

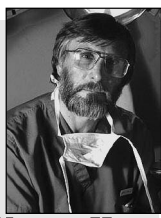
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HERN: A MATTER OF LIFE AND DEATH

The doctor's dilemma — truly delusional decisions from the Supreme Court

Many years ago, a young woman with a desired pregnancy was referred to me by her physician in northern Colorado because tests had shown a dangerous genetic disorder in the fetus. The chromosomal



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abnormality was not only lethal for the fetus; it posed a risk to the woman's health. She was in danger of developing severe high blood pressure due to changes in the pla-

centa that accompanied this condition. She was about 22 weeks pregnant.

When the woman arrived at my office, she didn't feel well. Her blood pressure was normal. By the time I got her to the operating room for the first steps of a three-day abortion procedure, her blood pressure was elevated. By the time we had finished this first step, it was higher. After watching her for a short time, I decided that she needed to be in the hospital. Her blood pressure continued to go up dangerously in spite of medications now being administered by medical colleagues and nurses who were experts in the management of these problems.

By midnight, her kidneys started to shut down. She stopped producing urine. We were worried about her having seizures or a stroke. Meantime, the preparations that were necessary to perform an abortion safely at this stage of pregnancy had hardly begun. It soon became apparent that we could not wait for those measures to have their effect. By 3 a.m., I concluded that my patient would not survive until dawn if I didn't do the abortion right then, so I did. The chief of obstetrics, who had no experience with this kind of abortion, stood behind me as I operated. Without the abortion to

empty the woman's uterus, she would die. Difficult as it was, it was safer for her than an abdominal operation to cut open her uterus or remove the uterus along with the fetus.

The woman survived without complications, but it took a long time to bring down her blood pressure and get other systems back to normal.

I couldn't stop at 3 a.m. to find out from a lawyer whether the operation I was about

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to perform was exactly as prescribed and not prohibited in any way by Congress. That is the kind of problem created by the law that was upheld by the Supreme Court on Wednesday, April 18.

There are innumerable problems with the “Partial Birth Abortion Ban Act of 2003” that was upheld by the Supreme Court in *Gonzales v. Carhart*, starting with the fact that no committee in either the House or the Senate has ever heard spoken testimony from or questioned a physician expert in late abortion before it was passed by Congress and signed into law by the President.

I was present at the only hearing before the U.S. Senate Judiciary Committee on November 17, 1995 with prepared testimony at the request of the minority counsel who worked for Senator Kennedy. Pro-choice leaders did not want me to testify because I disagreed with their statements that the “partial-birth abortion” technique was the “safest way to do late abortions.” There has never been any evidence for this assertion, which was repeated in court by those opposing this absurd law.

There is no way for a physician to read this law and know whether he or she would be prosecuted for exercising their medical judgment for a patient. Justice Kennedy's opinion upholding the law does not help. It is an obscene and convoluted mass of contradictions that brings judicial micromanagement into difficult medical decisions that must be made in minutes or seconds. It is delusional to assert that this law, and worse, this decision, does not keep doctors from practicing good medicine for their patients. It is surreal.

The only certain way to avoid prosecution under this law is not to perform abortions.

Even though Congress passed the “Partial Birth Abortion Ban Act of 2003” without reference to any facts or expert testimony, and even though Justice Kennedy stated that Congress had made assertions contrary to fact, he and his four male Catholic brethren, all appointed by Republican presidents, voted to uphold the law. It is the first time that Congress has passed a law prohibiting a specific medical or surgical procedure. There are no exceptions to protect a woman's health, even in an emergency.

In this case, it is a procedure reported by one physician at a private medical conference in 1992 and which has never been described in the medical literature. Although I specialize in late abortion, I do not personally know anyone who does this procedure including the physician who made the report in 1992. No one knows who performs it or how many are done.

What we do know now as the result of this decision is that the radical religious right has won the struggle for power in this country. It is a triumph of ideology and politics over facts and reason.

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