

passed a law since it was passed at a time when there were no oral contraceptives and when the only time drugs were indicated were prescribed for a specific physiological condition, not as a matter—not a drug widely prescribed for healthy women to avoid pregnancy. So at least the setting in which the law was passed and the word “safe” was used was not the same as it is now.

I would assume that we are going to have to examine this question in some depth and maybe the law ought to be interpreted just as it was interpreted. I am not saying that it should not be, I do not know.

It would seem to me that under the 1938 law, if you had an oral contraceptive, and if there were reasons, good reasons, why a risk of pregnancy would be very serious and why the patient should not be exposed even to a 1-percent risk because of various physiological or psychological consequences, then that would come within the purview of the use of the word “safe” in the statute.

But when we start talking on broader grounds that these potential hazards and the value of the drugs are balanced, and if you are including on balance the important factor of not having an exploding population, which I think is important, I think we have included something that was not contemplated when the law was passed.

Dr. HERTZ. I would agree, Senator Nelson, that the preexisting legislation would not give us any guidelines along this line.

The history of the development of preventive medical procedure, such as, let us say, smallpox vaccination, shows that in their original introduction there is always a tremendous conflict as to what the social indications are or will be. There were actually civil wars over smallpox vaccination before it became, as is now, the legally universally acceptable practice to vaccinate everybody unless they have a religious objection to this, and there are still segments of the population who have a religious objection to smallpox vaccination.

Now, we are simply evolving our ground rules with respect to this other area, and I would say that this is as much a matter for the consideration of the legislators as it is for the medical profession, if not more so.

Senator NELSON. There is one other factor involved here, and that is there are very effective alternatives. So an additional factor involved here is that even if you have a case in which it is important physiologically or psychologically as a significant matter of health that a particular woman not become pregnant, there are still intrauterine devices, diaphragms, et cetera, which according to the very best testimony we have had are highly effective if properly used.

So if the drug is being prescribed widely for convenience, I am not sure that that comes within the purview of the meaning of safety. Anyway, I have raised the question because I think it is one we do have to examine. I want to make it clear that I happen to strongly believe that the country is overpopulated already, and I could tell that by the number of people who voted against me. [Laughter]. But I think that is an important matter, and I raise it because I think we are going to have to confront it.

Dr. HERTZ. I think your concern is more than justified, and, however, in that context I would say that with eminent fairness to all of the members of the committee, that Dr. Hellman had digested out of a very difficult difference of opinion the essential consensus of that group but not necessarily the individual opinions of each of us.