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Minutes of the Meeting of the  
Committee on the Criminal Court  
of The Association of the Bar of  
the City of New York, held at  
the House of the Association,  
42 West 44th Street, New York  
36, New York, at 8:00 p.m. on  
Tuesday, December 29, 1964

The roll being called, the following members were

Present:

Jerome J. Londin, Chairman  
Harvey P. Dale, Secretary  
Jay Goldberg  
Richard A. Green  
Moses L. Kove  
Leon Polsky

William Rand, Jr.  
Burton B. Roberts  
Robert K. Ruskin  
Edwyn Silberling  
Richard Uviller  
Francis L. Valente

Patrick M. Wall

Excused:

Edward Brodsky  
William Esbitt  
Sylvio J. Mollo

Courtlandt Nicoll  
Judson A. Parsons, Jr.  
Harold J. Reynolds

The Chairman presided. The Chairman called on  
Mr. Kove for his report on Article 130 of the Proposed New  
York Penal Law, "Homicide, Abortion, and Related Offenses."  
Following an extensive discussion, the following positions  
were taken by the Committee:

1. It was the sense of the Committee that Section  
130.05(4) should be amended to exclude from the definition  
of "unlawful abortifacient act" abortifacient acts committed under  
the following circumstances:

(a) When the pregnancy is the result of a forcible rape.

(b) When there is substantial evidence that the child would be physically or mentally deficient.

(c) When there is substantial evidence that the birth of the child would seriously impair the mother's physical or mental health.

(d) When at the time of conception, the mother was incapable of consent by reason of being mentally defective.

(e) When at the time of conception, the mother was incapable of consent by reason of being mentally incapacitated.

(f) When at the time of conception, the mother was incapable of consent by reason of being physically helpless.

(g) When at the time of conception, the mother was less than 14 years of age.

(h) When there is substantial evidence that the pregnancy is the result of an incestuous relationship with a person related to the mother, either legitimately or illegitimately, as an ancestor, decendent, or brother or sister of either the whole or half blood.

(The Committee was evenly divided on the question of whether it should also be lawful to commit an abortifacient act in the

following cases: (a) When the pregnancy was the result of an incestuous relationship with a person related to the mother, either legitimately or illegitimately, as an uncle, aunt, niece, or nephew; (b) when, at the time of conception, the mother was incapable of consent by reason of being unaware.)

2. It was the sense of the Committee that appropriate procedural safeguards should be considered in connection with the establishment of the particular circumstances required to be established to justify an abortifacient act. In particular, the Committee felt that the following factors should be considered in formulating an appropriate procedure:

(a) Speed

(b) Possible need for corroboration.

(c) Whose consent should be required if the female is incapable of consent. (It was the sense of the Committee, by a closely divided vote, that, under certain circumstances, individuals other than the pregnant woman should be allowed to consent on her behalf if she is incapable of consent.)

(d) Whether there should be provision for judicial determination and/or review.

(e) Whether there should be provision for some form of adversary procedure, e.g., by a guardian ad litem.

3. It was the sense of the Committee that Section 130.20(1) should be amended to except therefrom acts committed under the influence of extreme emotional disturbance for which there is a reasonable explanation or excuse (as defined in Section 130.20(2)), and that a person should be guilty of manslaughter in the second degree when, with intent to cause physical injury to another person, he causes the death of such person or of a third person under circumstances which would constitute manslaughter in the first degree as defined in subdivision 1 of Section 130.20 except that the homicidal act is committed under the influence of extreme emotional disturbance for which there is a reasonable explanation or excuse.

In the absence of the Chairman, Mr. Rand acted as Chairman and recognized Mr. Uviller for a discussion of Section 130.25(3), "Felony Murder." Although there was discussion of this subdivision, the Committee did not take any formal votes thereon, but recommended that the discussion be continued at the next meeting of the Committee.

It was proposed that the Committee take some action with regard to two recent instances of possible abusive use of publicity by prosecutors in releasing pre-trial statements about accused individuals, etc. It was the sense of the Committee that this was a more appropriate matter for consideration by the Committee on Grievances, and

that individual approaches to that Committee should be made.

There being no further business, the meeting adjourned at 11:20 p.m.

Respectfully submitted,

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HARVEY P. DALE  
Secretary