nors who appear in court are reported to be from middle-class and upper class suburban families; minors who are poor or who live in the rural areas of this largely rural state apparently are not able to take advantage of the judicial bypass.

At the same time that judicial bypass laws are making access to abortion more difficult, they do not seem to be encouraging substantially more young women to confer with their parents about their pregnancies. Abortion clinics and referral services in the three states report that some 20–35 percent of their minor patients are going to court rather than confiding in their parents. In Massachusetts and Rhode Island, from which it is relatively easy for minors to travel to another state for abortion, another 35 percent and 49 percent, respectively, of the minors who contact a clinic decide to go out of state.

A national survey has found that a little over half of unmarried minors obtaining abortions discuss the abortion beforehand with their parents.[2] Ideally, *all* unmarried minors who become pregnant would seek their parents' advice. However, many minors feel that they cannot do so, and judges and others involved in implementing the judicial bypass laws agree that when a minor believes that she cannot consult with her parents, forcing her to appear in court before she can have an abortion serves no constructive purpose. It does not foster parent-child communication. In fact, as judges who have heard these cases point out, it is precisely because of the absence of a good family relationship that many minors decline to talk to their parents. Nor do these judges believe that the process improves the ability of minors to give informed consent for abortion.

What the laws have done, observers believe, is to make it harder for minors to obtain abortions, and to put minors willing to go to court through an emotionally difficult and sometimes traumatic experience.

Discouraging minors from having abortions is, of course, what the sponsors of these laws had in mind. And there are early signs that the laws may be achieving that goal. During the period that bypass laws have been in effect in Massachusetts and Minnesota, the number of abortions obtained by minors has decreased by about one-third.

The Supreme Court has considered the constitutionality of judicial bypass laws on two occasions—first in 1979, in a case involving an earlier Massachusetts statute,[3] and again in June of 1983, in cases from Akron, Ohio,[4] and Missouri.[5] Both times, the Court reviewed laws that were not being enforced because their implementation had been enjoined by a lower court. Thus, while it has endorsed the concept of the judicial bypass alternative, the Court has not had an opportunity to consider the impact of bypass laws once they have been put into practice. It may have that chance in a couple of years, however, because lawsuits pending in Massachusetts and Minnesota contend that the judicial bypass statute makes it so difficult in practice for minors to obtain abortions that it unconstitutionally interferes with their fundamental right to end an unintended pregnancy.[6]

The Process

The Massachusetts and Rhode Island statutes require minors to have parental *consent*. In Rhode Island, the minor needs the consent of one parent. In Massachusetts, she must have the consent of both parents, but if they are divorced, the consent of the custodial parent is sufficient. Minnesota requires the minor to *notify* both parents of her intention to have an abortion, this requirement holds even if her parents are divorced, unless the noncustodial parent cannot be located through a "reasonably diligent effort."* If the minor decides to seek judicial authorization in one of these states, she must show the judge either that she is mature enough to make her own decision or, if the judge finds her not to be "mature," that an abortion without her parents' knowledge is in her best interest.

The law in each of these states requires that the courts give priority to abortion petitions so that they can be heard quickly, but only the Minnesota statute recognizes a minor's right to an expedited appeal if her petition is denied. Although the Massachusetts statute makes no provision for appeal, in all but one of the instances in which a minor's petition has been denied, appeals have been heard quickly.† In none of the three states are minors required to go to court in the county where they live or where they will have the abortion. Each law stipulates that if the minor is unable to pay for a private attorney (which is virtually always the case), a court-appointed attorney (in Massachusetts and Minnesota) or guardian ad litem (in Rhode Island) must be provided. The Massachusetts and Minnesota statutes call for the appointment of a guardian ad litem as well if the judge believes that one is necessary.

Most minors who go to court in Massachusetts are represented by a member of the Lawyers Referral Panel, a network of lawyers organized by the Women's Bar Association and the Women's Committee of the local chapter of the National Lawyers Guild in order to assist young women seeking judicial authorization for an abortion.‡ The referral panel currently has 230 members, who are paid by the state for the time they spend representing minors. Rather than name a member of the referral panel, some courts in the western part of the state prefer to appoint a lawyer from their regular list of private attorneys who represent indigent clients; possible reasons for the preference, according to referrral panel members, include a desire by the judges to deal with attorneys they know, and an antagonism to the pro-choice stance of the referral lawyers.[7] In apparent violation of the law, the court in Springfield—which trails only the Boston and Cambridge courts in the number of petitions it has heard—discourages minors from having a lawyer at all because of the court costs involved; minors now routinely appear without an attorney after they have been counseled by the local abortion clinic.

Minors are put in touch with a referral panel attorney by the state's Planned Parenthood affiliate, which has been actively involved in helping minors through the court system, or by the abortion or family planning clinic contacted by the minor. The courts also have the names of panel members.

Referral panel lawyers contact the court to schedule a hearing for the minor. Hearings normally have to be scheduled three or four days in advance, and during this past summer, when many judges were on vacation, the wait was frequently seven days. The proceedings generally last from five to 10 minutes. Because most clinics schedule abortions early in the morning, it is almost never possible for the minor to have the abortion on the same day that she appears in court.

In Minnesota, the courts rely on public defenders—lawyers paid out of public funds to represent indigent persons in criminal and other government legal actions—to represent minors seeking abortions. When the minor calls an abortion clinic in the Minneapolis–St. Paul area, she is told how to contact the public defender's office to obtain counsel. There is typically a 2–3-day wait for a court hearing. On the day of the hearing, the court appoints a guardian ad litem to interview the young woman and independently assess her maturity. The minor meets separately with the public defender and the guardian ad litem for about 10–20 minutes each and then goes before the judge. The

*The Minnesota law was written with two parts. The first part required parental notification for all minors and made no provision for judicial bypass. The second part, which was to take effect only if implementation of the first part was enjoined, included the bypass provision. Enforcement of the first part of the statute was enjoined by the Federal District Court for Minnesota on July 31, 1981.

†The one case in which an appeal was not heard was reargued before another judge, who granted the petition.

‡A pregnancy counseling agency in Worcester (in east-central Massachusetts) is an additional source of legal assistance to minors.

length of the hearing ranges from 5–10 minutes in Minneapolis to 20 minutes in St. Paul. In Duluth, the only city outside the Twin Cities area with a large abortion provider (the Midwest Women's Health Center), the abortion clinic makes the appointments with the public defender for its minor patients. Guardians ad litem are not routinely used in Duluth. Some of the Minnesota clinics send a counselor to accompany the minor during the court proceedings; some clinics are able to perform the abortion the same day the minor goes to court.

Until September 1983, Planned Parenthood of Rhode Island was the only abortion provider in the state that helped minors go to court. (Since then, one other provider has begun taking minors to court.) Planned Parenthood arranges for the court hearing, which ordinarily must be scheduled 2–3 days in advance. When the minor arrives at court, accompanied by a Planned Parenthood counselor, she meets with a guardian ad litem appointed by the court from a list of attorneys who have asked to represent minors in these cases. That meeting often lasts an hour and is followed by the hearing before the judge, which runs 20–30 minutes. The abortion is usually performed within 2–5 days of the hearing, but never the same day.

In contrast to the hearing procedure followed in Massachusetts, in which the judge questions the minor, in Minnesota and Rhode Island the public defender or guardian ad litem does most of the questioning, with the judge interrupting only if the attorney does not bring out information that the judge wants. Another difference involves the scheduling of court hearings. Before a hearing in a Massachusetts court can be scheduled, the court clerk must first find a judge who is likely to be available (sometimes the judge turns out to be unavailable after all, and the hearing must be rescheduled). The Minnesota and Rhode Island courts, in contrast, have specific times, usually in the morning, when they hear abortion petitions.

Despite the differences in the implementation of these laws, there are two important similarities. In almost every case, the minor has been thoroughly counseled by the abortion clinic or referral agency about her options, the abortion procedure and the risks involved, and the questions the judge is likely to ask. Several judges and public defenders have remarked that the minors are so well prepared for these hearings that it is virtually impossible not to find them mature.

Second, although each judge conducts the hearing according to his or her personal style, most do not wear their robes, and most hold the hearing in their private office rather than in the courtroom. The majority of judges also want to obtain certain information about the minor—whether, for example, she has received counseling and understands the risks of the procedure, why she wants the abortion, whether she is being pressured by anyone to have the abortion, whom she has talked to about the abortion, which school and community activities she is involved in, how much and what kind of work experience she has had, and what she plans to do after she completes high school. The most critical issue for the judges, however, is why the minor believes that she cannot talk to her parents about her pregnancy—a point some observers believe does not relate to the minor's maturity.

Who Goes to Court?

Data from the three states indicate that for the most part, it is 16- and 17-year-olds who decide to go before a judge; younger minors are more likely to consult with their parents.

In Massachusetts, 1,571 minors went to court between April 23, 1981—the date the abortion consent law took effect—and mid-September 1983.* There is no statewide breakdown of the ages of these minors, but of the 563 petitions heard during that period by the Suffolk County Superior Court in Boston, 297 (53 percent) were filed by 17-year-olds; 176 (31 percent), by 16-year-olds; 68 (12 percent), by 15-year-olds; and 18 (three percent), by 14-year-olds. Three petitions were filed by minors who were aged 13, and one by a 12-year-old. A random sample of 400 minors who have been represented by referral panel attorneys shows the same distribution: One-half (199) were 17-year-olds, and another 34 percent (135), 16-year-olds.[5]

The age breakdown is similar in Minnesota, where at least 1,478 minors went to court between August 1, 1981, and August 31, 1983.† The juvenile court in Minneapolis, which heard 974 of these petitions, reports that 527 (54 percent) were filed by 17-year-olds; 326 (33 percent), by 16-year-olds; 101 (10 percent), by 15-year-olds; and 16 (two percent), by 14-year-olds. Four petitions were filed by 13-year-olds.

In Rhode Island, 52 minors went to court between September 1, 1982, and September 27, 1983. (The rate at which minors are seeking judicial authorization has increased in recent months: the court in Providence reports that since the Women's Health Center in that city joined Planned Parenthood in helping minors through the process, the court has been averaging one petition per day.) No breakdown of the minors' ages is available, but Harriet Singer, Coordinator of Social Services at Planned Parenthood, notes that it is "very rare" for a minor under 16 to go to court.

There are no complete figures for these states on the numbers of minors seeking abortions who tell their parents about their pregnancy, compared with the numbers who elect instead to go to court or to another state. Service providers indicate, however, that substantial proportions of their minor patients are choosing *not* to involve their parents in the abortion decision:

- Planned Parenthood of Massachusetts, which operates the largest abortion counseling and referral service in the state, reports that between May 1, 1981, and August 31, 1983, it counseled and referred for abortion 1,968 minors.‡ Seventy-six percent of them chose not to involve their parents—805 (41 percent) elected to go to court, and 687 (35 percent) went out of state for the abortion.
- According to Planned Parenthood of Minnesota, it performed abortions for 426 minors between August 1, 1981, and July 31, 1983; a total of 235 (55 percent) had received court authorization for the procedure. Of the 308 minors who obtained abortions at the Midwest Women's Health Center in Duluth between August 1, 1981, and September 30, 1983, 130 (42 percent) had gone to court. And the state's largest abortion clinic, Meadowbrook Women's Clinic in Minneapolis, reports that in 1982, 34 percent of its minor patients elected to go to court.
- In Rhode Island, where Planned Parenthood is a major abortion provider, 175 minors contacted the agency for an abortion between September 1, 1982, and September 1, 1983. Of these young women, 53 (30 percent) obtained the consent of a parent, 37 (21 percent) received court authorization, and the remaining 85 (49 percent) were referred to out-of-state clinics.

For minors who live in Massachusetts or Rhode Island, it is relatively easy to obtain an abortion in another state. Many of those who do travel out of state go to New Hampshire. The Feminist Health Center in Portsmouth, which is only an hour from Boston, reports

---

*The courts in all counties except Middlesex County could give precise figures. Middlesex County, which includes Cambridge, could only provide an estimate, however, the court clerk believes the estimate is very close to the actual number.

†This figure includes the minors who went to court in Minneapolis, St. Paul, Duluth and four counties (Dakota, Goodhue, Olmstead and Sibley) within 100 miles of the Twin Cities. It also includes two petitions filed in Mower and Nobles Counties (which are on the Minnesota-Iowa border) shortly after the law took effect. A few minors may have gone to court in other counties.

‡This figure excludes minors who contacted Planned Parenthood in December 1981; statistics for that month are not available. The agency also performs abortions at its Worcester clinic; it is not known how many of those who went to Worcester are included in the 1,968 figure.

performing 5–5 abortions each week for Massachusetts minors: the Feminist Health Center in Concord provided 231 Massachusetts minors with abortions between January 1982 and June 1983. Elsewhere, a private physician in Falmouth, Maine, which is one and one-half hours from Boston, reports performing 2–5 abortions for Massachusetts minors each week. Massachusetts minors can also go to Connecticut and Vermont.[9]

Despite this fairly easy access to out-of-state abortion facilities, such travel is not an acceptable alternative for many Massachusetts teenagers, according to Ellen diPaola, Coordinator of Counseling and Referral at Planned Parenthood. "Many of the minors we talk to have never been out of their hometown area, and going to another state is like going to Europe. It is unthinkable." Furthermore, diPaola adds, even though Portsmouth is a small city, "many kids think of New Hampshire as 'the country' or even 'the sticks,' and they can't believe they can get a safe abortion there." There are also financial reasons for staying closer to home. Out-of-state clinics require minors to pay the entire cost of the abortion ($150–$250) in cash at the time it is performed, whereas Boston clinics will arrange for deferred payments. DiPaola also points out that arranging transportation can be difficult, since it usually requires minors to have access to a car.

In practice, the majority of Minnesota minors do not have the option of going to another state, although some of those who live in the northwest section of the state can go to Fargo, North Dakota, and minors living along the southern border can go to Iowa; very few go to either state, however. (Even though Minnesota teenagers who travel to Fargo will have to go to court there or have both parents' consent, for some minors that city's abortion clinic is more accessible than the clinics in the Twin Cities or Duluth.) In fact, minors from neighboring states and Canada come to Minnesota clinics in significant numbers, presumably because of the lack of abortion services in those areas. The Meadowbrook Women's Clinic in Minneapolis reports, for example, that between August 1981 and May 1983, it served 186 minors from Wisconsin, South Dakota, North Dakota, Iowa, Illinois, Wyoming and Canada. The abortion clinic in Duluth sees minors from Wisconsin, the upper peninsula of Michigan and the Canadian province of Ontario.

There appear to be some significant differences between the minors who go to court in Massachusetts and Rhode Island and those who exercise that option in Minnesota. At least in the Minneapolis–St. Paul area, the minors who go to court are uniformly characterized by judges and others as white and middle-class or upper class. "They are not the girls who ordinarily come to juvenile court," says Judge Allen Oleisky, who hears most of the petitions filed in Minneapolis. "They tend to be in school, to be good students, to have plans for after school, such as a trade school or college or a career, and they tend to be involved in school activities. They are . . . middle-class kids, and they tend to be suburban kids as opposed to city kids. They are overwhelmingly white."

Judge George Peterson, who has heard over 300 petitions filed in St. Paul, agrees with Judge Oleisky's observations. "One of my earliest impressions was of how different the girls who come in for these hearings are from the girls who come into delinquency court. They are far more mature and appear to be much more stable."

George Widseth, a public defender who has represented nearly half of the minors who have appeared in court in Minneapolis, estimates that fewer than one percent of them have been black. (The population of Hennepin County, where Minneapolis is located, is 3.5 percent black, and the state as a whole is 1.3 percent black.[10])

According to Tina Welsh, Executive Director of the Midwest Women's Health Center in Duluth, there is greater economic diversity among the minors who go to court in that city than among those who use the Minneapolis and St. Paul courts, but she confirms that she sees few teenagers from minority groups.

Most observers in Massachusetts and Rhode Island say that, as in Minnesota, small numbers of blacks have chosen to go to court, but that otherwise there is ethnic and economic diversity among the minors who appear in court in the two states. "I see a cross-section of young womanhood," notes Massachusetts judge Edith Fine. "Everyone from prep-school, high-achieving, college-bound young women to very poor girls with no families, some of whom are already mothers."

Judge Haigi Bedrosian, of Providence, Rhode Island, who has heard most of the abortion petitions filed in that state, says that when the law first went into effect, the court saw many "so-called upper class and middle-class girls. But they are not the only group we're seeing now, although we see a very low percentage of minority girls. What's been astonishing to me," Bedrosian adds, "is that we're getting mothers, minors who already have a baby and whose parents don't want them to come home if they get pregnant again."

Harriet Singer, of Planned Parenthood of Rhode Island, reports that her agency sees "a large assortment of minors. They range from having no money to being able to muster the funds because they have jobs. They definitely don't look [affluent]," she emphasizes. "They look like they have problems."

The small proportion of black minors who use the judicial bypass is puzzling. One reason may be a greater acceptance of out-of-wedlock births among minority groups than among white, middle-class families. DiPaola, of Planned Parenthood of Massachusetts, notes that her agency gets fewer calls from blacks generally than from other groups. It is also possible that black parents, who appear to be more likely than white parents to know when their daughters are sexually active, and more likely to suggest that they seek contraceptive services,[11] may also be more likely to know when their daughters become pregnant, thus, black minors may have less of a need to seek court authorization for abortion.

Why Do Minors Go to Court?

Many minors elect to go to court because of a difficult family situation, which, they believe, will only become worse if their parents learn of the pregnancy. "We hear of an amazing amount of [family] turmoil from the girls . . . the loss of jobs, health problems, chemical dependency and marital strains," Judge Oleisky notes. "These girls are living in homes where the parties are together physically but rarely relate to one another. The girl doesn't feel comfortable bringing a problem into the house because it will just exacerbate all the other problems." Judge Gerald Martin of Duluth agrees. "There are problems at home in almost all the cases. The father is alcoholic and violent; or the parents are in poor health or have marital difficulties, and the girl fears that the news of her pregnancy will jeopardize her parents' health or marriage; or the parents are ideologically opposed to abortion and have told their daughter that if she becomes pregnant, she will be ejected from the home or will not be allowed to go to college or will be forced to put the child up for adoption."

Some of the minors who go to court say they have a good relationship with their parents but are afraid that they will disappoint them if their pregnancy becomes known. "The girls go through this experience alone because they don't want to shatter the good-girl image their parents have of them," observes Tina Welsh. "They know their parents have high expectations for them and they don't want to disappoint them."

A substantial proportion of minors in Massachusetts and Minnesota go to court even though one parent is aware of their pregnancy and supports their decision to have an abortion. This circumstance is especially

(Continued on page 264)

(Continued from page 262)

common in Minnesota, which requires that both parents be notified even if they are divorced and the absent parent has had no contact with the minor in years. According to Judge Oleisky, 25 percent of the minors he sees have told one parent about their pregnancy; and Judge Peterson estimates that in 25–30 percent of the cases he hears involving divorced and separated parents, the custodial parent knows of the minor's pregnancy. The Minnesota courts see many minors whose fathers have deserted their families and have provided no financial support. Although they could fulfill the notification requirement by sending a letter to the father's last known address, many minors and their mothers feel that the minor's pregnancy is none of the man's business and that informing him about it is an invasion of the minor's privacy. According to Welsh, it has been suggested to her several times that in these cases, she simply send a letter to a fictitious address rather than take the minor to court, but she has refused to do so. "The law is atrocious, but I won't play games with it," Welsh explains. "I have too much to lose. It's my responsibility to protect the doctors, the clinic and myself. Our professional credibility is on the line."

Both Judge Peterson and Judge Oleisky testified last spring in support of a bill that would amend the law to make notification of the custodial parent sufficient in cases of divorce or legal separation.[12] The judges favor the change because it will reduce the number of hearings and, therefore, the demands made on the personnel involved. So far, no action has been taken on the bill.

Access to the Courts

The extra workload for already busy courts and public defenders is one reason why access to a judicial hearing is not as prompt as legislators may have envisioned when they required that abortion petitions be given precedence over other court matters. Indeed, the Minnesota law states that minors are to have access to the courts 24 hours a day, seven days a week—but it simply doesn't work that way, in Minnesota or anywhere else. No courts in any of these states are open in the evening or on weekends, times when minors could more easily arrange appointments. In all three states, there is at least a 2–3-day wait for a hearing, and in Massachusetts, it is often four days (even if there is an emergency, there is no guarantee of an immediate hearing).

In fact, it was unrealistic for the legislatures to expect that the courts could take action on these petitions on the spur of the moment, particularly if, as happened in Massachusetts and Minnesota, the number of petitions turned out to be large. Court schedules are often drawn up from two to six weeks in advance, and in Massachusetts, where abortion petitions are heard in the superior (i.e., trial) court, the judges are often involved in lengthy trials. "The superior court system wasn't built to handle this kind of problem," explains Beryl Cowan, a referral panel attorney. "It wasn't set up to absorb emergencies and flexible time schedules. It is hard to predict a break in a trial, when a hearing can be squeezed in."

Another reason why it takes several days to schedule a hearing, and why some minors do not have access to the judicial bypass option at all, is that many judges in Massachusetts and Minnesota simply refuse to hear abortion petitions. The problem is especially acute in Minnesota, where very few judges aside from the three juvenile court judges in Minneapolis, St. Paul and Duluth have assumed their responsibility to implement the law. (The three are the only juvenile court judges in these cities; however, several district and county court judges are available to hear petitions when Judges Oleisky, Peterson and Martin are unavailable.) As a result, many minors in this very large state must travel long distances to find a judge who is willing to consider their petition. Of the 1,478 petitions heard through the end of August, 1,430 (97 percent) were filed in the Twin Cities and Duluth, even though each of the state's 87 counties has a court with jurisdiction over these cases. Similarly, over 50 percent of the minors who have gone to court in Minneapolis have not been residents of the county in which the city is located. For minors who are unable to make travel arrangements, the option of going to court is lost.

The problem is most critical for minors who live in the northern part of the state and who therefore must go to Duluth for both their court appearance and the abortion. The Midwest Women's Health Center there provides abortions to minors from a vast 23-county, largely rural area of the state. Round trips of 500 miles or more are not uncommon, and, as the Center's director, Tina Welsh, explains, "there are no means of transportation available to young women who come here other than the automobile: there are no direct buses, no trains, no planes. To get the family car and to be gone 13 or 14 hours to make the 700- or 800-mile round trip is very difficult. If they could go to court in their own county, it would be much easier on these young women because they wouldn't have to make the long drive two or even three times." Although return trips are often necessary—because the abortion frequently cannot be scheduled for the same day as the hearing—the Duluth clinic does manage to get about 50 percent of its minor patients through the entire process in one day.

Judge Martin, who hears almost all of the petitions filed in Duluth, cannot understand his colleagues' refusal to implement the law. "It's an obligation juvenile court judges in any court in the state have. I don't understand the attitude that 'I simply will not hear these cases.' We're here to administer the law." Martin wonders why no one has petitioned the Minnesota Supreme Court, which issued the order that abortion petitions were to be heard in juvenile court, to enforce this requirement throughout the state.

Judge Oleisky believes that while some of the rural judges object on moral grounds to hearing these petitions, others simply consider it to be politically inexpedient for them to be involved. He points out that Minnesota judges are elected to six-year terms, and that outside the Minneapolis area, Minnesota is a conservative state.

For minors who live in rural areas, the one possible advantage of going to court in another county is that the minor's privacy will probably be protected to a greater degree. "In rural areas, it is very likely that the girl or her family [would be] known in the community, and her appearance in a small courthouse would lead to speculation," Judge Oleisky observes. "In Minneapolis, on the other hand, with so many young people around, they can [go through the judicial process] very anonymously." Nevertheless, even in a city the size of Duluth (population, 93,000), protecting minors' confidentiality can be a problem. Tina Welsh and Duluth public defenders have sometimes had to go to great lengths—such as meeting in the courthouse bathroom—to protect a minor's anonymity, because her family is well known in the community, or she has a relative who works at the court, or a judge there is a friend of the family. Welsh has accompanied to court the daughters of judges, of legislators who supported the parental notification law, and of antiabortion activists, and in those cases, the public defenders and even Judge Martin have been very disinclined to become involved.

The issue of confidentiality notwithstanding, Welsh is convinced that some minors are unable to obtain abortions because of the logistical problems entailed in getting to court, a view shared by Thomas Webber, Executive Director of Planned Parenthood of Minnesota. "Where you live has a great deal to do with whether you can get into the system." And getting into the system is crucial, since virtually every minor who goes to court receives authorization for the abortion. Indeed, since the Minnesota law went into ef-

fect, only five petitions are known to have been denied.*

In Massachusetts, there are more judges and more courts to turn to, but it is often still a problem for the attorney to find a judge willing to hear the minor's petition. Altogether, there are 62 judges distributed among the 14 superior courts in the state (there is one in each county). Eight of these judges refuse to hear any petitions, claiming that they have moral problems with abortion; two others will not hear petitions filed by minors who are more than 12 weeks pregnant. In addition, a number of judges are so rude or difficult that the lawyers avoid them whenever possible. Jaime Sabino, chair of the steering committee of the Lawyers Referral Panel, notes that although there are roughly 40 judges whom attorneys feel comfortable coming before with these petitions, judges generally rotate among different counties each month, and it is not uncommon to find that all the judges assigned to a particular county are among those who refuse to hear petitions. In such cases, the minor and her attorney must go to another county, a circumstance that can present logistical problems for the minor, although not to the same extent as in Minnesota. Moreover, lawyers in Massachusetts report that their efforts to schedule hearings are increasingly being met with resistance and even hostility by some court clerks, as the clerks and judges have grown tired of handling the petitions.

Minors in Rhode Island have gone to court exclusively in Providence because Planned Parenthood is located there. Judge Bedrosian hears most of the petitions, primarily because her colleagues have reservations about minors' not consulting with their parents. Other judges will hear the petitions, however, if she is unavailable. The state is so small that traveling to Providence has not been a problem for minors.

Different Courts, Different Sensitivities

An important difference in the systems that have developed in the three states is the court to which the abortion petitions are assigned. In Minnesota, the minors go to juvenile court, and in Rhode Island, they go to family court, both courts are experienced in dealing with young people. In Massachusetts, however, petitions must be filed in superior court, which is the trial court; judges there rarely encounter juveniles.

Judges in Minnesota and Rhode Island appear to have a greater understanding of how difficult it is for young girls to have to go to court. "This law forces the girl to come to a strange city, to go to a strange court, where she is unlikely to have appeared in the past, and to tell her story to three or four strangers," Judge Oleisky notes. "She has to talk to a public defender, whom she has never seen before and who is usually a man; she talks to a woman in the guardian ad litem program; and then she comes to see a middle-aged man such as myself who passes judgment. . . . It takes a great deal of courage on her part to submit herself to all these strangers." Judge Martin agrees. "It's a burden on the pregnant girls."

Massachusetts superior court judges, on the other hand, appear unaware of, or just do not focus on, the anxiety a court appearance can cause a minor. Judge John Forte, for example, admits that he does not know whether going to court creates any hardship for a minor or causes her any embarrassment. He is concerned, however, about judicial immunity if he authorizes an abortion for a girl who later dies as a result of the procedure—an issue that has not been raised by judges in the other states.

Judge Edith Fine, whom referral panel attorneys consider one of the best Massachusetts judges and who does not "think there is anything about a courtroom appearance that is helpful to young women," nevertheless believes that the "10 minutes or so they spend with me is not harmful or unpleasant to them." Although Judge Fine may be able to put the minors who come before her at ease, they still are likely to find the prospect of appearing in court upsetting. On the whole, Massachusetts judges seem less able to understand that, probably because of their inexperience in dealing with adolescents.

Many Massachusetts superior court judges believe that for just this reason, abortion petitions belong in the juvenile or probate court (the latter handles family and custody issues). Judge Paul Garrity, who has heard close to 100 abortion petitions, points out that "juvenile court is a smaller, more intimate setting. Judges there are more sensitive, they have more human contact. I am a law judge who tries serious crimes." And Suffolk County Clerk Michael Donovan notes that the superior courts do not have the personnel trained to deal with young people. "The probate or juvenile courts are the proper forum; they deal with juveniles all the time."

Partly for this reason, and partly because of the difficulties that lawyers are encountering in finding superior court judges who will hear abortion petitions, Planned Parenthood of Massachusetts and the referral panel are investigating ways to change the law so that petitions can be filed in juvenile or probate court as well as in superior court.

Inappropriate Questions

Only in Massachusetts, apparently, do minors encounter judges who raise issues that touch on the morality of abortion. For example, a judge in Worcester, who has adopted children, reportedly asks each minor who comes before him if she knows that he has adopted children; he then tells her that adoption is wonderful and asks if she has thought about having the baby and putting it up for adoption. "He puts in a real big plug for adoption, which is totally inappropriate," remarks referral attorney Sabino, who points out that this judge is often one of only two judges in the county who are available to hear abortion petitions.

Another Massachusetts judge, who is notorious for asking insulting or upsetting questions, has asked several minors if they have considered that they "would be able to get welfare payments for the baby [and] . . . that a lot of people are brought up that way and live a successful life."[13] In one such case, when the girl's attorney objected to this question, the judge refused to continue the hearing, forcing the minor and her lawyer to return to court another day for a hearing before a different judge. Although attorneys avoid this judge when they can, it is not always possible if he is sitting in a county where he is the only judge willing to hear abortion petitions.

Some judges continue to ask minors how they feel about having a "dead child," despite guidelines issued in June 1981 by the Massachusetts Supreme Judicial Court indicating that such questions are inappropriate;[14] and others inquire if the minor knows that abortion can jeopardize her future fertility (some of those who ask this question seem to believe, mistakenly, that abortion can have that effect[15]).

---

*One case involved a minor who had not received any counseling prior to her court appearance; the judge refused to authorize the abortion until the minor had been counseled, but once counseling was provided, the authorization was given. In another case, the judge determined that the minor did not want the abortion but was going to court in an effort to persuade her boyfriend to marry her. After her petition was denied, and the boyfriend refused to marry her, the minor returned to court and obtained authorization for the abortion. A third case was that of a 14-year-old whose father was dead and whose mother had abandoned her, but whose foster mother approved of the girl's decision to have an abortion; the judge found the minor immature, and decided that it would not be against the girl's best interest to send the mother a letter at her last known address. The letter of notification was returned undelivered, and the abortion was performed. The other denials were issued by judges in outlying counties. In one case, the judge belonged to an antiabortion group; in the other, the judge was completely unfamiliar with the law and denied the minor's petition despite her mother's presence at the hearing and testimony regarding her father's potential for violence if he learned of his daughter's pregnancy (the parents had been divorced for years). The outcome of the first case is not known; the minor in the second case obtained an abortion in Iowa.

In one case, a girl requested that her male companion be allowed to attend the hearing. The judge not only denied her request, but declared that with "any further provocation," he would have the companion charged with statutory rape.[16]

"The vast majority of judges handle these hearings with some dignity and some compassion," Sabino stresses, "but we tell people to avoid 25 percent of the judges." She points out that attorneys and minors have little recourse when judges are hostile. "Laws are generally implemented through appeals. The judges know that as long as they grant a minor's petition, there is nothing to appeal, and therefore no one will look at how they conducted the hearing. We have tried twice, unsuccessfully, to get the state's Judicial Conduct Commission to review the judges' handling of these cases." The former Chief Justice of the Superior Court was also unwilling to reprimand the judges for the way they behaved during the hearings, however. Sabino and other members of the referral panel hope that his newly appointed successor will be more concerned about these judges' conduct.

Some Massachusetts judges have begun to raise the issue of how long the minor has been pregnant and how gestational age has been determined. In a few cases, the judge has demanded to see a copy of the pregnancy test results before authorizing a first-trimester abortion. Moreover, minors who are more than 18 or 19 weeks pregnant are now being advised by their attorneys to have a sonogram done prior to their court appearance, because some judges refuse to authorize a late second-trimester abortion without one. Several judges have insisted that the minor produce an affidavit by the doctor who performed the sonogram explaining its results, and one judge has even interrupted a hearing to telephone the hospital and track down the doctor to verify the ultrasound results. Precisely why the judges are so concerned about these abortions is not clear. They may simply feel more uncomfortable in dealing with a minor who is five months pregnant. Or they may want to make certain that they are not authorizing a third-trimester abortion, either for moral reasons or because they mistakenly believe that such abortions are illegal in Massachusetts. (State law permits a third-trimester abortion to save the woman's life or protect her physical or mental health, but no hospital in the state will perform one.[17]) "It is a very different situation when you take a girl with a belly into court," notes attorney Beryl Cowan.

From all reports, unpleasant incidents similar to those reported in Massachusetts have not happened in Minnesota and Rhode Island. In both states, public defenders, guardians ad litem and judges say that questions relating to the morality of abortion are never raised. As for the question of gestational age, in Minnesota the guardian ad litem and the public defender know how many weeks pregnant the minor is, but it is not a fact ordinarily brought out in the hearing. The judge frequently does not even inquire whether the minor is seeking a first- or second-trimester abortion. "Even though it has been clear that some of the judges are not comfortable with the law, all of them have been kind to the girls and have wished them good luck," says Judy Vyse, a Rhode Island Planned Parenthood counselor who has accompanied at least 20 minors to court.

The Laws' Impact

Although supporters of parental consent or notification laws contend that these statutes are a valid way of encouraging parental involvement in a difficult decision, most observers believe that the real intent of such statutes is to make it more difficult for minors to obtain abortions. The available data indicate that these laws may, indeed, be keeping minors from having abortions, at least in their home states. In Minnesota between 1980, the last full year without the notification law, and 1982, the first full year during which the law was in effect, the number of abortions obtained by minors decreased by 33 percent, from 2,327 to 1,565.[18] The decline was greatest for minors aged 16–17, among whom the number of procedures dropped by 35 percent.* The state has not released its 1982 birth data, but many believe that the data will show an increase in the number of babies born to minors, particularly since Minnesota minors are apparently not obtaining abortions in other states. "I cannot account for what's happened to these kids otherwise," Thomas Webber, of Planned Parenthood, observes. "I doubt there has been a revolution in morality."

Data from Massachusetts on 1982 abortions and births among minors are not available. However, during 1980–1981, the number of abortions obtained in the state by minors dropped from 5,131 to 3,365, a decrease of 34 percent.[19] (Although the law took effect in April 1981, it received considerable publicity before then.) Again, the decline was greatest for those aged 16 and 17, who obtained 33 percent and 38 percent fewer abortions, respectively. During the same period, the number of minors who gave birth remained essentially unchanged (dropping only from 2,471 to 2,449).[20] In all likelihood, the sharp decrease in in-state abortions was substantially offset by the large numbers of Massachusetts minors who had their pregnancies terminated in other states. The abortion consent law seems to be having one other effect—that of delaying the performance of abortion until a later and more dangerous stage of gestation. Officials at Brigham and Women's Hospital in Boston report that the number of minors requesting second-trimester abortions has risen since the consent law went into effect.[21]

In Rhode Island, the number of abortions among minors declined slightly during 1981–1982 (from 989 to 950), as did the number of births (from 507 to 490).[22] Whether these figures reflect the impact of the judicial bypass law is problematic, since the law did not take effect until September 1, 1982.

There is no way to know the extent to which the Massachusetts, Minnesota and Rhode Island laws have persuaded minors in the three states to confide in their parents. Judges, guardians ad litem, public defenders, private attorneys and abortion providers in these states agree that when a minor feels she cannot talk to her parents about an unintended pregnancy, forcing her to go to court does not lead to greater parent-child communication. "I think the law is very unrealistic," comments Susan Stacy, of the guardian ad litem program in Minneapolis. "To expect that a family that had never talked about pregnancy, abortion, birth control or any serious issue would suddenly change into a close, supportive family when the minor became pregnant is idealistic at best."

George Widseth, the Minneapolis public defender, agrees. "We've gone from 'gee, wouldn't it be a better world if girls were able to talk to their parents about being pregnant' and taken a quantum leap and ordered them to talk to their parents or go through a dozen hoops . . . and suffer embarrassment and inconvenience. I don't think that's brought many families closer together. I agree it would be nice if all kids could talk to their parents about real tough issues in their lives, but I don't think it works that way."

Judge Oleisky points out that "the function of the juvenile court is to reconcile parents with children. This law doesn't do it." Judge Peterson shares his colleague's view that the courts are not playing an appropriate role in this area of behavior. "I don't believe that I belong in the middle of this decision. . . . I don't know why I should be the person making this decision. . . ."

Most of those who are involved with minors who go to court do not believe that the process increases the minors' ability to give informed consent. It is true that the need to go to court has substantially lengthened the

*The state does not provide separate statistics for 17-year-olds and 16-year-olds.

time that clinics spend counseling minors, now that the clinic must explain not only the abortion procedure and the risks involved, but also the court procedures and the questions the judge is likely to ask. Much of that time, however, is spent rehearsing for the court appearance. "Before the consent law, we did a lot of teaching and explaining and gave girls a fact sheet to read and sign, but they did not recite back the information they had been given," notes counselor Judy Vyse of Planned Parenthood of Rhode Island. "Now the minors have to learn everything very thoroughly." Indeed, they are being so well coached that, as Heather Sweetland, a public defender in Duluth, points out, "there is not much spontaneity in the hearing. It's like going through a little script." During the period that these laws have been enforced, only a handful of minors' petitions have been denied. Judges and others observe that they see very little ambivalence among the minors who go to court and that the minors are serious and certain about their decision. Indeed, their willingness to accept the difficulties and anxieties associated with the process is testament to their determination.

Judge Martin of Duluth acknowledges that it is "almost absurd" to expect a court to determine a minor's maturity in the space of five minutes, the average duration of hearings before his court. He points out that the court does not hold a "true evidentiary hearing. We can't call teachers or parents in an effort to determine maturity. The minor has been thoroughly counseled and knows the questions that she will be asked. The court is not in any position to make a sound independent judgment."

Massachusetts' Judge Fine, on the other hand, believes that she learns enough about the minor in five or 10 minutes to make a judgment about her maturity, and she also thinks the law contributes to the minor's being better informed about her situation and her options. "The process probably results in more thought and more discussion" than might otherwise occur, the judge suggests.

Other Massachusetts judges, however, do not share Judge Fine's opinion of the value of the law, and believe that the judicial process has been rendered meaningless in any case by the court of appeals' rapid reversal of decisions that deny abortion petitions. (Only seven Massachusetts petitions are known to have been denied, and five of the denials were quickly overturned by the appeals court.*) Judge Garrity, who notes that he is morally opposed to abortion, regards the law as "utterly preposterous. The court is a pure rubber stamp. All the law does is to harass kids. It sets up a barrier to abortion."

Judge Bedrosian, in Rhode Island, agrees. "The law is a vehicle for making abortion more difficult for minors to obtain. That's all it is."

The judicial bypass laws have placed new strains on busy courts that the state legislatures have apparently chosen to ignore. According to Judge Peterson of St. Paul, "The state hasn't put any money into implementing this law," even though the statute has increased substantially the need for public defenders and guardians ad litem, and implementation of the law can require a significant amount of the judges' time. "It probably takes four or five hours a week of our time," Judge Oleisky estimates.

George Widseth notes that his work as a public defender in abortion petitions frequently requires most of his mornings. And according to Suffolk County Clerk Donovan, his court has had to set up an entirely new department to handle the paperwork generated by the petitions, but has not been able to hire additional staff because the legislature has refused to increase the court's budget. Donovan estimates that his office spends a minimum of one hour on each petition.

The Massachusetts, Minnesota and Rhode Island laws appear to comply with the framework set out by the Supreme Court for ensuring that mature minors and minors whose best interests would not be served by parental consultation have a confidential alternative for obtaining authorization of an abortion. Nevertheless, lawsuits filed in Massachusetts and Minnesota contend that while these statutes may be constitutional on paper, in practice they unconstitutionally burden a minor's right to obtain an abortion, and they deny to poor, minority and rural minors the option of going to court. The laws are being challenged by the Planned Parenthood affiliates in each state, as well as by other abortion providers. The cases could go to trial in federal court as early as next spring.

Most of the judges who are now hearing minors' petitions in Massachusetts and Minnesota would not comment on the likely outcome of the litigation, but Judge Oleisky volunteered, "We're looking forward to seeing what is going to happen. The lawsuit might put us out of business. I think we would all be happy about that."

*The denials were overturned primarily because the judge had no basis for not finding the minor mature or because the judge allowed his decision to be tainted by his personal views. A sixth denial was sent back to the superior court to await the results of a sonogram, the minor, worried that the delay would put her beyond 21 weeks' gestation, when it is difficult to find a provider who will perform the abortion, elected to go out of state. In the case of the seventh denial, the petition was refiled and heard by another superior court judge.

References

1. Bellotti v. Baird, 443 U.S. 622 (1979), City of Akron v. Akron Center for Reproductive Health, 103 S. Ct. 2481 (1983), and Planned Parenthood Association of Kansas City, Mo. v. Ashcroft, 103 S. Ct. 2517 (1983).

2. A. Torres, J. D. Forrest and S. Eisman, "Telling Parents: Clinic Policies and Adolescents' Use of Family Planning and Abortion Services," *Family Planning Perspectives*, 12:284, 1980, Table 6.

3. Bellotti v. Baird, 1979, op. cit. (see reference 1).

4. City of Akron v. Akron Center for Reproductive Health, 1983, op. cit. (see reference 1).

5. Planned Parenthood Association of Kansas City, Mo., v. Ashcroft, 1983, op. cit. (see reference 1).

6. Planned Parenthood League of Massachusetts v. Bellotti, No. 80-1166-MA (D. Mass.), Planned Parenthood League of Massachusetts v. Bellotti, Civil Action 48-266 (Mass. Super. Ct.), and Hodgson v. State of Minnesota, 3-81 Civ. 538 (D. Minn.).

7. J. Sabino, Lawyers Referral Panel, personal communication, Sept. 14, 1983.

8. Ibid.

9. S. Gordon, Family Planning Advocates of New York State, "Out-of-State Abortions Generated by the Massachusetts Consent Law," memorandum, Aug. 31, 1983.

10. Minnesota Analysis and Planning System, University of Minnesota, *Minnesota Population and Housing Characteristics 1980 Count*, St. Paul, 1982.

11. L. S. Zabin and S. D. Clark, Jr., "Why They Delay: A Study of Teenage Family Planning Clinic Patients," *Family Planning Perspectives*, 13:205, 1981, and F. F. Furstenberg, Jr., R. Herceg-Baron, J. Shea and D. Webb, "Family Communication and Contraceptive Use Among Sexually Active Adolescents," in J. B. Lancaster and B. A. Hamburg, eds., *School-Age Pregnancy and Parenthood: Biosocial Dimensions*, 1983 (in manuscript).

12. Minnesota House of Representatives, House File No. 303.

13. Affidavit of B. L. Nordwind, Esq., Mattapoisett, Mass., Aug. 5, 1983.

14. Planned Parenthood League of Massachusetts v. Bellotti, No. 81-124 (Mass. Sup. Jud. Ct., June 16, 1981).

15. C. J. R. Hogue, W. Cates, Jr., and C. Tietze, "Impact of Vacuum Aspiration Abortion on Future Childbearing: A Review," *Family Planning Perspectives*, 15:119, 1983.

16. B. L. Nordwind, 1983, op. cit. (see reference 13).

17. R. Osathanondh, Director, Ambulatory Surgery Unit for Obstetrics and Gynecology, Brigham and Women's Hospital, Boston, personal communication, Nov. 29, 1983.

18. Minnesota Center for Health Statistics, Minnesota Department of Health, Minneapolis, unpublished provisional data.

19. Division of Health Statistics and Research, Massachusetts Department of Public Health, *Public Document No. 1*, Boston, 1980, Table 26, and E. Parker, Division of Health Statistics and Research, Massachusetts Department of Public Health, personal communication, Nov. 16, 1983.

20. Ibid.

21. R. Osathanondh, 1983, op. cit. (see reference 17).

22. Rhode Island Department of Health, *Vital Statistics, 1981*, Providence, 1982, Tables 11 and 21; and ——, *Vital Statistics, 1982*, unpublished.