ABORTION RIGHTS FOR PRISONER DENIED

Because of a Massachusetts policy prohibiting the use of state funds to pay for elective abortions, a woman prisoner in that state will now have to carry to term a pregnancy she does not want. The woman, using the pseudonum "Karen Koe," sued the state after Department of Corrections (DOC) officials, acting under a newly instituted policy, informed her that they would not pay for an abortion which she had requested. It had been their policy until this time to pay for elective abortions and other elective surgery such as cosmetic dentistry and tatoo removal.

Koe had been in prison for two weeks when she found out she was pregnant. She was in her sixteenth week when she filed her suit. She was represented by Nancy Gertner and John Reinstein, acting for the Civil Liberties Union of Massachusetts' Women's Rights Project. Along with the class action suit on behalf of all women prisoners in Koe's situation, the attorneys asked for a temporary restraining order ordering the DOC to suspend implementation of its new policy and pay for Koe's abortion. Her attorneys presented ample proof to the court that lasting physical and emotional damage could result if the procedure was delayed.

District Court Judge David S. Nelson defied both logic and precedent, denying the motion and placing an unheard-of burden on the plaintiff to prove beyond doubt that she could not obtain an abortion any way but through the DOC. Apparently, the only thing that would satisfy the judge would be sworn statements from every doctor in the state attesting that they would refuse to perform a free abortion on this woman. The suit, which was filed on August 3, dragged on for two weeks while the judge and the state looked for ways to delay or undermine what they knew would be a clear-cut constitutional case. Finally, as a last-ditch measure, the DOC announced that a local hospital had agreed to do the abortion for free, thus evading the issue of using state money for an abortion and invalidating the motion for a restraining order.

Karen Koe was taken to the hospital for a saline abortion, but refused the operation, maintaining that the doctor there had treated her brutally and that the pain of the procedure was too much for her to take. A saline abortion is painful and traumatic under the best of circumstances. How much worse would it be for a woman deprived of her freedom, kept in suspense by legal maneuvers and finally deposited in the hands of a doctor who is obviously in cahoots with her persecuters? At this time, Koe, in her twentieth week of pregnancy and having already "refused" an abortion, is beyond the point where any doctor in the state will perform the procedure on her. If the state had given her the abortion when she first requested, or if the judge had granted the restraining order, she could have had a D & C under general anaesthesia and been spared three weeks of trauma and terrorization, and an unwanted pregnancy.

Lawyers working on the case have still not assessed the impact of this situation on future class actions that will have to be brought to defend the abortion rights of prisoners. One thing is clear, however--that the Massachusetts Department of Correction, under the leadership of a reactionary, woman-hating Governor, Ed King, will continue to wage a war of attrition to defend their illegal and immoral policy. Any woman prisoner unfortunate enough to find herself facing an unwanted pregnancy will also be facing a trial by ordeal.

by Susan Saxe (thanks to off our backs)

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