AMERICAN BAR ASSOCIATION
REPORT TO THE HOUSE OF DELEGATES
SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES

RECOMMENDATION

The Section of Individual Rights and Responsibilities recommends adoption of the following:

BE IT RESOLVED that the American Bar Association supports legislation on the federal and state level to finance abortion services for indigent women.

REPORT

The ability to pay for an abortion is, in a real way, the equivalent of having a right to choose to have an abortion. If the Supreme Court's recognition of a right of choice for a pregnant woman, (Roe v. Wade, 410 U.S. 113 (1973), and Doe v Bolton, 410 U.S. 179 (1973)), is to have any meaning for indigent women, public financing of abortion services is essential.

Prior to the Roe and Doe decisions, it was a fact that abortions were available to those who could afford to travel to a state where abortion had been decriminalized. Simple equity was thus denied to indigent women, who could not afford such travel, and the denial was based solely on their indigency.

The decisions in Roe and Doe, while recognizing for all women a right of privacy that included the right to choose to have an abortion, did not alter the reality that indigent women were still denied equal access to abortion services because of their indigency.
The Medicaid program, funded jointly by the states and the federal government, perpetuated the inequality. While that program paid for almost all other medical needs of the poor, abortion services frequently were excluded by state administrators of the program. The federal government left discretion largely with the states, with the practical result that abortions were unavailable to Medicaid recipients in a significant number of states.

A common restriction in state Medicaid policy provided that abortion services would be covered only where termination of pregnancy was "medically necessary." While funding was available for all indigent women who chose to continue their pregnancies to childbirth, the right to elect to terminate a pregnancy was conditional only. Voluntary abortions were excluded from coverage, despite their undoubted legality.

Nearly every federal court confronted with a challenge to this restriction found it in violation either of the 14th Amendment equal protection clause, or of the Social Security Act, or both. The Supreme Court, however, ruled on June 20, 1977, (Beal v. Doe, 432 U.S. 438 and Maher v. Roe, 432 U.S. 464), that the restriction violated neither the Constitution nor federal statutory law. The Court concluded that it was for the legislatures to decide whether to be neutral in the childbirth v. abortion choice.

The issue of public financing of abortion services thus is presently a matter of legislative policy. It will be worked out in an atmosphere that is potentially divisive, even destructive. It is essential, therefore, that all efforts should be made to encourage reasoned debate on this matter.

Currently, Congress is dealing with the subject in the context of legislation to appropriate funds for the Department of Health, Education, and Welfare. When state legislatures in nearly all of the states reconvene in January, the subject will be raised in the context of state law and administrative discretion.

Congress' repeated enactment of the so-called "Hyde Amendment," and variations of it, has led to new challenges in the courts, again raising profound constitutional questions and serious statutory issues. The same has occurred in the wake of decisions in 35 states to reduce markedly the scope of abortion services funding.
In the meantime, however, the debate will proceed in the legislative arena. The American Bar Association can contribute importantly to the quality and the substance of that debate. Its voice should be heard, calmly and rationally, on behalf of simple equity for indigent women.

Brooksley E. Landau
Chairperson
Section of Individual Rights and Responsibilities

August, 1978