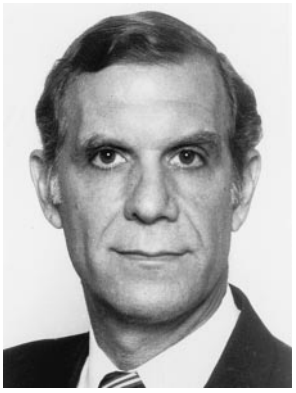
Should Refusal to Undergo a Cesarean Delivery Be a Criminal Offense?



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Those providing medical care for pregnant women certainly know that they are responsible for both the woman herself and the 1 or more fetuses she is carrying. Regardless of when one believes that life begins, we all understand that concerns about the well-being of a "viable" human fetus are as relevant as those relating to the mother who is carrying it. Book titles, conferences, and untold numbers of peer-reviewed articles refer to the "Fetus as a Patient," and those of us who focus our attention on the provision of antenatal medical and/or surgical therapy are constantly aware of the fact the recipient of our care is a resident in the pregnant woman's uterus. Physicians naturally strive to maximize beneficial outcomes for their patients, and often serve as advocates on their behalf–but are there limits to that advocacy?

Caring for more than 1 patient in a pregnancy can be very complicated because sometimes the best interests of the separate parties are in conflict. Ongoing compromise of 1 twin in utero at 27 weeks might dictate that rapid delivery would be life-saving, but that delivery could seriously jeopardize the other twin from the sequelae of severe prematurity. The appropriate therapy of worsening hemolysis, elevated liver enzymes, low platelets syndrome at 26 weeks is delivery for maternal indications, but that could seriously endanger a baby born at such an early gestational age. The first case is extremely difficult and involves a kind of "Sophie's choice," but this type of decision is most frequently made by informed parents after evaluating the degree of compromise being suffered by the affected twin and the track record of the neonatal intensive care unit into which the delivered babies will be going. The second case is usually unambiguously decided in favor of the mother, regardless of the gestational age, because of the well-established principal in our society that concerns about the medical well-being of a mother outweigh those relating to her fetus. In the case of *Senberg v Carhart* (530 US 914 [2000]), the Supreme Court has specifically ruled that a late-term abortion cannot be prohibited when a mother's health is at stake.

More than a quarter of American deliveries are currently performed by cesarean, for a variety of reasons. Women undergoing those procedures voluntarily agree to undergo major abdominal surgery to maximize the potential for a healthy outcome for their babies, even though in most cases there is no direct health benefit for the mother. Many other examples exist of things done by and to pregnant women for the express purpose of benefiting their fetuses. These range from reduction in daily alcohol consumption, and acceptance of bed rest for preterm contractions to major dietary alterations, multiple finger sticks, and frequent injections for the management of insulin-dependent diabetes, the performance of transabdominial intravascular transfusions for the treatment of severe fetal anemia in utero, and even submission to open surgical repair of neural tube defects. All of these things are done selflessly but voluntarily. What, however, should be done if a woman doesn't choose to act in what her caregivers think is in the best interests of her fetus? Is she obligated to do so? Prosecutors in Utah undoubtedly feel that she is.

Melissa Rowland was charged with the murder of her stillborn twin because she failed to accede to the advice of her obstetrician to undergo a cesarean delivery.

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These charges were subsequently dropped when she accepted a plea of child endangerment for using drugs during pregnancy. The facts of the case are tragic. Ms. Rowland is a woman with a long history of mental illness and substance abuse. According to press reports,[1–4] her first set of twins was born when she was 14 years old, 2 of her 6 children were given up for adoption, 1 was taken away by child protective services, and she had been convicted of child endangerment of 1 of the others. She had undergone 2 prior cesarean deliveries and claimed that she was terrified to have another because the doctors wanted to cut her open from "breast bone to pubic bone." She was advised to have a cesarean delivery on January 2, 2004 because of decreased amniotic fluid volume and poor fetal growth. She initially refused but finally agreed to undergo an abdominal delivery 11 days later. One twin was born alive and survived but tested positive for cocaine and alcohol. The other was judged to have died in utero approximately 2 days earlier. The Salt Lake County District Attorney's Office filed murder charges under a state statute that defines a fetus as a person for the purposes of criminal prosecution.

In this issue of *Obstetrics & Gynecology*, Minkoff and Paltrow[5] discuss the justification for, and implications of, this judicial action and find them to be extremely concerning. They present several legal and ethical arguments against forcing a woman to undergo a cesarean delivery, but the one I find most compelling is that relating to the case of *McFall v Shimp* (10 Pa DC3d 90 [1978]) adjudicated by the Allegheny County Court in 1978. In that case the first cousin of a man with life-threatening aplastic anemia was found to be the only compatible donor for a marrow transplant. He refused his cousin's request to undergo a marrow aspiration and was subsequently brought to court to seek an injunction compelling him to submit to the procedure. While finding the potential donor's refusal to help his cousin reprehensible, the court denied the plaintiff's appeal. In addition to the statement quoted in the article by Minkoff and Paltrow, the opinion from that case states, "Our society, contrary to many others, has as its first principle the respect for the individual, and that society and government exist to protect the individual from being invaded and hurt by another," (*McFall v Shrimp*) and "For a society which respects the rights of one individual, to sink its teeth into the jugular vein or neck of one of its members and suck from it sustenance for another member, is revolting to our hard-wrought concepts of jurisprudence. Forcible extraction of living body tissue causes revulsion to the judicial mind. Such would raise the specter of the swastika and the Inquisition, reminiscent of the horrors this portends" (*McFall v Shrimp*).

If a 3-month-old neonate requires a renal transplant, its mother cannot be forced to provide a kidney even if she has the only compatible one to be found. Therefore, assuming that she is competent to make rational decisions, forcing a woman to undergo a major operative procedure when she is pregnant denies her the rights she will have after she has delivered. This is clearly discriminatory. If the undelivered mother is found to be incapable of making a rational decision, other mechanisms should be brought into play to decide on an appropriate course of action; Ms. Rowland's competence was not raised as an issue in her case.

Minkoff and Paltrow[5] eloquently point to the problems that can follow from the notion that pregnant women can be found criminally negligent for behavior that endangers their fetuses. Will we be jailing women for refusing to reduce their cigarette consumption during pregnancy or being unwilling to undergo a multifetal pregnancy reduction in a high-order multiple pregnancy that results in the birth of very premature infants? There is no end to the variations on that theme. Given the propensity in this country to assign blame for virtually any bad outcome, think of the multiple possible recriminations that can be assigned whenever a baby is born that is less than perfectly healthy.

Despite my strong advocacy for the fetus, I agree with the conclusions reached by Minkoff and Paltrow.[5] Informed consent means that individuals being offered a medical option have the right to refuse it. We obtain informed consent before performing cesarean deliveries for precisely that reason. There is no question that pregnancy is a unique state and that obstetric patients have an ethical responsibility to optimize the outcome for their fetuses, but that does not mean that they should surrender their legal rights to have control over what is done to their bodies.

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