

Chapter One

The Tumbling Wall

Breaking the Silence About Abortion

"Abortion is the dread secret of our society," began Lawrence Lader's *Abortion*.¹ When the book was published in early 1966, abortion was "the dread secret" that everyone knew. Somewhere between two hundred thousand and 1.5 million women received abortions in the United States each year, with most estimates hovering around one million. Of these, only eight thousand a year were legal. But these figures belie the public perception of abortion. Abortion was pervasive in numbers only; as a news story, as a political issue, and as a matter of public scrutiny, abortion had been shrouded in a cloak of silence for decades. Legal abortion was a cause without a voice. The experiences of the one million women a year who terminated their pregnancies through an underground network of abortionists ranging from back-alley butchers to Park Avenue surgeons were largely unarticulated. Abortion was taboo, and to write about it was a bad career move for a journalist; to speak about it as a politician was at best naive, at worst politically suicidal.

In 1966, however, the ice was beginning to melt. "The 'conspiracy of silence' to which Lawrence Lader alludes in his new book is gradually being breached," wrote Edwin Schur in a review of *Abortion* in *The Nation*. Abortion was gradually creeping its way into the news. For example, from 1961 to 1964, *The New York Times* published a total of only forty-six articles pertaining to abortion, the vast majority of which were about criminal trials of abortionists. In 1965 and 1966, the *Times* published thirty abortion articles each year. In 1967, that number

¹ Lawrence Lader, *Abortion* (Indianapolis: The Bobbs-Merrill Company, Inc., 1966), 1.

jumped to 140. Abortion was shifting from national secret to national issue, and Lader was at the crest of a building wave of demand for legal abortion that would break in New York just three years later and nationally in 1973.²

Abortion was not originally Larry Lader's cause. A New York writer, Lader had built his career on his biography of Margaret Sanger, the renowned champion of birth control and Lader's personal friend. Having published *Margaret Sanger and the Fight for Birth Control* in 1955, he considered abortion as the subject of his next work but rejected the notion because abortion was too thorny an issue. Instead he wrote a book about New England abolitionists, which was published in 1961. The historical parallels he perceived between slavery and illegal abortion brought him back to the issue, as did his continued devotion to Sanger and her crusade for reproductive freedom. Sanger herself was never an advocate of abortion, but Lader felt her view of the issue was based on her experience as nurse in 1910, when even hospital abortion was not safe, and Sanger had witnessed the butchery of the un-licensed abortionists who preyed on poor, immigrant women. But in the 1960s, when abortion performed by a skilled doctor was statistically safer than childbirth, Lader believed that abortion was a legitimate recourse for contraceptive failure, and thus the next logical step in Sanger's campaign for women's reproductive freedom.

Furthermore, Lader concluded that abortion was an inalienable right. He later wrote, "It seemed to me that for the state to force any woman to bear a child against her will was a flagrant and brutal abuse of personal liberty." In 1962 Lader began to solicit magazine editors for the chance to write an abortion article. He was rejected dozens of times. A year later, despite lingering concerns that it would ruin his career as a writer, he began work on *Abortion*. In April of 1965, Lader finally got a magazine article published. *The New York Times Magazine* ran a four-page piece entitled, "The Scandal of Abortion Laws." *The Readers' Guide to Periodical*

² Edwin M. Schur, "Abortion on Demand," review of *Abortion*, by Lawrence Lader, *The Nation*, November 7, 1966.

Literature lists Lader's article as one of twenty-three that year on the subject of abortion, a notable rise from the mere twelve articles published in the previous two years combined. "Until a few years ago, prospects for changing the abortion laws seemed hopeless," wrote Lader. "Recently, however, individual voices have joined in a national chorus calling for reforms."³

Despite the growing attention that abortion received in periodicals, books on the subject were sorely lacking. In fact, only thirteen of the New York Public Library's 785 current holdings on the subject of abortion were published prior to 1966. The first serious book to break the silence on abortion was written in 1958 by Dr. Mary Calderone, the medical director of the Planned Parenthood Foundation. Calderone's work, *Abortion in the United States*, stressed the normality of abortion, making use of Alfred Kinsey's studies on the subject and dispelling the myth that abortion was a sign of bad moral character. Calderone also revealed that doctors performed tens of thousands of abortions a year for so-called "therapeutic" reasons. In 1962, a radical paperback was published entitled *The Abortionist*, by Dr. X and Lucy Freeman. *The Abortionist* "portrayed abortionists as kindly but victimized public servants who risked their freedom for the sake of many." Responsibility for the book was later claimed by Dr. Nathan H. Rappaport, self-described as "the only doctor of medicine in America, admittedly specializing in criminal abortion, fighting for the freedom of women. . . ."⁴

Beyond these and a handful of other minor works, serious books on abortion were all but absent from America's bookshelves. Lader pieced together the information for *Abortion* mostly from papers and articles. "Before *Abortion* there had been nothing, absolutely nothing.

³ Lawrence Lader, *Abortion II: Making the Revolution* (Boston: Beacon Press Books, 1973), 20-21, introduction; Lawrence Lader, "The Scandal of Abortion Laws," *New York Times Magazine*, April 25, 1965.

⁴ Calderone's work is discussed in Nanette J. Davis, *From Crime to Choice: The Transformation of Abortion in America* (Westport, Connecticut: Greenwood Press, 1985) 4-5; *The Abortionist* is discussed in Marvin Olasky, *Abortion Rites: A Social History of Abortion in America* (Wheaton, Illinois: Crossway Books), 278; Nathan H. Rappaport to Howard Moody, 24 May 1967, Clergy Consultation Service Archive, Judson Memorial Church (hereafter cited as CCS Archive).

There was no material. All you had was a few crappy stories," he recalls.⁵

The publication of *Abortion* proved to be a minor breakthrough for the movement. The book was not a best-seller, but its publication chipped away at the wall of silence surrounding abortion. "Mr. Lader has performed a real service in providing the general reader with a well-documented and lucid discussion of all aspects of the abortion problem," wrote Schur in *The Nation*. Lader's book provided a much needed voice of legitimacy concerning abortion at a time when a reform movement seemed long overdue. Schur noted in his review that Frederick Taussig had complained in 1936 of "our 'ostrich-like' refusal to face the facts of abortion." Thirty years later, America's head still appeared to be in the sand. Given that the abortion issue affected at least one million women a year (and those were only the ones who managed to procure an abortion, not the total number of women who wanted one), a supportive audience for an abortion reform movement was clearly present. A series of events prior to 1966 set the stage for the struggle, and the publication of *Abortion* provided the first part of the script. Lader found himself rather suddenly at the forefront of a growing movement.⁶

Two important questions remained, however. The first was who would lead the reform movement, and the possibilities were many. Abortion was a moral, legal, medical, religious, political, and women's issue. Which groups would assume command of the struggle? The second, equally important question was what sort of action the movement would take toward its goals. Would the fight be political? Would it be waged in the courts? Would it be a mass movement that would inspire advocates to take to the streets? These two questions led to a more important question: What would be the goal of the movement? The answer to this question was by no means obvious. The possibilities ranged from mild legal reform to total repeal of all laws restricting abortion, and it was clear from the start that factions within the

⁵ Lawrence Lader, interview by the author, tape recording, New York, N.Y., 20 November 1997.

⁶ Schur, "Abortion on Demand."

movement had very different aims.

To understand the formation of the abortion movement, it is first necessary to consider the history of abortion in the United States. The history of abortion as a legal issue in America is surprisingly short. When the Supreme Court overturned existing abortion laws in its 1973 *Roe v. Wade* decision, abortion had only been a point of major legal contention for about a century, though some abortion laws date further back. Abortion by herbal potions and poisons was a fairly common practice when the Constitution was written, yet abortion was neither protected nor forbidden in it or any state constitution or legislation. Common law had dictated for centuries that abortion was acceptable provided it occurred before quickening, the moment when fetal movement is first perceptible. The reason for this allowance was partially practical, since there was no reliable way to test for pregnancy until it was physically obvious. Another reason for the common law's permissiveness was an essential difference in perspective on abortion between people living in this century and those who had lived in previous centuries. Prior to the twentieth century, a woman who was pregnant but had not quickened was perceived as having a natural "block" or "obstruction" of her normal menses. Though the origins of fetal life had been debated for thousands of years, there was no moral argument against removing such a menstrual obstruction. A woman or a physician could legally take steps to remove the blockage.⁷

In 1803, the British parliament broke with the common law and enacted legislation making abortion before quickening illegal. The new law was part of a larger effort by Lord Ellenborough, a British statesman. Ellenborough intended to end the liberalization of common law by establishing a greater number of capital offenses. The anti-abortion statute was part of omnibus legislation, and despite the new legal precedent on abortion, legislators in the United States did not follow England's example. The first domestic laws against abortion of any kind

⁷ James C. Mohr, *Abortion in America: The Origins and Evolution of National Policy, 1800-1900* (New York: Oxford University Press, 1978), 15.

were not approved until the 1820s. The first of these was a law passed in Connecticut in 1821 which forbid the use of certain poison abortifacients but held only the person issuing the potion responsible. The restriction was a minor one intended to protect women from dangerous poisons, and it applied only in cases after quickening. Three states followed suit with similar statutes. From 1828 to 1830, both New York and Connecticut passed legislation prohibiting abortion after quickening. New York's law, which became a model for most early anti-abortion legislation, held the abortionist liable, but not the patient, and an unsuccessful abortion was not considered a crime. A clause in the code set an entirely new legal precedent, however. Any person using any "medicine, drug, substance or thing whatever . . . or any instrument or means whatever" with intent to "procure a miscarriage" would be charged with a misdemeanor unless the procedure had been used to preserve the life of the mother. By allowing for abortion as a health measure and making a distinction between abortion before quickening (a misdemeanor) and abortion after quickening (a felony), the New York law opened up a Pandora's box of jurisdictional disputes between the legal and medical professions that would continue for a century and a half. Despite these more stringent regulations, abortion remained extremely common and was almost never prosecuted.⁸

Around the time of the American Civil War, a major shift occurred in the public perception and legal status of abortion in the United States. From 1840 to 1860, sixteen states enacted laws that limited or prohibited abortion. By 1869, thirty states had anti-abortion legislation, and almost all of these forbid abortion before and after quickening. "Without exception," agreed 281 American historians in a 1988 *Amici Curiae* to the United States Supreme Court, "physicians were the principal nineteenth-century proponents of laws to restrict abortion." The American Medical Association (AMA) had been founded in 1847, and it launched an aggressive anti-abortion campaign at the start of the Civil War. "From the

⁸ Mohr, *Abortion in America*, 23, 26-27.

Louisville convention of 1859 through the rest of the nineteenth century, the steadily growing AMA would remain steadfastly and officially committed to outlawing the practice of abortion in the United States . . . and the vigorous efforts of America's regular physicians would prove in the long run to be the single most important factor in altering the legal policies toward abortion in this country," writes James Mohr, an eminent historian of nineteenth-century abortion.⁹

As physicians sought to legitimate regular medicine and professionalize their field, they needed to crowd out the broad range of "irregular" practitioners who still played a significant role in American medicine. The AMA, the standard-bearer of medical science, sought to marginalize the homeopaths, allopaths, midwives, and herbalists who crowded the field. Abortion provided an ideal battleground. Irregular physicians, frequently using herbal or potion abortifacients, had a tactical edge over regular physicians whose surgical abortion methods led to infection and were greatly inferior. Abortions were in reasonably high demand, and women were likely to turn to irregular physicians, which undermined the role of regular physicians. By demanding that legislators ban abortion, medical doctors secured their legitimacy, forced out their competition, and gained power as administrators of women's reproduction.

Furthermore, a shifting perception of the morality of abortion made the medical doctors' cause difficult to dispute. Sensational stories of trunk murders and flamboyant abortionists like New York's Madame Restell began to turn the public against abortion. The public perception of the morality of abortion at the middle of the nineteenth century is a matter of some historical debate. While Mohr claims "the chief problems associated with abortion were medical rather than moral," historian Marvin Olasky argues "The evidence suggests that most abortions during that period were related to prostitution, which was a muddy stream rather than a mainstream

⁹ Olasky, *Abortion Rites*, 102; Brief of 281 American Historians as Amici Curiae, Supporting Appellees, in *Webster v. Reproductive Health Services*, No. 88-605, Supreme Court of the United States, October Term, 1988, re-printed in Eva R. Rubin, ed., *The Abortion Controversy: A Documentary History* (Greenwood Press: Westport, Connecticut, 1994), 14; Mohr, *Abortion in America*, 157.

of American life, and was definitely not viewed as an issue unrelated to morality." Another historical view is that the movement against abortion in the nineteenth century reflected a backlash against women's exertion of control over their family size. Throughout the nineteenth century the birthrate was falling, and new roles for women outside of domestic settings were part of the reason for its decline. The increasing availability of birth control and the concept of voluntary motherhood through abstinence gave women both control over their childbearing and newfound sexual freedom. "Abortion highlighted women's new sexual liberty; women's deaths as a result of abortion emphasized the dangers of sex," writes historian Leslie Regan. "The anti-abortion campaign channeled anxiety about female sexuality into support for the medical program of midwife control."¹⁰

In 1873, the leader of the New York Society for the Suppression of Vice, Anthony Comstock, lobbied for Congressional passage of "an Act for the Suppression of Trade in and Circulation of Obscene Literature and Articles of Immoral Use." The Comstock Act, as it came to be known, made Comstock himself a special inspector for the government. His jurisdiction included not only pornography, but information about birth control or abortion, two issues which had been closely linked to each other by the moral opposition. Mohr explains, "The core purposes of the Comstock Act were to enforce chastity on the young and unmarried and to preserve the subservient position of women within a 'traditional' family structure." Comstock successfully drove abortion out of the public eye. Since the 1840s, advertisements for abortionists and abortifacients had been widespread, but Comstock forced them underground. His crowning achievement was his personal arrest of the infamous Madame Restell, New York City's most prominent abortionist. On the eve of her trial, Restell slit her throat from ear to ear. "The Restell suicide of April 1878 may well have marked a turning point in public opinion in the

¹⁰ Mohr, *Abortion in America*, 75; Olasky, *Abortion Rites*, 59; Leslie Regan, *When Abortion Was a Crime: Women, Medicine, and Law in the United States, 1867-1973* (Berkeley: University of California Press), 92.

United States," writes Mohr. "As Madame Restell evidently realized and acknowledged in her own dramatic fashion, American society no longer seemed willing to afford abortion the salutary neglect it received during the first half of the century."¹¹

New York's abortion law changed ten times between 1828 and 1881, but like other abortion legislation nationwide, it experienced little further revision until the 1960s. Though abortion laws were very rarely enforced and almost never with success, by the turn of the twentieth century abortion was technically illegal in every state. Abortion had moved beyond its connection with birth control and become an important issue for the nativist movement. Americans' fears of growing immigrant populations in urban centers pre-dated the Civil War and were reflected in nativist political movements like the "Know-Nothings." In the first decades of the twentieth century, nativism developed into an acute fear of "race suicide." With a growing minority population and waves of Catholic immigrants coming into the country, white Protestants grew fearful that they were under-breeding themselves out of existence. This fear was escalated by the policies of the fascist regimes of the 1930s. Manpower and empire building became closely linked, and countries such as Germany, Italy, and Japan used strict measures to ensure increases in their populations. Meanwhile America's burgeoning industries made population growth very appealing for economic as well as racial reasons. "Rapid population growth was shown as the chief stimulus for economic development because it gave rise to social repercussions and counter-pressures that offset the initial economic disadvantages," writes the sociologist Nanette Davis. The combination of these forces ensured that restrictions on abortion would not be lifted.¹²

Despite the legal barriers, however, abortion in the first half of the twentieth century was still fairly common. In a study of abortion statistics from 1890 to 1950, Alfred Kinsey found

¹¹ Mohr, *Abortion in America*, 196; Brief of 281 American Historians as Amici Curiae, 17; Mohr, *Abortion in America*, 199.

¹² Davis, *From Crime to Choice*, 27.

that between eighty-eight and ninety-five percent of the unmarried and pregnant women in his sample had had at least one abortion, and that eighty-seven percent of all reported abortions had been performed by licensed physicians. The estimates of the annual number of abortions in America from the 1930s to the 1950s range from two hundred thousand to one million. Given that abortion was one of the nation's largest criminal industries, prosecutions were remarkably few and were usually limited to abortions that resulted in the death of the patient.¹³

One of the most significant developments during this time was an increase in therapeutic abortions. Dr. Frederick J. Taussig proposed liberalizing the grounds for therapeutic abortion in a report published by the National Committee on Maternal Health in 1936. Taussig's recommendations were less radical than those of a very small number of his colleagues who were also proposing liberalization, but the medical community refused to lobby for reform of the nation's abortion laws. De jure liberalization was rejected. Instead, Regan writes that "during the 1930s, individual physicians and the profession as a whole accepted a de facto expansion of the accepted indications for therapeutic abortions. . . ." Debilitating illnesses such as tuberculosis, heart disease, and later rubella became causes for therapeutic abortion. During the 1940s and 1950s, psychiatric justifications for abortion increased dramatically. By 1947, abortions for psychiatric reasons had risen to twenty percent of all therapeutic abortions. One study reported that half of all therapeutic abortions in the 1950s were performed for reasons of mental illness, a statistic that represented both a decline in disease-related therapeutic abortions and an increase in the legitimacy of psychiatry. Psychiatric indications were ambiguous enough to allow doctors to bend the rules for patients who could pay their fees. Still the abortion decision remained firmly in the physician's control, since the indefinite psychiatric requirements for a therapeutic abortion were judged at his discretion. "That abortion was highly lucrative and fairly difficult for outsiders to detect in a regular medical practice enabled doctors

¹³ *Ibid.*, 4.

to circumvent the law with near impunity," writes Davis.¹⁴

With the increased availability of therapeutic abortions, a two-tiered system developed. Women who could afford the best in medical care were likely to have little trouble obtaining a safe abortion. Doctors performed so many therapeutic abortions for monetary gain that the term "therapeutic" was determined largely by the demands of the market. From 1943 to 1962, ninety-one percent of therapeutic abortions in New York City were performed on white women. For women who couldn't afford the outrageous prices of medically-licensed abortionists, options were limited to dangerous home remedies, abortifacients, back-alley abortionists, and the few legitimate doctors who had been marginalized enough in their profession to turn to abortion as a living.¹⁵

The most severe repression of abortion occurred during the 1950s. The pressures for population growth cited above combined with a resurgent emphasis on women's domestic roles increased the constraints on abortion. Regan asserts that "the repression of abortion in this period was new, not normal, and should be incorporated into our understanding of the multifaceted and far-reaching effects of 'McCarthyism.'" Abortion was deemed "subversive" in the face of the nation's powerful pro-natalist ideology. The number of police raids on abortionists increased dramatically, a trend on which corrupt policemen greatly capitalized. Prosecutors routinely threatened abortionists and their patients with public exposure, vastly increasing the fear of women who were considering abortion.¹⁶

Perhaps the most repressive measure against abortion in the 1950s was the introduction of the hospital committee. In the 1930s and 1940s, abortion decisions in hospitals were typically made through the consultation of two physicians, though even this simple protocol

¹⁴ Regan, *When Abortion Was a Crime*, 143, 201; Davis, *From Crime to Choice*, 66.

¹⁵ Regan, *When Abortion Was a Crime*, 205.

¹⁶ Regan, *When Abortion Was a Crime*, 163-168.

was often neglected altogether. Consultation was used more to diffuse responsibility and avoid the intervention of administrators than to ensure a correct medical decision. In the late 1940s, however, the rules began to change. Federal grants required hospitals to keep more complete records of surgical procedures, including the removal of fetal tissue. Abortions were thus considerably more difficult to disguise. The pro-natalist pressures of the 1950s encouraged hospitals to drastically reduce the number of abortions they performed. An abundant record of abortions became a black eye for hospitals, and most sought to avoid the ignominious reputation of being an "abortion mill." Instead of simply conferring with a colleague, doctors were required to have their abortion requests screened by committees consisting of specialists such as obstetricians and psychiatrists. These therapeutic abortion committees became universal during the 1950s. Abortion became a task for specialists, which further diminished the number of doctors willing to perform the procedure; most highly-trained obstetricians sought to avoid the vulgar label of "abortionist." Davis writes that since hospital committees existed largely to diffuse responsibility for abortions and reduce their numbers, they "took a conservative reading of the law, that is, abortion to 'preserve' the mother's life. 'Severe' medical problems were the only medical indications honored, or at least recorded."¹⁷ The days of bending the rules and creating psychiatric justifications for abortions had passed. Smaller hospitals that were unable to staff an abortion committee with specialists ceased performing abortions altogether. Another alarming trend was the growing tendency for committees to require patient-elective or physician-recommended sterilization as the "price" for abortion. This was particularly true in metropolitan hospitals and in the cases of poor women with multiple pregnancies. Not surprisingly, the number of appeals for abortion decreased even further.

The effects of the increasingly repressive attitude toward abortion during the 1950s were immediately apparent. Abortion was driven further underground than ever before. Abortion

¹⁷ Davis, *From Crime to Choice*, 66-69.

became considerably more expensive, more difficult to obtain, and more dangerous. The wall of silence surrounding abortion transformed into a wall of secrecy. "What had been a fairly open practice became more clandestine as abortionists devised ways to avoid police detection," writes Regan. As prices increased and the supply of doctors willing to perform abortions decreased, non-licensed abortionists entered the market in greater numbers. Hospitals reported increases in the number of women admitted for botched or incomplete abortions. Horror stories of underground abortions during this period are abundant, but the numbers speak for themselves: between 1951 and 1962, the number of abortion deaths in New York City doubled in both absolute and relative terms. Abortion accounted for a quarter of maternal deaths among white women and half of maternal deaths among women of color. These statistics are particularly troubling because improvements in medical procedures and antibiotics made abortion a safer procedure than ever before. The number of annual abortion deaths in the early 1960s remains a matter of debate. A study by the University of California placed the figure somewhere between five thousand and ten thousand, but Dr. Christopher Tietze of the National Committee on Maternal Health estimated the number was only one thousand annually. Even such a low estimate must be viewed in the context of the simplicity and safety of the procedure when performed by a professional. Tietze estimated hospital abortion to be one-sixth to one-tenth as dangerous to maternal health as pregnancy and childbirth. The increase in the safety of hospital abortion, however, was made virtually irrelevant by the comparatively small number of abortions performed in this setting. In the early 1960s, only eight thousand of the estimated one million annual abortions were performed in hospitals.¹⁸

The uniquely repressive environment of the 1950s and early 1960s fueled the development of the abortion movement. "The abortion rights movement arose out of the deteriorating conditions of abortion and the frustrations of both women and physicians," writes

¹⁸ Regan, *When Abortion Was a Crime*, 193, 211; Lader, *Abortion*, 3, 16-17.

Regan. Davis claims, "The cultural turbulence of the 1960s gave birth to a wave of liberationist movements, setting the stage for collective attacks on criminal abortion laws." Davis notes that these various movements, though mutually interactive, were organized separately. Though they shared symbols and overlapped in goals, constituents, and sometimes even leadership, the abortion rights movement and other liberationist movements were relatively distinct. "The wave of movements did not provide a progressive, unified push for abortion reform as much as acting as a catalyst for accelerating institutional crisis," writes Davis.¹⁹

When Larry Lader was writing *Abortion*, however, it was still unclear who would take advantage of the institutional crisis and lead the movement. In 150 years of illegal abortion, hardly a hint of an abortion rights movement had reared its head. The medical and political institutions that were responsible for the illegality of abortion showed little interest in initiating reform. Abortion was simply too dangerous a cause. As Lader had discovered in 1962, even journalists were afraid to touch the subject. Davis notes, "Established groups winced beneath the ideological thrust of reform, envisioning the birth of a new, possibly dangerous reproductive regime—dangerous because it was out of their control. Elites rose to the occasion, and the abortion movement was launched."²⁰

A combination of events in the early 1960s shed new light on the issue of abortion rights and brought together some of the organizers who would form the movement's vanguard. The first such event was the crack in the media's wall of silence caused by the uncommon case of Miss Sherri Finkbine of Phoenix, Arizona. The Finkbine case provided a fortuitous combination of a media-friendly story and a controversial abortion. Though her request for an abortion scandalized abortion opponents, early advocates for abortion rights could not have hoped for a more pristine protagonist than Sherri Finkbine. A twenty-nine year-old mother of four whose

¹⁹ Regan, *When Abortion Was a Crime*, 216; Davis, *From Crime to Choice*, 109-110.

²⁰ Davis, *From Crime to Choice*, 110.

husband was a high school history teacher, Finkbine also found time for her own career as Miss Sherri on the Phoenix edition of the television show *Romper Room*. In the winter of 1962, her husband had travelled to Europe and purchased tranquilizers that included the drug Thalidomide. That spring Finkbine discovered she was pregnant and took some of the tranquilizers to calm her nerves. In July she read an article about the banning of Thalidomide, which was attributed to the birth defects of more than five thousand babies in Europe. The link between Thalidomide and phocomelia (flipper-like limbs) or an absence of limbs was conclusive and deemed most damaging in cases where Thalidomide was ingested during the first trimester. Finkbine consulted her doctor, and within days a panel approved her for a therapeutic abortion. The abortion would have gone as scheduled, but Finkbine decided to break the silence.

In order to alert other women to the dangers of Thalidomide, Finkbine told a Phoenix newspaper her story. The hospital administrators, fearing protests and legal action, revoked their approval of her abortion, and the story was immediately picked up by the national press. In the last week of July and throughout the month of August, the national media followed Finkbine's case closely as she and her husband searched for an abortion. While religious leaders from across the spectrum weighed-in with their opinions, the local prosecutor declared that if the abortion were performed in Arizona and someone were to file a complaint, he would have to prosecute Finkbine. Ultimately the Finkbines were able to obtain an abortion in Sweden. The horror stories of Thalidomide deformities combined with the wholesomeness of Finkbine made her tribulations a phenomenal human interest story. For the first time the media had a national news story about abortion that did not pertain to the prosecution of an abortionist, immoral women, or vice of any kind. The Finkbine case finally exposed the difficulties encountered by married women with "legitimate" cases for abortion. "If by speaking out against the drug I prevented even one baby from this type of birth and one mother from the heartbreak of seeing it born, then my hurt has been small indeed," wrote Finkbine in 1967. "Then, too, I hope that our

case serves as a catalyst of sorts for abortion reform in our country."²¹

The momentum gathered by the public failure of therapeutic abortion policies in the case of Thalidomide carried over into the next crisis of birth defects: the German Measles, or rubella, epidemic of 1963-64. Since 1941, researchers were aware that children born to mothers with rubella were vulnerable to heart disease, blindness, mental retardation, and infant death. The 1963-64 epidemic led to an estimated fifteen to twenty thousand cases of defective and malformed infants. New York hospitals doubled their rate of therapeutic abortions in response to the crisis, and rubella was the justification for fifty-seven percent of therapeutic abortions in 1964. Though rubella as a justification for abortion raised troubling questions about eugenics, it also raised public awareness of abortion as a legitimate medical procedure that should be available to women. The combination of therapeutic abortion for Thalidomide and rubella further breached the wall of silence surrounding abortion, lending the subject greater legitimacy as a national issue.²²

Progress toward the reformation of abortion laws was finally beginning. In 1959 the American Law Institute (ALI), a national think-tank of lawyers, judges, and criminologists, completed a draft of a model penal code. The ten-year effort was formally approved by the ALI in 1962 and immediately won national attention and prominence. The document's section on abortion garnered particular notice. Though "unjustified abortion" was still punishable as a felony, the code recommended legally sanctioned "justifiable abortion." The sub-section read, "A licensed physician is justified in terminating a pregnancy if he believes there is substantial risk that continuance of the pregnancy would gravely impair the physical or mental health of the mother or that the child would be born with grave physical or mental defect. . . ." The code also

²¹ Sherri Finkbine, "The Lesser of Two Evils," in *The Case for Legalized Abortion Now*, ed. Alan F. Guttmacher (Berkeley: Divalo Press, 1967), 15-25, as quoted in Rubin, ed., *The Abortion Controversy*, 71.

²² Lader, *Abortion*, 36-39.

allowed for abortion in the case of rape or incest. Hospital committees were to be supplanted by the agreement of two physicians. The penal code immediately came up for debate in five state legislatures, and though the abortion section drew particularly heavy fire, the first genuine legal debates on abortion were underway. The first abortion reform attempt in the nation came in 1961 in California, when a reform effort based on the 1959 draft of the ALI model penal code fell flat. Another bid for abortion reform was initiated by Assemblyman Anthony Beilenson in 1963. Despite early signs that the bill would go the Assembly, it was killed in committee in 1963 and repeatedly suffered a similar fate in subsequent years. Nevertheless, the ALI code provided the impetus needed to make abortion reform a real possibility. The code represented the careful compromises of the nation's best legal minds, and it offered legislators a valid starting point for debate.²³

What was lacking, however, was a movement to support the legislators who were willing to fight for reform. Two organizations devoted exclusively to abortion reform were gathering steam in the early 1960s. The first was the Society for Humane Abortion (SHA), a San Francisco based group founded by Patricia Maginnis. Maginnis had had three abortions herself, the latter two of which were self-induced through methods she learned in the Women's Army Corps. The final one landed her in the hospital with a severe infection, and she resolved to devote herself to fighting for abortion reform. The SHA was focused primarily on raising abortion awareness, a task Maginnis had begun by handing out flyers on street corners in the early 1960s. By 1966, the SHA was staging radio and television debates, public meetings, and a conference on abortion rights. It would not support the Beilenson bill, however, because it considered the reform legislation a "sidestep" that left a woman's abortion rights in the hands of her doctor and required that abortion be performed in hospitals, making it a dauntingly

²³ American Law Institute, *Model Penal Code: Proposed Official Draft* (Philadelphia: American Law Institute, May 4, 1962) as quoted in Rubin, ed., *The Abortion Controversy*, 80.

expensive procedure.²⁴

The second organization was more broad-based. The Association for the Study of Abortion (ASA) was founded in 1964 and headquartered in New York City. Compared to the organizations that would appear later in the abortion movement, the ASA was fairly conservative. In the early days of abortion organizing, however, it served the purpose of publicizing the need for reform and building the cause's legitimacy by including prominent and powerful voices in its ranks. Dr. Robert Hall, a prestigious professor of obstetrics at Columbia-Presbyterian Medical Center, was its president, and its board included Dr. Alan Guttmacher, the president of the Planned Parenthood Federation, as well as Larry Lader, who was a founding member. The ASA's committees included 250 clergy, lawyers, sociologists, and doctors. The organization focused its efforts on professions involved in abortion, and its activities largely consisted of gathering and disseminating information about the need for abortion reform. Given the silence on abortion in the decade preceding its founding, the ASA was a breakthrough, though its importance would be supplanted by more radical organizations in later years.

While the reformers began to collaborate and gradually nudge their way toward abortion reform, the U.S. Supreme Court abruptly provided them with a key strategic victory. In 1965 the Court heard *Griswold v. Connecticut*, a challenge to a statute forbidding the use of contraceptives even by married couples. The Court overturned the law in a seven-to-two decision that established a constitutional right to privacy for the first time in American history. Writing for the Court, Justice William O. Douglas contended that the Constitution protected a "zone of privacy" in the marital relationship. "We deal with a right of privacy older than the Bill of Rights," he wrote. The decision established contraception as a marital right included in the Ninth Amendment, that is, not specifically enumerated in the Constitution but still retained by

²⁴ Lader, *Abortion II*, 27.

the people. The implications of this were vast: if family planning was part of the legal right to privacy, then abortion might be protected by the Ninth Amendment as well. In some respects the only difference between contraception and abortion was a matter of degree. Contraceptive intrauterine devices available at the time may have actually functioned as abortifacients. Lader proposed that if scientists developed an abortion pill that could be taken at home it would have to fall under the auspices of "the right of marital privacy." Most importantly, the *Griswold* decision gave fledgling reform organizations a concrete goal for which to aim. If the Supreme Court might consider abortion part of the right to privacy, then reform organizations would have to devote themselves to increasing the mass appeal of the abortion rights movement and developing enough of a popular belief in the idea of legal abortion to put pressure on the courts. The New York Civil Liberties Union adopted a model abortion law that firmly established its position on abortion rights and readied it for a fight in the courts: "A person is guilty of abortion if he is not a duly licensed physician and intentionally terminates the pregnancy of another otherwise than by live birth." *Griswold* opened the door to the popular perception of abortion rights as an issue of civil liberties.²⁵

Lader wrote in the final chapter of *Abortion*:

If such organizations as the New York Civil Liberties Union and the Association for the Study of Abortion are to carry this campaign through the courts, women themselves must bear the special responsibility of rallying opinion behind reform. . . . Nothing is stronger than the moral power of an idea once it has come of age. . . . If men and women are going to break U.S. abortion laws at least a million times a year, let them declare their freedom boldly.²⁶

The question that remained was how to establish abortion rights as an idea with "moral power." How could an issue that was so long associated with immorality be fashioned into a

²⁵ 381 *U.S. Reports* 479 (1965) as quoted in Rubin, ed., *The Abortion Controversy*, 123; Lader, *Abortion*, 173; The NYCLU model abortion statute is poorly worded, but I have cited it correctly here. It is quote in James Ridgeway, "Birth and Non-Birth," *The New Republic*, 26 November 1966.

²⁶ Lader, *Abortion*, 175.

moral crusade? How could the shame and fear of abortion be removed to give women the confidence to freely demand abortion as a civil right?

For Lader, one of the most important tools in the abortion rights movement may have come to him by accident. After the publication of "The Scandal of Abortion Laws" in *The New York Times Magazine* in 1965, Lader began to receive hundreds of letters and phone calls from women hoping to find abortions through the routes he alluded to in his article. "If a woman is referred by a doctor or a friend, she may reach the top level of skilled abortionists, such as Dr. S., who practices in a small town some three hours from New York City, or Dr. M., in a major Washington city," he had written in the *Times*. Now women wanted to know from Lader how to reach Dr. S. The publication of *Abortion* increased the flow of inquiries, as did the surprising publication of excerpts from the book in the November issue of *Readers' Digest* under the title "Let's Speak Out on Abortion." DeWitt Wallace, editor of *Readers' Digest* was devoted to Margaret Sanger and had published a portion of Lader's biography. "Wally [DeWitt Wallace] was great on birth control, but I never thought he'd make the leap to abortion," recalls Lader. Though he was politically conservative, Wallace published eight and a half of the most substantial pages in *Abortion*, and he sent Lader on a tour to promote the issue.²⁷

At the first national press conference for *Abortion* in April 1966, Lader found himself slipping "almost accidentally from the role of writer to campaigner." Reporters wanted to know how women were reaching the doctors that were performing thousands of illegal abortions each year, and Lader admitted that women had been contacting him with the same question. The reporters pressed him to say whether he had been giving women the information they sought, and Lader told them he had and would continue to do so until a district attorney forced him to stop. Acting independently of the ASA, Lader made a formal announcement in May that he would try to secure "skilled medical consultation" for any woman in need. Lader's extremely

²⁷ Lader, "The Scandal of Abortion Laws"; Lader, interview.

public campaign was not without risks. Conspiracy to commit abortion was a crime in New York, and conviction carried a fine and possible prison term. Nevertheless, Lader decided to take the chance. "It seemed to me that having publicly favored abortion, I owed these women something," he later wrote. Building a movement proved to be an arduous task. Lader spoke over one hundred times in 1966, and he confirmed his commitment to abortion referrals in every lecture and broadcast. In addition to his public relations campaign, he answered a dozen referral requests a day in the form of letters and phone calls. Since he operated his referral service alone, he also had to spend time finding doctors, which was a very difficult chore. Despite the enormous amount of time he invested in referring women to safe abortionists, he refused any payment for his services. This policy would later prove to be an integral aspect of the growing abortion referral movement.²⁸

While promoting his book in San Francisco, Lader met with Maginnis for the first time. Maginnis had set up a small referral service of her own. She had taken a trip to Tijuana where abortion was illegal but tolerated by the authorities, and she had met with a dozen different doctors at their small clinics. She listed the names, addresses, and phone numbers of the best of the Mexican clinics on a mimeographed sheet that she handed out on the streets of San Francisco in violation of the California Penal Code. Despite her best efforts to get arrested (she even sent a copy of her referral list to the State Attorney General), it was months before she generated enough publicity to attract the press and force the police to charge her with distributing lewd and obscene literature. The judge, as Maginnis undoubtedly had hoped, not only ordered her released but declared the statute an unconstitutional violation of free speech.

Maginnis and Lader were learning very quickly that abortion referral had the potential to be a keystone of the abortion rights movement. Lader likened it to the work of abolitionists who garnered national support for their movement when they defied the law and harbored runaway

²⁸ Lader, *Abortion II*, xiii-ix; Lader, "The Mother Who Chose Abortion," *Redbook*, February 1968.

slaves. "Abortion referrals, it seemed to me, were the most valid symbol of resistance," wrote Lader. "On humanitarian grounds, they saved a woman from underworld abortion. But beyond that, they drew women into the movement, and provided a constant affirmation that the laws were wrong and could only be righted when enough people stepped forward to challenge them." Abortion referrals were a powerful expression of civil disobedience of unjust abortion laws, and the humanitarian basis for abortion referral would make it awkward for prosecutors to bring charges.²⁹

Lader's language of "saving" women from underworld abortion was by no means merely symbolic. As noted above, the mortality rate of women who received illegal abortions was appalling, and abortion fatalities were only the tip of the iceberg when it came to the risks of illegal abortion. Side effects of botched abortions, or "incompletes," frequently included infection, dangerously high fever, hemorrhaging, perforation of the uterus, and sterility. Under medically ideal conditions, abortion was a safe procedure, but the world of illegal abortion was not medically ideal, and the procedures were frequently not safe. Illegal abortionists were notorious for failing to take basic medical precautions such as sterilizing their instruments. Dilation and curettage in an unclean environment with unsterile instruments often led to infection even if the abortion itself was performed correctly. Many abortionists did not use any anesthetic, making the procedure extremely painful. This was preferable, however, to anesthesia that was administered improperly, an error that often resulted in death. Many illegal abortionists used medically unsound techniques, such as "packing" or catheters. The packing procedure consisted of inserting wads of gauze into the vagina to dilate the cervix and induce contractions several hours later. The risk of infection was high, especially if the gauze was not sterile. The catheter, or "bougie" was even more dangerous. This technique consisted of inserting a small tube into the cervix, leading to dilation in a fashion similar to packing. This method also

²⁹ Lader, *Abortion II*, 28.

had a high risk of infection, both from a lack of sterility and from the potential improper insertion of the tube, often causing it to lodge in the uterine wall or worse, to perforate the uterus.

Even if a woman could find an abortionist whose technique would not lead to infection or death, her experience was still likely to be undignified or even terrifying. Illegal abortionists were not known for their gentility and kind care-giving, and stories of their brash and demeaning treatment of women abound. Women were occasionally asked to supplement their cash payment with sexual favors. Desperation often left them with no choice but to comply. "By the time I got to the sex part of the 'price tag,' what was I going to do?" remembered one woman. "I wanted an abortion and I'd have done whatever it took, at that point, to make it happen. The doctor probably knew that." Illegal abortions could be terrifying because of the precautions abortionists took to conceal their identities or the locations of their "practices." Women were routinely required to be blindfolded and transported to the abortionists "office." Many abortionists wore masks or performed the procedure from behind a curtain. A trip to an illegal abortionist was often a terrifying event.³⁰

Far more frightening, however, were the potential effects of the "home remedies" that women turned to in desperation when they could not afford, or could not find, an abortionist. One infamous method was by inserting a knitting needle or coat hanger into the uterus to induce an abortion. Like the catheter, a misplaced coat hanger could result in perforation of the uterus, infection, and death. Another popular though not terribly effective method of self-abortion was a soap solution douche. Potential complications from this method included gas gangrene, passage of the soap into the uterine veins leading to blood poisoning, and air bubbles that blocked blood vessels and created an air embolism. Even worse than soap solutions were popular abortifacients ranging from uterine pastes to all manner of poisons that women

³⁰ Patricia G. Miller, *The Worst of Times* (New York: Harper Collins, 1993), 63.

ingested in hope of terminating their pregnancies. Such poisons included quinine, calomel, wormwood, Spanish fly, lead salts, kerosene, mercury salts, castor oil, and nitrobenzene.³¹

Every woman Lader referred for a safe abortion was saved from the dangers and indignities of underworld abortions. Lader claimed that his humanitarian cause appealed to a higher morality than the law, a point of great symbolic importance since the abortion issue was still badly in need of moral redefinition. By offering his referrals as openly as possible, Lader dragged the abortion issue out of the shadows and took a step toward giving it a long overdue change of image. Lader's referrals officially made public the secret that everyone already knew: anyone could get an abortion if they could afford the exorbitant prices. Maginnis and her co-organizer, Lana Clarke Phelan, advised women seeking abortions to simply ask their mother, their friends, doctors, druggists, and cabdrivers. "Everyone in town of childbearing age and over has either had an abortion or knows someone intimately who has," they explained. "Like the famous search for the left-handed monkey wrench, this is a social game and you must go through all the hoops while everyone snickers around you."³²

Although Lader, Maginnis, and Phelan shared a common humanitarian purpose, they had different goals for referral. Phelan claimed that "she never thought of referral work in strategic terms, but strictly as a means of helping individual women." Lader, however, had a grander strategy in mind. Abortion referrals would generate publicity, forcing the authorities to confront the failures of abortion statutes and increasing public scrutiny of the injustices of existing abortion restrictions. The wall of silence surrounding abortion would begin to tumble down. Yet the task of referrals was too great for Lader to manage all by himself. He needed others to join his endeavor, and his movement was still in dire need of an infusion of morality.

³¹ Lader, *Abortion*, 68-70.

³² Lader, *Abortion II*, x; Lana Clarke Phelan and Patricia Therese Maginnis, *The Abortion Handbook for Responsible Women* (North Hollywood, California: Contact Books, 1969), 62.

In 1967, both these necessities would be met by the entrance of the clergy into the abortion referral movement.³³

³³ Phelan is quoted in Suzanne Staggenborg, *The Pro-Choice Movement: Organization and Activism in the Abortion Conflict* (New York: Oxford University Press, 1991), 22.