Gates Public Service Law Program Speaker Series

Lynn Paltrow
"Why I stopped defending abortion and started defending pregnant women"

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Dean Kellye Testy

Well good afternoon everyone I want to greet you and welcome you to this program. I’m Kellye Testy your Dean at the University of Washington School of Law. And I’m really pleased today to welcome you to the Gates Public Service Law Program speaker series and as you know today we have a wonderful speaker with us, Lynn Paltrow. And it is my great pleasure, my honor to introduce her. I’ve been a fan for so long. So let me tell you a little bit about her background. She has a law degree and it’s from NYU of course also an undergraduate degree from Cornell. More presently she is the founder and executive director of the National Advocates for Pregnant Women. And what I want to note as I let you know a little bit about that effort is that one of the things I admire so much about her is that she is really willing to try and to push our thinking into new paradigms. To really think about things hard to try to not get stuck all the time in the same way of thinking about things because sometimes we start advocating and moving along in one direction and that runs up against some kind of a wall and it’s tempting sometimes to say, ‘well let’s try a little harder and knock down that wall,’ but that doesn’t always work so well sometimes it’s better to step back, rethink and then go forward in a new way. And she recognized the need for the shift in the reproductive rights paradigm. Away from what was a very divisive and is divisive pro-choice and anti-choice categorizations and toward a new way of thinking about this that is much more inclusive, more positive, more focused around justice and values. Around ideas that more allies can mobilize together on. And so I want to just say congratulations to you and thanks for being that kind of a leader. UW Law really prides itself on being a leader for the global common good and it’s that quality of being able to sometimes stake out the uncomfortable position that I think really does characterize leadership and so I congratulate you on that work. Let me let you all know, too that before this current position that Lynn holds, she served as a senior staff attorney at the ACLU’s Reproductive Freedom Project, also as a director of special litigation at The Center for Reproductive Law and Policy and as a vice president for public affairs for Planned Parenthood of New York City. As you can imagine from the kind of work she has done, she is frequently a requested speaker, very much well published author in many venues. She has been recognized widely, she has won a lot of awards and fellowships and was also listed on an important list as one of the most promising leaders for the twenty-first century. I certainly see her as that and I welcome you to UW Law, we’re really honored to have you with us, so welcome.

Lynn Paltrow

Thank you so much for having me here and making all the arrangements which can be sometimes frustrating with practitioners who are, I’m looking right at you Ann, thank you. And the dean’s I really appreciate the warm welcome and the wonderful LSRJ lunch that
we had today and the students I got to meet today.

The title of this talk: How I started out defending abortion or stopped defending abortion and started defending pregnant women has to do with my journey and I had the privilege of listening to some of the other lectures. I think this one might be a little more personal and partly because I understand this program to be one in which it’s supposed to give students a sense of how one becomes or does public interest law so at the risk of humiliating myself I’m sharing with you some pictures from my younger days and my earlier practice.

But as the talk says, I started out defending the right to choose abortion. This is a picture of me in front of the Supreme Court filing my first amicus brief that I was primarily responsible for it was the Thornberg case, a case in which for the first time, an argument had been made that Roe specifically should be overturned. I was working at the National Abortion Rights Action League which had been collecting letters from women describing why they had chose to have abortions. And I thought these stories illustrate why it is that losing the right to choose abortion would affect so many things and we used them to illustrate all the ways the fundamental rights would be at stake and the meaning of liberty. I show this to you to say that I hope that one can grow and dress better and have better haircuts, as my colleagues and it’s also an example I followed this with Marcia Neman a grassroots activist from Tuscon who had come in to organize the letter collection. And a young lawyer named Cliff Zimmerman who happens to be a dean at Northwestern Law School now. I happened to be speaking there did not know he was a dean and had this picture with me. You should have heard the students howl when they saw this.

I also worked on cases that involved direct challenge to the right to choose abortion. In 1990 the US territory of Guam outlawed abortion and it was lead by Eliszbeth Ariola an elected official who passed a law banning all abortions in direct challenge to Roe and I had the opportunity to go out to Guam help the person who was leading the challenge against that legislation who happened to be Anita Ariola, the daughter of the legislator who had put that law into place which tells you it’s all about family. And I just want to give you, the glamour of being a public interest lawyer. Here we are on the floor putting the papers together and it was still the early days of computers so you can tell that we’re supposed to file in fifteen minutes and the computer is frozen and there’s real panic ensued.

I did have the opportunity not only to litigate but I always believe that change comes about not just through the law but action in the streets and this was an action in New York City counter-protesting a group of people who were opposed to abortion I think they were trying to create a human crucifix across streets in Manhattan and there I am doing I guess my Janis Joplin imitation, I’m not sure, and wearing a pretty radical label about abortion.

But through this time I started to realize and feel frustrated about certain things where the work that I was doing, reproductive rights work was predominantly white women working through the law. Abortion clinics were not places of organizing there wasn’t really grassroots organizing and I felt like something was missing. I had friends working the Battered Women’s Movement at the time, it was called back then. And people were talking about how do you make shelters welcoming to women of color, to lesbians, accessible to disabled women? And I wasn’t hearing those conversations happening in the mainstream reproductive rights law world I was in. So I went in search of people who were doing it differently and I found my way to the National Black Women’s Health Project, to Billy Avery and Lilly Allen, neither of whom are in this picture. This is from 2004 at the March for Women’s Lives. Other women I found back in the day were Loretta Ross Sister Song,
Luz Alvarez Martinez, Daison Dixon. And these were women of color developing women of color lead organizations who were really talking about yes, we need to preserve the right to chose abortion. But there’s a whole generation of white women, second wave feminists for whom their ability to participate in society really depended on having access, or being able to decide when and whether they were going to reproduce. Growing up in the fifties and the sixties being forced to continue an unwanted pregnancy to term could mean the difference between getting an education having access to all the privileges that white middle class women have. And so the focus of the work that represented equality was very much about abortion but if you were a woman of color facing all kinds of discrimination, you could get your abortion and you still might not have access to an education to the kind of job, to the kind of life you might want to lead. You would still be subject in many circumstances to people pushing you to get sterilized because of the color of you skin or the fact that you had too many children according to your doctor. It could mean you didn’t have the money to raise the children you wanted. So abortion alone was not an issue that was compelling as a single issue or any other for a wide range of women who definitely did not want to see abortion become criminal again but who weren’t going to make that the primary focus of their work. Those leaders eventually formed Sister Song and the Asian Communities for Reproductive Justice, the groups that have defined what’s come to be known as a reproductive justice framework that says it’s not enough to talk about having reproductive health or reproductive rights, we have to have the means, the economic, the social conditions that make it possible to make choices to be able to not only end a pregnancy but to have a pregnancy to have a safe one, to be able to raise your children. To connect reproductive justice with social justice, with human rights.

Much of the conversation however, over the last thirty years has been about the defense of Roe v. Wade the 1973 Supreme Court decision recognizing that there is a fundamental right to choose to have an abortion. That refused to recognized that fetuses were persons at any stage of development. It did recognize state interests but recognized that women are persons at all stages of development meaning their life and health is always paramount. And we talked a lot through all these years the mainstream pro-choice movement, these are a picture of a lot of the signs at one of the major marches, saying things like, ‘my body, my choice’, ’another woman for choice’, all of these kinds of, ‘my body, my right’. And I think part of the transformation that I’ve gone through and the part of the reason a little bit that we’re in the mess that we’re in is that this doesn’t actually reflect the experience that women have. If you’ll remember that charming picture of me in front of the Supreme Court. I read hundreds and hundreds of letters from women describing why they had had abortions and people who loved them describing why someone they knew had an abortion. Not one of them said I had an abortion because I have the right to choose. Not one of them said I had an abortion because it’s my body, it’s my right. Every single one of those letters was about family responsibility, it was about moral responsibility and decision that took all of the lives at stake into account including their own including the child they might have including the children they already had. So it was stories about I had a daughter who had spina bifida. I was committed to making sure I raised her and supported her. If I had an other child right now I can’t do that. Somebody wrote about a father who was dying and a husband who had just left to serve in the Vietnam War. Every one of them was about the complex decisions women make when they are tying to take responsibility for their lives and their family members’ lives.

During that time I also started to get cases where the anti-abortion argument was being used to hurt women who wanted to go to term. And one of those cases was in Re: A. C., the Angela Carter case. Angela Carter at the age of thirteen was diagnosed with a rare form of
bone cancer. She was told at thirteen she was likely to die but she fought that death and then she found her way to NIH and went through multiple chemo therapies and surgeries and survived into adulthood. She eventually, she’s the one on the left in the picture, she eventually had an entire leg and half her pelvis removed. That’s with her mom who was in a terrible accident. And I love both of them for their courage for have given me this picture. In any event Angela Carter was a disabled woman when she got married, she got pregnant and she found it very hard to get OB/GYN care because we discriminate against disabled women. As a regular OB/GYN, what do you do about getting a one-legged woman onto the table in stirrups? So she had trouble getting care finally found her way to the George Washington University Hospital where they had a high-risk clinic. She started to complain about not feeling well and they started treating her like a bitchy pregnant woman you know you’re missing half your pelvis, you know of course you're stretched, finally they listened to her and at that point they found a tumor the size of a football in her lungs. She was clear, people were saying this time you might not make it, but she’d been told that many times before. Her health declined very quickly she had to go into the ICU unit but it as clear that what she wanted to do was everything possible to stay alive for as long as possible, she was then twenty-seven years old and twenty-five weeks pregnant. A hospital neonatologist walked by as a conversation happened about whether if she did die, should they do an emergency cesarean surgery and try to save the baby? Without talking to Angela, her doctors, or anybody else, the neonatologist ran to the hospital lawyers and said, ‘I can save all twenty-five week babies, this baby has a right to life’. They called an emergency hearing to decide what rights the fetus had. The fetus was appointed a lawyer, somehow a District of Columbia attorney showed up also representing the fetus and a lawyer was appointed for Angela Carter but not one who had had any experience with reproductive rights law. Over the course of the day they held a hearing Angela’s own doctor from NIH who would have testified was not even notified. She had no time to pick a lawyer, prepare with the lawyer. And it was decided at the end of the day that the judge said I have an obligation to give this fetus a chance for life. And they ordered the surgery knowing that it could kill her. Eventually her own doctors explained to her that, they hadn’t talked to her they hadn’t gone to her bedside, but when her doctors finally visited her in the ICU and explained to her that a judge had decided that she should have this procedure not her doctors who she loved and trusted that she could die, she was intubated but she was able to mouth, ‘I don’t want it done, I don’t want it done’. They did an emergency appeal by phone a three-judge appellate court upheld the court order. They took her from the ICU unit where she was brought down to have surgery they performed the cesarean surgery. The fetus was in fact so far from viability, it was born alive it died within three hours and Angela Carter died two days later with the cesarean section listed as a contributing factor. That case with great help from many people was eventually, we got a court to say this order was wrong. This is the team, this is another, like no case is won by one individual they were a team of people. One of the lawyers standing there for any of you who have heard of her is Dawn Johnson who is a professor in Indiana and been nominated to be head of office of legal council. We won and we also won a civil suit against the hospital where they adopted different policies. I’m sad to say that while we have several good decisions from courts saying, no there is not a exception for pregnant women for the right to life from the right to liberty from the right to make medical decisions we keep seeing cases like these reemerge. so one question is why?

Another case I started to get where the anti-abortion arguments were being used to hurt women who didn’t want to end their pregnancies was the Pamela Ray Stewart case. It was a woman who was arrested in California and the allegation was she had given birth, she was bleeding extensively the baby was born alive but then died and they charged her under a sort of strange criminal child support statute. But the theory was the unborn have a right to
life therefore failing to take care of that unborn life makes you subject to criminal laws like child abuse laws. There was an allegation of drug use which the police and prosecutor later pretty much said didn't exist. Her crimes were not getting to the hospital quick enough on the day of delivery, having intercourse with her husband the morning of the day of delivery, not having taken her doctor’s advice to get bed rest. Again, we were able to get those charges dismissed but we started to see many of these cases in which women in particular women of color who went to term in spite of a drug problem who went through pregnancy and the risks of pregnancy who did have drug problems that they were trying desperately to get help for. They gave birth to healthy babies and upon giving birth were arrested. because apparently it can be a crime for some women in America to give birth under the theory that something you did may have risked harm to the child that you were carrying.

This is Kimberly Hardie in Michigan who tried to get help through her pregnancy left Michigan went to Mississippi and as a result lost her prenatal care benefits. Tried to get into treatment and couldn’t. When she finally got help to get into treatment when she got back because her case got attention the minute she finished treatment she was arrested on drug delivery charges meaning through the umbilical cord. Brita Smith in Virginia knew she had a drug problem called every treatment program and everyone said either we have no room for you or you are on a waiting list because you only have Medicaid to pay for this. I just want you to know there is not enough treatment for anybody in this country who needs it for drug problems and what tends to happen if there is one drug treatment program everybody says well you could have gone, there’s a drug treatment program. I think of five hundred people and one glass of water and saying to all five hundred, see you could have had some water. And that’s what we do to people who need and want drug treatment. This is Crystal Ferguson in South Carolina who also wanted to get help but was arrested when she didn’t immediately enter into a program, a hospital mental ward which was the only residential treatment program available. And she didn’t want to do that because she had two children at home and was perfectly happy to go to outpatient treatment. We have won every time we have gotten involved with these cases in every state except South Carolina we’ve been able to stop them which is to say if you do good lawyering it makes a difference. If you do collaborative work and work with allies in the health professions, public health, drug policy reform. You can win cases and prevent innocent people from going to jail.

But we’ve discovered hundreds of cases that have gone under the radar. Where lawyers for a variety of reasons: because they’re not prepared, because they believe the junk science that’s thrown at them about these women, because they think they don’t deserve real defense because judges won’t authorize expert witnesses. We’re finding hundreds cases of women despite the fact the law does not support it and the question is, ‘why?’ And I think part of the answer has to do with the thirty years of efforts to recriminalize abortion, overturn Roe, and the conversation which does not stay limited to abortion. As many of you know these are the kinds of arguments and signs that are seen: ’Abortion kills children’, ’Abortion the hidden holocaust’, comparing concentration camp victims to what purport to be aborted fetuses. There’s a program called GAP, Genocide Awareness Project that goes to college campuses, they’re very well funded and they analogize the holocaust of Jews, religious, to lynching, racial choice, to reproductive choice and I don’t understand this picture. I don’t know what it says about capitalism, the coin and the arms. And they have as some of you have heard, there’s a whole new resurgence of arguments analogizing abortion particularly in African American communities to slavery and genocide.

The problem with this is that the abortion debate and particularly this very charged language creates the illusion that there are two kinds of women: women who have abortions and kill...
their babies and another kind who go ahead, go to term, and have their babies. And this is again where the shift where from defending abortions and defending pregnant women comes in. It turns out that sixty-one percent of women who have abortions are already mothers. And eighty-four percent of all women become mothers by the age of forty-five, they become pregnant and they give birth. So while it is true that we don not want to be defined by our capacity for child bearing, we don not want to be seen only as people who can raise and bear children. Some of the most important leaders, men and women are people who have not given birth or parented, but eighty-four percent of women do give birth. Women do eighty percent of the childcare two-thirds of the house work. And if we want to look at changing how women are treated, then we have to include the women who are giving birth and think about what’s happening them and include them in our movement. And if you think about it that way, you really have to ask the women who are having abortions are mothers and are pregnant women so when it is analogized, when you say, ‘abortion is like a holocaust,’ are we saying that a pregnant woman is no different from Hitler? Do we mean that a pregnant woman is no different from the SS? This is Alveda King, one of the leaders of the movement saying that a baby that could be aborted is like a slave because he or she does not have a choice? Then, are pregnant women including the African American women are they no different from the slave holder in relationship to the fetuses they carry, they nurture, they sustain? Is a pregnant woman no different than an executioner and a murderer? One of the things that I’ve started is really to take literally what people are saying and unfortunately I think we have let a lot of this go without examining what it means. I know people here and every audience I talk to are raised in traditions which value unborn life from the moment of conception, fetuses, want to see a society that values all life, but I think that those people like people who are called pro-choice have let a lot of language slip by. Do we really mean that the individual decisions that women make around their reproductive lives, sometimes they decide to have abortions is the same as government sponsored genocide, deciding that a certain group of people because of religion, or race, or ethnic origin should be killed, is that really the same as an individual decision that a woman makes? Is it no different from a genocide? And when you have groups saying that they’re the same I think you have to ask, what is it saying about how we value pregnant women? And also what is it teaching what genocide and holocausts are? Because when you do that you erase the role of government in authorizing the use of the military, authorizing the use of legal mechanisms to force the murder of groups of people again based on race, or religion or ethnicity.

We not only have this kind of language but we have an increasing number of states that have laws that in one way or another are recognizing separate legal rights or status for the unborn. Thirty-seven states have foeticide or fetal homicide laws by statute or decision at least nineteen of them apply to the early stages of pregnancy. And what we’re seeing is that these laws are generally passed in the wake of violence against a pregnant woman. A pregnant woman is brutally murdered and groups come in and say we have to recognize the loss of the unborn life and we have to do something about this violence and what we’re going to do is to pass a foeticide law to make it a separate crime to cause the death of an unborn child. And there is no question that that loss ought to be recognized and I think there are lots of ways of doing it. What we’ve discovered is that these laws are very quickly turned into tools for arresting pregnant women. That they become the basis for prosecutors arresting pregnant women and arguing that we can interpret the child abuse law to include unborn children in relationship to the pregnant women who carry them.

We also see a growing number of so called personhood laws. There’s an organization that is trying to pass these laws, they would have states redefine their constitutions to apply to the
unborn from the moment of conception. We’ve been starting to call this a Radical Fetal Separatist Movement. And what we mean by that is that women themselves don’t think by and large they’re carrying tissue. They understand that what they are carrying is human that if the pregnancy continues, they will give birth to a human child that they will care for and love with hopefully much more support than what many women get. They understand a certain degree of separateness. But you think of groups like Lamaze that is very much a birth pro-birth organization, support organization, but you watch their videos and they talk about, they use unborn child, they use a lot of different language, but they say at birth is when you meet your new baby, that there is something that happens at birth where the pregnant woman and fetus is not entirely separate and these efforts to define fetal life as if it has a separate legal status is segregating fertilized eggs, embryos, and fetuses from the pregnant woman. And for a long time the pro-choice movement, what’s been called the pro-choice movement has really defended or argued against these laws, argued against these principles by talking specifically about how it threatens your right to abortion, your reproductive rights, your right to do what you will with your body. The problem with that is it’s too narrow. Certainly these laws could implicate that but we know that these laws are already affecting pregnant women who have no intention of ending their pregnancies.

And one of the things that I’ve seen from working on the cases that I’ve been working on is that every single right that we associate with personhood in this society is at stake. I think within the movement to recognize or to segregate unborn life from pregnant women is the hope or the argument that we have been in an arc of progression that we once thought it was okay to enslave African Americans and we freed African Americans and we once thought it was okay to treat all women as a lesser status and then we recognized the right to vote and we freed women and we’re just continuing that arc is the argument by recognizing a separate legal status for eggs, fetuses, embryos, there’s a profound difference, however. When slavery was ended white people and slave holders lost certainly extraordinary privilege and power and they argued they lost the constitutional right to property but they didn’t lose their personhood. As a result of ending slavery, they did not lose their status as persons with all kinds of rights to life, to liberty, and those things. When we began to recognize the rights of women, white men did lose privilege and power and all sorts of ability to control and take advantage of, but they did not lose their personhood. They did not lose their constitutional status as persons as a result of recognizing the personhood of women. What we are seeing is that if we do the same, if the pro-recriminilazation movement, whatever you want to call it, is successful, women will lose their status not as persons, not just their reproductive rights, with Angela Carter you saw that she lost her right to life. People are never required to sacrifice their lives even for another living person, yet she was required to with less procedural due process that is imaginable for anybody under similar circumstances.

Laura Pemberton a woman of Florida was pregnant, had had a previous cesarean section, she didn’t want to have unnecessary surgery every hospital she went to said if you want to deliver here in a hospital setting, you have to agree to cesarean surgery whether you need it or not and she wanted to got to a hospital where she could have a trial of labor, if she needed cesarean surgery she would agree to it, but she did not want to undergo unnecessary surgery. She ended up laboring at home alone because midwives are not allowed to accompany in most states a woman who is considered high risk and she is considered high risk. And a hospital had learned that she was at home, laboring, having had previous cesarean surgery. And while she was approximately five to six centimeters dilated, she heard a knock on the door it was the sheriff. The sheriff was there to take her, he had a court order. She tried to stall him so that she could continue her labor and hopefully deliver. The
sheriff would not wait, he took her put her in the back of an ambulance, strapped her legs
together brought her to the hospital where she was given a few minutes to articulate her
well-researched and well-reasoned reasons for not wanting to undergo unnecessary surgery
and she was subjected to that surgery. They said that she was exercising bravado that the
baby would have died, had a huge sixty to ninety percent chance of dying from a uterine
rupture. They concluded when she sued later for a violation of her civil rights that whatever
the scope of her personal constitutional rights, they did not outweigh the interests of the
state of Florida in preserving of the life of the unborn child.

Laura Pemberton is a religious woman who opposes abortion profoundly. But it turns out
that her right to give birth in the respectful healthful way she wanted was denied to her
based on the anti-abortion arguments that re being used to argue that Roe and legalized
abortion should be recriminalized and women subordinated.

Just to show you, Laura Pemberton did have that birth by cesarean surgery, she now had
two cesarean surgeries, her uterus was twice scared. She came to a conference where we
brought together birthing rights advocates with people who advocate for abortion. She was a
little nervous about coming to a place who had people from Planned Parenthood, people
who she was taught to fear. She was very happy to see the older woman in the middle, Ina
May Gaskin who is the mother of modern midwifery at the conference. And she said she
would come to speak to us only if she could bring her whole family including her two boys,
the twins who she gave birth to vaginally after the two prior cesarean surgeries and the little
girl in the red skirt.

So, no women are not always right, but it is a question of do we create a system of law of
which women upon becoming pregnant lose their civil and human rights to be the ones to
make mistakes in the course of exercising their right to life their right to liberty. Ms.
Pemberton’s case is very telling as is Angela Carter’s. She lost her right to due process, she
lost her right counsel, she didn’t get a court appointed lawyer the decision in the Angela
Carter case, a life and death decision took place in a day. For people on death row, it’s an
average of 12.5 years of appeals and hearings. If you look at the arguments being made on
behalf of Terri Schiavo, who was in a persistent vegetative state, a complete vegetative
state. The argument made on her behalf was every life should be treated as not futile as
worth living and should have as much due process as possible. And her due process
included going all the way through the federal court system multiple times, going to the
Supreme Court, Federal legislation on it. The only two groups that defended the forced
surgery in Angela Carter’s case were Americans United for Life and the United Catholic
Conference, which, I think really articulated the true meaning of pro-life, they were only
defending the one life, that of the unborn child and literally argued in her case Angela
Carter was going to die anyway. It was futile to do anything but to give that unborn child a
chance and it was worth doing even though it did not survive.

Aisha Machen was pregnant she was in labor for thirty-six hours, her water had broke and
people were concerned about an infection. She wasn’t refusing any cesarean surgery but she
believed as a matter of religious principle, that’s how she articulated religion for her, she
got to decide, she said, ‘let me off the table and walk around, maybe I won’t need cesarean
surgery’. They refused, they called an emergency court hearing again a lawyer appointed in
the middle of the night no opportunity for nay kind of due process and no right to bodily
integrity or medical decision making the judge in the middle of the night came in and said
simply put all that stands between this unborn child’s life is a scalpel. He erased Aisha’s
Machen’s body, her abdomen, her uterine wall, the muscles that had to be cut through, all
that stood between this fetus and life was simply put a surgeon’s scalpel. These cases make clear that what’s happening is not simply a removal of a right, a limited right, but rather pregnant women’s humanity of their personhood, their right to be protected under the law.

This is a case, Julie Starks, was arrested at what was reputed to be a methamphetamine lab, her name was on the lease, so she was arrested for that. She was pregnant. The child welfare court got involved at the request of the prosecutor. Bail had been set at some reasonable level at something like twenty thousand dollars which she could have afforded. But they sought to have the unborn child declared dependant and the family court judge who had no jurisdiction raised her bail to a level which kept her in prison through the course of much of her pregnancy where she became dehydrated, where she had to go to the emergency room if you think jails are places that protect unborn life or regular life, you have not visited American prisons. So the right to bail, so you have the right to life, the right to liberty, the right to bodily integrity, the right to due process. If the anti-choice movement or the pro-life legal movement succeeds and the unborn are recognized as being legally separated from pregnant women, a woman upon becoming pregnant can say goodbye to any kind of informational privacy right. Because anything she does that a doctor, her husband, her neighbors, anybody else perceives as risking harm to the unborn child becomes subject to child welfare laws, criminal child abuse laws.

And this is a picture of Christine Taylor who, we don’t even have these laws yet and it’s happening. In Iowa, she had moved there with her two children, she was struggling to make a life for herself, she was separated from her husband. They had a very painful conversation on the phone. And after she turned around from talking on the phone, she fell down the stairs. An ambulance came she was fine, but she was so worried about her unborn child that she asked to go to the hospital and she was pretty hysterical. And in the course of questioning it came up that she was unhappy I guess she had said that she had maybe even thought about having an abortion and the hospital nurse called the police. She was able to leave the hospital, baby was fine, she was fine. Driving home, a police car stopped her and arrested her for attempted fetal homicide the theory being that she had somehow thrown herself intentionally down the stairs. This is what the world starts to look like and most of the cases we have are really as a result of doctors and hospitals reporting pregnant women to the authorities.

One of the things that I find particularly worrisome, we live in a world where we have room for many points of view, but if it is really true that a woman who has an abortion is no different from a murderer, we set up a very interesting moral hierarchy what we’re seeing more and more is this every kind of killing has a defense, self defense, there are certain circumstances war, in which all of the kinds of killing that both men and women at least under some circumstances can be defended and justified. What is interesting to me is the only kind of killing, and I will say that many women who have abortions feel that they are killing, that they feel that they have to for a variety of life saving reasons for themselves and their families and their futures. It is the only kind of killing that is never justified. So the only kind of killing that is never justified is the only kind that women can do and women alone can do. And it becomes the gravest moral evil, it becomes a greater moral evil than government sponsored genocide it becomes a greater moral evil than government sponsored holocausts. It becomes a reason to dehumanize women because they are never morally justified in making decisions that involve ending a pregnancy.

Other aspects of rights that are lost, in medical university of South Carolina which Dorothy Roberts has so eloquently written about in a case that we brought. Women were being
secretly searched for evidence of drug use and if they were positive, hospital staff reported them to police. They took them out in chains and shackles, they violated ultimately as the US Supreme Court said their fourth amendment rights which had been justified by the claim that we can do this to serve the need of the unborn. Women were taken there still bleeding from having given birth, their supplies were taken away and they were kept there in filthy circumstances separated from their newborn children. And it was a policy in the South particularly that was targeting African American Women and the obvious racism of this policy was applied only at the time to African American Women was justified again, why? Because we’re saving black babies. It becomes a cover for justifying every kind of deprivation of rights. And it is a violation of reproductive rights whether to end a pregnancy or to go to term.

In many of the cases that we’ve found we see that the crime for women who are pregnant have drug problems continued to term is articulated as the crime of giving birth. These are from various arrest warrants, ‘Ms. Arnold did on August 27, 1993 wilfully and unlawfully give birth to a male child’. And it goes on to say, ‘who was exposed’, but it’s articulated as Tomeka Tomas gave birth to a baby boy. The defendant gave birth to her child. This is the crime that is being articulated around the country. And most of these start with African American Women many of whom use drugs because they are the least popular and the most vulnerable pregnant women. And then they create a precedent that then allows the arrest of every woman and I’ll take you through that. And also the notion that they are the worst of all. I think this is a little out of order, but as some of you know there’s been a billboard campaign that shows African American child and it says that the most dangerous place for an African American child is in its mother womb, well who’s womb is that? An African American Woman, so are we really saying that the most dangerous person in terms of African Americans are their own mothers and the website that you’re directed to say, ’there’s a battle being waged in the United States that is taking more lives than any foreign war or act of terrorism’. So when I was talking about the moral hierarchy, terrorism: bad, but not as bad as women choosing to end pregnancies when they need to. Foreign wars that go on forever and deplete our country of the resources we need: maybe bad, but not as bad as the taking of innocent life by the women who are raising our children doing eighty percent of the housework and two-thirds of the childcare. The result of all of this is not those who would like to have legal segregation between the unborn and the pregnant women, the fetuses, eggs, and embryos they carry. The result will not be like before Roe v. Wade. Before then, there were women who were arrested for having illegal abortions, but it was rare, the focus was more on the doctors and the penalty was for the crime of illegal abortion which at most was two to ten years, it’s not insignificant. But we now see already that women are being arrested as murderers. Katherine Barnett who had been essentially by pimps forced to prostitute while she was pregnant, they kept doping her up, was suffering a miscarriage on the streets of Indiana, the police came, saved her from them, took her to the hospital where she suffered a miscarriage and they charged her with murder.

This mother gave birth to a child who suffered from Sudden Infant Death Syndrome. She had a history of drug problems, that’s not what caused the Sudden Infant Death, she was charged with murder.

This woman who had no intention of losing her pregnancy, this is Regina McKnight a woman who loved her children suffered a still birth that they blamed on her drug use, I will say that she was convicted of homicide by child abuse and sentenced to twelve years in jail.

Melissa Roland in Utah, gave birth to twins one was stillborn she was arrested for murder...
why? Because two weeks earlier she had refused a cesarean surgery. She ultimately gave birth by cesarean surgery the argument was that by refusing the cesarean surgery two weeks earlier she had caused the death of her unborn child and was going to be punished as a murderer. Again, in most of these cases including Regina McKnight’s we were able eventually the court said that she had inadequate representation, that we now know that cocaine and other drugs do not cause still births that they’re not more dangerous. This is the unanimous opinion of the South Carolina Supreme Court not a group of radical feminists making stuff up. That she was finally let out after serving eight years in prison. And the law in South Carolina that first recognized, by using African American women, who were accused of using drugs, recognizing that you could treat eggs, embryos, fetuses, or in South Carolina viable fetuses, as they are legally separate.

Jessica Clyburn eighteen, eight months pregnant and depressed, threw herself out of a window she landed on an awning and survived but lost the pregnancy and she was arrested for homicide by child abuse, on no drugs, no intention of killing her baby, she was depressed. And what happened to her she went to jail and even though many of us offered to help because she was charged with murder she wasn’t going to get out on bail or bail that she could afford and so rather than face ten years of litigation she plead guilty to manslaughter so that she could get out of the horrendous conditions that she was in.

I want to talk about reasons for hope I know that telling these stories are often shocking and depressing. It’s hard not to be, but here are some of the reasons why I think I maintain hope. One is you can’t limit the anti-abortion stuff, if you call pregnant women killers, you’re calling mothers killers and it doesn’t stay limited to the abortion issue. Women giving birth in America know that today, they know it because they’re being coerced in to having unnecessary cesarean surgery. They’re not being listened to when they talk about not wanting unnecessary labor induction. Some of them are tired of law after law being passed to ensure that women having abortions give informed consent. Twenty-eight states have laws requiring so-called informed consent for abortions often it’s misinformation only two states have maternal information acts that require hospitals to disclose their cesarean surgery rates, that require them to disclose their labor induction rates. Women are tired of being mistreated and being subjected to practices that are not evidence based.

I think more and more people are tired of having the abortion issue distract attention from shared values. I don’t think we’ll all come to an agreement I think there are many ways in which we agree but I think we’re tired of having that issue keep us from talking about forty million and more people with out health insurance. A country one of two countries that doesn’t have paid maternity or paternity leave of any kind where millions of women continue to be discriminated against, pregnant women, discriminated against under our existing permit discrimination against millions of pregnant women in the work place.

And I show this, I often ask what people think this is? Can somebody in one little last minute audience participation? The fabulous audience member said, ’Is this the cemetery for the unborn?’ And I thank you for that and the answer is no. But you gave the answer I was hoping for. This was actually a demonstration at the University of Wisconsin for people in Wisconsin who had lost their lives serving in the Vietnam War. So we take a discussion about war and turn it into a demonstration about the lost unborn lives and the murderous pregnant women and mothers in America. And that is what’s happening, We use the abortion issue as a brilliant distraction.

I’m hopeful because there’s a new generation of activists and people who think and care
outside of the pro-choice/pro-life, the boxes that aren’t really working, like Exhale, which calls itself pro-voice. Once abortion became legal it meant that if abortion was bad, if it wasn’t an experience for you, if it was a sad experience, if it was a loss, if you happened to have a bad doctor, you didn’t blame it on the face, you couldn’t say it’s all because it was illegal, it’s because it was a bad experience. And the way in which we divided it up is that if you were a pro-life person and all abortion providers say that about a third of the patients who come into their clinics are people who say, ‘I’m pro-life but I need to do this anyway’. If they feel relieved, who can they talk to? And if you’re a pro-choice advocate and you feel sad, who can you talk to? And how do these issues get defined. Exhale is an organization that has free counselling that’s non-judgmental and that says what you think, what you feel as a woman or a friend of that woman or the potential father counts and we’re going to listen to you without imposing a politic on you. And Backline is another organization that offers counseling on all aspects of pregnancy without forcing you into a pregnancy crisis center or a politically correct stance of any kind.

I am hopeful because demonstrations matter. These are some of the demonstrators the women who had been arrested at the Medical University of South Carolina. I don’t think the demonstrations themselves brought us to victory, six to three in the US Supreme Court, but we know that activism matters. And one thing I want to keep in mind in these particularly scary times where anti-abortion stuff is coming down is that women, I think, invented political defiance. Because when you outlaw abortion, they have it anyway. When you make impossible for them to raise their children without committing crimes to feed them, to house them, to clothe them, they do it anyway. And it is political defiance that you saw in action in Cairo and it is political defiance that we will build and we will see again if the laws that are being proposed to once again criminalize abortion and take away women’s human and civil rights, you will see that again. I am hopeful because I think that there is a difference between pro-life and pro-lives and a difference between pro-choice and pro-lives. Because the people like the Marlows who also ran from a forced cesarean surgery, who hate abortion, who will take every baby God sends them their way, were almost forced to have cesarean surgery they came to the March for Women’s Lives not because they support abortion but because they understand what can happen if that right is lost. Women who have abortions are pro-lives, in other words they don’t think of themselves as pro-choice, as feminists who just want to defend a right in their body they think of themselves as human beings who care about all the lives at stake including the children they already have, the children they hope to have. Because we can bring together birthing rights activists this is the conference Birthing Rights Activists with people defending the right to choose abortion and because we can share values around things like child bearing with dignity. I think that in the end for me it’s that possibility of connecting around being pro-lives and recognizing that you don’t have to be a parent or ever give birth to be valued. But we can’t have a culture of life unless we value the women who give that life. And I hope you’ll join me in doing that. Thank you.

[Applause]

Dean Kellye Testey

We have a reception in room 115 but we have a couple of moments we can maybe take one or two questions before we adjourn to the reception. Any questions?

Audience 1
I know that questions of what the most appropriate and effective strategy around these issues have been very fraught within the women’s movement. I’d be interested in any comments you might have around that.

Lynn Paltrow

The question was if I have it right, that there’s the discussion of strategy has been fraught within the women’s movement. I think that would be fair. And I think if it wasn’t fraught we weren’t thinking. I do think that there may be a new generation of thinking I do think that we’ve had thirty years of kind of a certain main stream pro-choice strategy we’re clear it’s not working. I think those who would like to see abortion recriminalized have had a thirty year plan I don’t think have. And I think there’s a generation that’s willing to work with those for whom a pro-choice framework resonates and makes sense but to understand that there are women in prison, women in prison, women in neighborhoods across this country for whom that language does not make sense for whom will come together because anti-choice arguments are hurting them in family courts, the child welfare system, the criminal punishment system. And they’re coming up with a different framework the reproductive justice framework and with activism that we haven’t seen in thirty years. Oh the other thing about is it fraught? Is just to say as many people say, Andrew Smith and others, if you’re in coalition and it’s not uncomfortable and it’s not fraught, you’re not doing it right.

Audience 2

Thank you so much I think you gave us a fair jolting demonstrating to all of us, some of us may know, some of us may not all these nuances which the law is not very good in recognizing the legal framework is often about black and white the pro-choice and pro-life legal experiences of women often fly in the face of that but I’m wondering when you do argue in court how are you able to work within that framework and yet try to move it forward away from that framework?

Lynn Paltrow

The question was how do you work within the legal framework but press it and be effective in moving it in different directions? And I am somewhat cynical about what we can do with courts. And if you look at any other movement civil rights movement and others there are different times where you are going to have better success in the courts and other times in legislatures and other time sin the streets I think it is always wise to have strategies for all of them. I’ll say in the cases that we work on we’ve had way more success than I think one would expect because we do it as education that judges are very often like the rest of us, they get their information from Time Magazine, they are frightened of looking like they don’t value life and we bring in everybody from the American College of Obstetricians and Gynecologists, to the American Academy of Pediatrics, to child welfare organizations to say that these actions that seek to legally segregate eggs, embryos, and fetuses from pregnant women actually undermine maternal, fetal and child health. And what most of what will happen as a result of these laws and what is already happening, even if you don’t care about women, it is bad for babies. Because when you tell a woman you’re go to a hospital and lose your privacy rights they’re going to stop going to the hospital and they’re going to stop talking to their doctors and they’re going to stop seeking health care or complaining if the health care is bad whoever is providing it.
Dean Kellye Testey

Just a comment really. One of the things that has always interested me is the overlap between racism, sexism, and capitalism. And one of the things that I would note about this is that it’s also very much a procommodification stand point to try and separate everything out is then the more individually identified the fetus and the eggs, the more commodifiable it is in some ways. And so you mentioned the link to slavery or also to women's rights generally I would say that in each instance what I would call the repressive version of this has been really a procommodification argument as well.

Lynn Paltrow

I wouldn’t presume to repeat the Dean’s brilliant comments I might get them wrong. On the notion of commodification and the intersections of race, and sexism, and capitalism one of the observations that I think is consistent with that idea, so you’re segregating out pieces is also the fact that you have prosecutors and others saying that a woman has an obligation to create a healthy and safe environment for the life that she’s carrying. That the unborn have a right to be born healthy yet she lives in a country where she herself has no right to health care or safety or enough food to eat or enough to live on. And so we have to look at all of this.

Dean

Indeed, absolutely.

Michele Storms

Well that last response just really brings it home, doesn’t it? I mean our world is complex, you know and every time you think you sort of have a problem beat there seems to be a new twist on it, but what is something for us to take some inspiration from is that ability to look at the nuances and to really evaluate this problem in such a profound way as to what the intersections as to what this valuing lives this pro-lives is really a powerful statement and I feel really grateful that in this process we can have someone share with us the ideas, this really, really profound work that you are doing to inspire you all wherever you are as law students, as community people who are concerned about these issues and to really help us all move forward to a world that is just a little more human and just and equal for everyone and that values all of our lives. So thank you so much, thank you so much.