages of women expressing guilt feelings. In a 1987 study of members of Women Exploited by Abortion 91% expressed guilt when interviewed about 11 years later.7 A 1990 study by a Minneapolis, Minnesota based post-abortion support group among religiously oriented women some 10-15 years post abortion found that 90% expressed guilt from their abortion.8 A 1989 study of 252 women seen at various crisis pregnancy centers in 39 states who exhibited evidence of some post abortion stress found that virtually all had guilt feelings from abortion.9

ABORTION IS DETERMINED TO BE ECONOMICALLY AND SOCIALLY BENEFICIAL TO WOMEN

The plurality opinion stated, “The ability of women to participate in the economic and social life of the nation has been facilitated by their ability to control their reproductive lives.” The single source cited in support this claim was a book entitled Abortion and Woman’s Choice10 written by Rosalind Petchesky as part of a Series in Feminist Theory published by Northeastern University in Boston. Originally published in 1984 it was revised and updated in 1990. However, the data cited in the Chapter entitled Economic and Social Conditions of Abortion only contains data during the period from 1970-1980. The Chapter contains a number of statements in the form of conclusions but no hard data is provided to support the statements which are made. For example, the statement is made: “( Abortions) contribution to the basic health and well-being was most dramatic for poor women who are disproportionately women of color...and greatly relieved economic and social conditions which led to the feminization of poverty”. This statement is made in the same paragraph as an admission that “feminization of poverty” increased subsequent to the legalization of abortion.

The Court never considered how abortion is detrimental to the well-being of women.

There is, in fact, considerable evidence that legalized abortion contributes to the feminization of poverty. This is especially evident as abortion is repeated which is particularly significant as nearly 50% of the abortions in the U.S. are now repeat abortions. A study at Yale Medical School among women having a first or repeat abortion found that overall 25% of those seeking abortion for the first time were on welfare compared to 38% who were repeating abortion.11 In a study of women entering Boston Hospital for Women in 1976-78, 16.9% of the women with no prior abortions were on welfare compared with 26% for women with one prior abortion and 27% for women with 2 or more abortions.12 Women repeating abortion have also been found to have lower net household income and poorer level of housing conditions compared with women aborting for the first time.13 Women repeating abortion have also been found to have a higher incidence or prior abortions, and particularly repeat abortions compared with women who do not use drugs.
Many women report first using drugs or alcohol in an attempt to overcome nightmares or insomnia in response to the abortion experience.\textsuperscript{16}

It is clear that as women repeat abortion there is increasing evidence of personal, social and health deterioration. Women are in less stable social situations and are more likely to be divorced as abortion is repeated, which is associated with greater levels of family poverty for women. The repeated utilization of abortion appears to lead not to economic prosperity or social well-being for many women, but to an increasing "feminization of poverty". None of these findings were considered by the Court in Planned Parenthood v. Casey.

\textbf{A HUSBAND WAS HELD TO HAVE NO LEGAL RIGHTS IN REPRODUCTIVE DECISION MAKING}

The plurality opinion specifically stated that a requirement of spousal notification embodied a view of marriage they found to be "repugnant". They further stated that "The marital couple is not an independent entity with a heart and mind of its own, but a association of two individuals with with a separate intellectual and emotional makeup". Based upon that definition they concluded that "a husband has no enforceable right to require a wife to advise him before she makes her personal choices".

The plurality opinion also made it clear that the scope of these "personal decisions" is very broad. For example, they expressed concern that if a spousal notification law were upheld a state might then require notice to a husband before engaging in conduct causing risks to the fetus or notify their husbands before they smoked or drank alcohol during pregnancy, or before using contraceptives or undergoing surgery involving reproductive organs. No mention is made of a husband's fundamental constitutional rights with respect to procreation. And apparently if the wife places an unborn child at risk by engaging in unhealthy and irresponsible practices, then the husband has no publicly recognized right or responsibility to act to protect his unborn child.

\textbf{A HUSBAND IS PORTRAYED AS A PETTY TYRANT ATTEMPTING TO COERCE HIS WIFE INTO CHILDBIRTH}

The plurality opinion determined that a husband who is not notified in advance of his wife's intention to obtain an abortion is very likely to be a petty tyrant. The plurality opinion reviewed the general literature on family abuse and concluded, based upon little evidence, that there is a high possibility of abuse by the husband if notified of his wife's pregnancy. The assumption was made that he would attempt to coerce her into childbirth by psychological, physical or economical threats, which was tantamount to a spousal veto of abortion. constituted an undue burden and was therefore unconstitutional. In fact, there has been little research on the subject which the opinion itself acknowledged. From available reports (1) Only about 10\% of the husbands not told about their wives pregnancy and abortion in advance because the wives thought they would be subject to physical or psychological abuse. (2) If husbands abuse their wives during pregnancy it appears that they are much more likely to seek to coerce their wife into having an abortion rather than childbirth.\textsuperscript{17}

\textbf{THE EXISTENCE OF HUMAN LIFE IN THE WOMB IS DENIED}

The majority opinion in Planned Parenthood v. Casey continued the legal fiction of "potential life" in the womb thus denying the obvious fact that actual human life is present and growing. In Roe v. Wade the Supreme Court via Harry Blackmun stated that the Court did not know when human life begins. In Planned Parenthood v. Casey the plurality opinion stated it was up to the woman seeking the
abortion to determine the value of the “mystery of human life”. In this regard the Court continues to confuse several different concepts. Human life in the womb is actual life not potential life. Human life in the womb is a potential citizen but an actual human being. Human life in the womb has the potential to develop into an artist, truckdriver, musician, police officer, etc. By the improper and misleading use of the term “potential life” the Court seeks to avoid recognition that human life is destroyed by abortion.

The Court is in direct opposition to contemporary scientific knowledge of fetal development.

In taking this position the Court is in direct opposition to contemporary scientific knowledge of fetal development and modern medical practice which now views the unborn child as a second patient. For example, in 1974 the American Board of Obstetrics and Gynecology developed a certification for the specialist in maternal fetal medicine. The 1989 edition of Williams Obstetrics, which is considered one of the leading medical texts on obstetric practice states:

Obstetrics is an unusual speciality of medicine. Practitioners of this art and science must be concerned simultaneously with the lives and well-being of two persons: indeed the lives of the two who are interwoven.

The fetus is no longer regarded as a maternal appendage ultimately to be shed at the whim of biological forces beyond control. Instead, the fetus has achieved the status of a second patient, a patient who usually faces much greater risks of serious morbidity and mortality than does the mother... The many advances in diagnosis and treatment that now clearly establish the fetus as a patient have also contributed remarkably to legal considerations regarding the fetus.

Recently an entire medical text has been developed consisting of hundreds of pages which is exclusively devoted to the unborn child as a patient. For example, it describes how fetal surgery can be performed and drug therapy provided. Behavioral studies are discussed and the text utilizes modern photographic techniques to take detailed pictures of actual life in the womb. One of its authors specifically states, “Once the origin and development of the fetus from the embryo to neonate could be explained scientifically the fetus can be considered to be a patient as it has been “demystified”. Human life in the womb should be no mystery to either the U.S. Supreme Court or pregnant women. Modern science has provided a rational understanding of human life in the womb.

VIABILITY IS ARBITRARILY SELECTED AS THE FIRST STAGE OF DEVELOPMENT WHERE THE STATE MIGHT POSSIBLY PROHIBIT ABORTION

In Planned Parenthood v. Casey the plurality opinion held that viability of the unborn child is the “most workable” point at which a state may prohibit abortion except where the health or life of the mother is at stake. However, considering the broad definition of health adopted by the Court, any prohibition, even after viability, would not be possible under current law.

The notion of viability i.e., the ability to survive independently from one’s environment is fatally flawed based upon any reasoned analysis. In Planned Parenthood v. Casey this was forcefully and eloquently argued to the Court in the Amici Brief of 16 Pro Life organizations.

“The Arctic explorer is viable if sufficiently clothed. The serious diabetic is viable if properly treated. The newborn, full term infant is viable if fed and nurtured. The unborn child is viable if not prematurely expelled from the womb. To deny protection on the basis of the need for protection is no more sensible
than to deny those who cannot swim the right to stay aboard a ship.

This point was underscored by Justice Scalia in his dissent when he observed, "Precisely why is it that, at the magical second when machines currently in use (though not necessarily available to the particular woman) are able to keep an unborn child alive apart from its mother, the creature is suddenly able (under our Constitution) to be protected by law, whereas before that magical second it was not? That makes no more sense than according infants legal protection only after the point when they can feed themselves". As Justice White has correctly observed, "The state's interest is in the fetus as an entity in itself, and the character of this entity does not change at the point of viability under conventional medical wisdom. Accordingly, the state's interest if compelling after viability, is equally compelling before viability".

THE PAIN OF CHILDBIRTH IS ARBITRARILY SELECTED TO RATIONALIZE THAT ABORTION SHOULD BE LEGAL

The Court in Planned Parenthood v. Casey stated in support of the abortion right that "The woman who carries a child to full term is subject to anxieties, to physical constraints, to pain that only she must bear... Her suffering is too intimate and personal for the state to insist, without more, upon its own vision of the woman's role."

Although the Court discussed pain and suffering from childbirth, it never counterbalances it by even mentioning the possibilities of joy and pleasure from childbirth. Nor does it consider the pain in women, both physical and psychological, from abortion - some for many years afterward. Nor does it recognize the pain and agony of the unborn child who is torn from the womb during abortion. Nor does the Court mention the pain from abortion which may arise in a prospective father upon realizing that perhaps his only child has been aborted. Nor did the Court consider the pain and suffering of those who are conscientiously opposed to abortion and arise each day in the society knowing that each and every day at least 4500 lives in the womb will be snuffed out.

The sole reference to pain and suffering from childbirth reflects a choice based upon a hierarchy of values which are deemed higher than other values which would favor allowing nature to take its course. The Court appears to use this thinly disguised technique to assert its own value judgment, which it considers superior to other values in order to reach a predetermined result.

CONCLUSION

The decision in Planned Parenthood v. Casey altered the abortion landscape. In Roe v. Wade abortion was merely tolerated and treated as a privacy right. But now abortion has been embraced as a constitutional liberty. However, the Court has confused liberty with license. License is the indulgence of the arbitrary will of the individual without regard to ethics or law or respect for the rights of others. Liberty is the exercise of the will in its moral freedom with justice to all.

Now the women who is pregnant no longer is a moral agent or one who is obligated to respect the rights of others. Planned Parenthood v. Casey severed the marital and maternal bond by making autonomy of the woman the supreme value. There is now no duty or obligation known to the law to obligate the mother or father or the state to protect or preserve the life of the unborn child. The doctor is reduced to a mere technician and the husband need not even be notified prior to abortion. There is now no consideration of the common good or promotion of the general welfare out of which one might find "ordered liberty" or a civil liberty. It is inherently unjust to permit the destruction of helpless, innocent unborn human life throughout the nine months of pregnancy. In the context of abortion
liberty and justice for all is now merely an empty promise.

Thomas W. Strahan, Esq.
Editor

The pregnant woman is no longer obligated to respect the rights of others.

FOOTNOTES
3. In a Different Voice, Carol Gilligan, 1982.
17. This argument was made to the Court in Planned Parenthood v. Casey in the Amicus brief of The Rutherford Institute.
18. This argument was made to the Court in Planned Parenthood v. Casey, in the Amici Brief of the American Association of Pro-Life Obstetricians and Gynecologists and the American Association of Pro-Life Pediatricians.

In the context of abortion, liberty and justice for all is merely an empty promise.