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Law School Report

BALDY CENTER FOR LAW AND SOCIAL POLICY

A controversy in context



Left to right: Mary Nell Trautner, assistant professor of sociology, Lucinda M. Finley, vice provost for faculty affairs and Frank G. Raichle Professor of Trial and Appellate Advocacy, and author Eyal Press.

Baldy conference explores many sides of the abortion debate

Cut short in 2006 by the freak October snowstorm, a Baldy Center conference on a perennially contentious issue, “Abortion Controversy in Context: Protest & Policy,” came together a year later with sunny skies and a diversity of viewpoints.

“Everyone who came last year came back,” reported Vice Provost for Faculty Affairs Lucinda Finley, co-organizer of the conference with UB Law Professors Athena Mutua and Martha McCluskey, “and additional people came who were not able to be here last year.”

The 2007 gathering, held Oct. 11 and 12 in the fifth-floor conference room of O’Brian Hall, expanded on the original premise, Finley said. “The initial idea was to explore why Buffalo had become so much of a center of the storm in the abortion controversy,” she said. “We expanded that to look at the larger context, to shed

light on why abortion is so controversial, to look at the impacts on health care providers, and to look at the legal restrictions that have emerged from this controversial issue.” The interdisciplinary conference included academics, health care providers, practicing attorneys, clergy and journalists.

In contrast to other law school symposia that have focused on the legal doctrines surrounding abortion, Finley said the Baldy Center effort took an approach that included the perspective of the social sciences. “One purpose of the conference was to look at social and religious movements and international activism around both sides of the issue, to get a perspective on why abortion has been an issue of such enduring controversy in our society,” she said. “There was also a subtheme centering around why, at a time when governments in the United States are more and more restrictively regulating abortion, the trend in

other countries is going in the other direction.

“This broad mix of distinct perspectives was thought-provoking and helped advance our understanding of some of the reasons abortion is contentious and the import of different legal regimes around the world.”

Diverse panel discussions dealt with Buffalo’s position as a focal point of abortion protest: whether legal change is more doable through courts or legislatures; the new limits on Roe v. Wade; the rhetoric of the abortion discussion; human rights and reproductive rights; and the experiences of health care providers.

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Some voices from “Abortion Controversy in Perspective”:

Eyal Press, journalist and author: “Depending on the poll, between 60 and 80 percent of Americans support keeping abortion legal some or all of the time. There is a broad center that abortion should be regarded more or less as it is regarded in Europe: as a medical service that is a part of life.

“Two generations of women and men have grown up thinking this is secure. There is a sense that they may chip away at the protections, but I will not have to be in a panic situation if I get pregnant. On the other side, the existence of Roe, the idea that this is ultimately in the courts’ hands, has enabled Republicans in Congress and the Senate to speak rhetorically in favor of a goal they do not actually support. This political support for abortion means legislators do not really want to overturn Roe.”

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Betsy Cavendish, executive director of Appleseed, a non-profit network of 16 public-interest justice centers: “There can be strategic and tactical questions about when to go for a big win and when to go for incremental wins. It overstates the explosion of Roe to think it came out of nowhere. There was a progression of cases, and there was some thought behind it.

“A judicial decision has more finality than a legislature. You do not have to pay attention to every committee chair in all 50 states every year to see if you are going to



Left to right: Martha T. McCluskey, William J. Magavern Fellow and professor, and Athena D. Mutua, associate professor

lose the right to choose.

“There is a misperception that the pro-choice groups are all abortion, all the time. They are about sex education, exercising moral agency, oriented toward a broader agenda. But nobody wants to talk about pro-choice groups doing that.”

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Sanda Rodgers of the University of Ottawa Law School: “Abortion is included in the universal, state-provided health care we enjoy in Canada. Sixteen percent of hospitals provide the service. Coverage and provision varies by province.

“Barriers to the service include misleading information given by anti-choice doctors and hospital switchboard operators. Doctors sometimes also delay access, or direct women to anti-choice organizations. Also, RU-486 has not been approved for use in Canada.

“To focus on abortion rights without focusing on those women who cannot access abortion is an insufficient focus – women who are young, who are poor, who have to travel large distances. Our attention has to be there as well.”

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Corinne Schiff of the American Civil Liberties Union’s Reproductive Freedom Project, on the U.S. Supreme Court’s affirmation in *Gonzales v. Carhart* of a ban on “partial-birth” abortion: “This does not come out of nowhere. It is the next step in a very carefully planned long-term strategy to take *Roe* apart bit by bit. In *Carhart*, the court gives a strong boost to the anti-abortion side. Throughout the opinion, women are referred to as ‘mother’ – even women who have never had children. Specialists are called ‘abortion doctors.’ The fetus is repeatedly referred to as an unborn child or a baby.

Left to right: Rev. David Selzer, Episcopal Church of the Good Shepherd in Buffalo, Isabel Marcus, professor, and Johanna Schoen, Women’s Studies, University of Iowa.

“Perhaps most critically, the court no longer holds that women’s health is paramount. The court says other interests can trump that. Here the winning interest is promoting respect for embryonic or fetal life. This is about how an abortion can be performed and whether a doctor can perform a medical procedure that she believes is best for her patient.”

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Helena Silverstein, a professor of government at Lafayette College, on laws now in place in 10 states that require a woman considering abortion to be given the option to see ultrasound images of the fetus: “Even optional viewing legislation is problematic because it suggests to a woman there is something she ought to see, and if she does not look at it she is being irresponsible. This is paternalistic, manipulative, it intrudes on her freedom – it is problematic in many ways.

“We might say that it is emotional blackmail to do this, and I agree. But the court at this point accepts emotional blackmail.”

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Caitlin Borgmann, of City University of New York Law School, on “the rhetoric

of life and motherhood in the abortion debate”: “Abortion rights opponents have attempted to cast the fetus as a person, with some success. The rhetoric portrays women as mothers, therefore abortion is seen as slashing the bonds of motherhood. Legislation is portrayed as protecting women from exploitation by abortion providers.

“I argue that defenders of abortion rights should begin head-on by addressing the issue of the fetus as a person and affirmatively reject it as a basis for legislation. This requires that we examine this language of life and motherhood and fetal personhood. They use these terms, and rarely is it demanded in the public discourse that they define the terms. Once fetal personhood is no longer the centerpiece of discussion about abortion, a very different discussion of abortion can begin.”

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Mark Steiner, a professor of communication studies at Christopher Newport University: “It really does upset me when I look at what passes for critical engagement and public dialogue, as someone who identifies with the pro-life movement.

“The rhetorical strategies are really very similar on both sides. If you look at the way the National Organization for Women argues publicly, it is almost identical to the way Operation Rescue argues. In my rhetoric class, I brought in copies of direct mailings from NOW and from Operation Rescue, and all my students had a eureka moment: Wow, all you have to do is change the labels and it is the same letter.

“Each side tries to monopolize the symbols of the debate; present your side as the defender of American values; portray the other side as extremist; and use hyperbolic discourse.”

