

American Medical Association Documents That Led to Laws Overturned by *Roe v. Wade*

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In 1857, a physician campaign against abortion, chronicled by James Mohr in his landmark *Abortion in America: The Origins and Evolution of National Policy, 1800-1900*,¹ commenced at the Annual Meeting of the American Medical Association in Nashville. Boston physician Horatio Robinson Storer (1830-1922) had requested that the AMA form a Committee on Criminal Abortion.² This was done, and Dr. Storer was appointed chairman.³ Criminal abortion was any abortion not carried out to save the mother or the child.

This was the first mention of abortion by the AMA, which had been formed in 1847.

The committee's report, delayed for a year by Dr. Storer's illness, was signed by Dr. Storer and the seven committee members he had appointed and was presented at the 1859 Annual Meeting in Louisville.⁴

The Report on Criminal Abortion can be found in the *Transactions of the American Medical Association for 1859*.⁵ The content is well summarized by the Memorial to state governors and legislatures that called for creation or improvements in the laws related to abortion and by the Address to state medical societies requesting their assistance in the effort to strengthen abortion laws. The Memorial and the Address are presented in full below.

The minutes of the Louisville American Medical Association Annual Meeting included the following: "The Committee, appointed in May, 1857, on Criminal Abortion, submitted a report written by Dr. Storer, of Boston, which was read by Dr. Blatchford, of New York, and referred to the Committee on [sic] Publication."⁶

In a letter to Dr. Storer, Dr. Thomas W. Blatchford wrote: "Your report was read and the resolutions unanimously adopted. Your report was highly spoken of, not a dissenting voice in any direction."⁷

These AMA efforts to strengthen laws against abortion and Dr. Storer's unique role in the efforts were fully discussed by Henry Miller, M.D., in his presidential address at the 1860 Annual Meeting in New Haven, Connecticut.

At the last meeting of the Association, the Committee on Criminal Abortion, of which Dr. Horatio R. Storer, of Boston, was chairman, made their report, which was received and referred to the Committee of Publication. By the resolutions appended to the report, which were unanimously adopted, the President and Secretaries were authorized to bring this important subject, by memorial, before Congress and the several State legislatures of the Union, with the prayer that the laws by which it has been attempted to restrain and punish abortionism may be revisited, and such legal enactments provided as the heinousness of the crime

demands. By reference to the proceedings of the last annual meeting, it will be seen that the Committee on Criminal Abortion were requested to continue their labors, "and especially to take any measures necessary to carry into effect the resolutions reported by them on the first day of the meeting." Under the warrant of this instruction, the Chairman of the Committee opened a correspondence with me, early last winter, tendering his co-operation in carrying out the wishes of the Association, and offering to place at my disposal extra copies of the report, and also of the papers published by himself in the *North American Medico-Chirurgical Review*, containing all the medico-legal information necessary to enable our federal and State legislatures to act intelligently in the premises. The offer was gladly accepted, and I am happy to acknowledge my obligations to the able Chairman for his valuable assistance, not only in furnishing the documents referred to, but in the preparation of the Memorial as well as of the Address directed to the various State Medical Societies, requesting their co-operation with the Association, in pressing this important subject on the attention of the legislatures of their respective States. The Memorial, with the accompanying documents, was transmitted in January last to the President of the United States and the Governor of each of the States and Territories of the Union, the legislatures of several of them being at the time in session. What disposition has been made of them I am not informed; but the hope may be reasonably indulged that their Excellencies have submitted them to the National, State, and Territorial legislatures, or will embrace the earliest opportunity of doing so.⁸

The Storer-written Memorial to governors and legislatures must be considered the most important document for securing the stringent laws against abortion that were passed over the next few decades. Most of these new laws remained with little change until overturned by *Roe v. Wade* in 1973. The Memorial was not published in the *Transactions of the American Medical Association* or anywhere else. The existence of the Memorial could only have been known from its being called for in the third Resolution appended to the Report on Criminal Abortion and its mention in Dr. Miller's Presidential Address. It may not have come to light if I had not written a biography of Dr. Storer.⁹ Two of Dr. Storer's grandchildren, Ethel Storer and Robert Treat Paine Storer, Jr., were living in Massachusetts. I visited them in October 1995. Both had large quantities of personal journals,

letters, medical journal articles, and even a medal struck to commemorate the life of Horatio Storer. The grandchildren loaned the material to me, and I contributed the material in their names to the Massachusetts Historical Society and the Francis A. Countway Library of Medicine in Boston. Medical

materials, including copies of the Memorial and Address, are parts of accession number Acc. 2001-063 at the Countway Library.

These important documents are finally in a medical journal.

Memorial

To the Governor and Legislature of the State of _____ the Memorial of the American Medical Association, an Organization representing the Medical Profession of the United States.

At a Meeting of the Association held at Louisville in May, 1859, it was formally and unanimously voted, "to present the subject of Criminal Abortion to the attention of the several Legislative Assemblies of the Union, with the prayer that the laws by which the crime is attempted to be controlled may be revised, and that such other action may be taken in the premises, as they in their wisdom may deem necessary."

Statistics reliable and not to be controverted, which are duly submitted in the papers accompanying this Memorial, go to prove that an immense number of living children annually are intentionally destroyed in this country, and that besides the serious injury thereby inflicted upon the public morals, a decided and detrimental influence has already been produced upon the rate of increase of the nation and upon its material prosperity.

The moral guilt of Criminal Abortion depends entirely upon the real and essential nature of the act. It is the intentional destruction of a child within its parent; and physicians are now agreed, from actual and various proof, that the child is alive from the moment of conception.

The evil to society of this crime is evident from the fact, that its instances in this country are now to be counted by hundreds of thousands.

Public sentiment and the natural sense of duty instinctive to parents proving insufficient to check the crime, it would seem that an appeal should be made to the law and to its framers.

In many States of the Union, abortion is not yet legally considered an offence, and is unprovided for by statute; in others, the statutes are so drawn as to be easily evaded, or indeed, by their inconsistencies, directly to encourage the crime they were framed to prevent. This is the case also with the Common Law, which, by a strange contradiction, fails to recognize the unborn child as criminally affected, whilst its existence for all civil purposes is nevertheless fully acknowledged.

It has therefore become the duty of the American Medical Association, in view of the prevalence and increasing frequency of Criminal Abortion in this country, publicly to enter an earnest and solemn protest against such unwarrantable destruction of human life. The duty would be but half fulfilled, did we not call upon those who alone can check and control the crime, early to give this matter their serious attention. The Association would in no wise transcend its office, but that office is here so plain that it has full confidence in the result. We therefore enter its earnest prayer, that the subject of Criminal Abortion in the state of _____, and the laws in force on the subject in said State may be referred to an appropriate Committee, with directions to report what legislative action may be necessary in the premises.

Accompanying this memorial will be found the Report of the Special Committee of the Association upon this subject, and the papers on which their Report is based.

All of which is respectfully submitted.

For the Association,

HENRY MILLER, President

S. M. BEMISS, S. G. HUBBARD, Secretaries

Address

To the President and Councilors of the _____ State Medical Society.

Gentlemen:

At the meeting of the American Medical Association held in Louisville, in May last, by a formal and unanimous vote it was

“Resolved, That while physicians have long been united in condemning the act of producing abortion, at every period of gestation, except as necessary for preserving the life of either mother or child, it has become the duty of this Association, in view of the prevalence and increasing frequency of the crime, publicly to enter an earnest and solemn protest against such unwarrantable destruction of human life.

“Resolved, That in pursuance of the grand and noble calling we profess, the saving of human lives, and of the sacred responsibilities thereby devolving upon us, the Association present this subject to the attention of the several legislative assemblies of the Union, with the prayer that the laws by which the crime of procuring abortion is attempted to be controlled may be revised, and that such other action may be taken in the premises as they in their wisdom may deem necessary.

“Resolved, That the Association request the zealous co-operation of the various State Medical Societies in pressing this subject upon the legislatures of their respective States; and that the President and Secretaries of the Association are hereby authorized to carry out, by memorial, these resolutions.”

In pursuance of our instructions, a Memorial, of which a copy is herewith enclosed, has been transmitted to the Governor and Legislature of the State of _____, and it now has become our duty earnestly to request of the body you represent, such early and hearty action in furtherance of the Memorial of the Association, as may insure its full success against the common, though unnatural crime it aims to check.

For the Association,

HENRY MILLER, President
S. M. BEMISS, S. G. HUBBARD, Secretaries

The Connecticut Legislature received the Memorial and asked the American Medical Association for assistance in revising abortion legislation. The minutes for day 3 of the same New Haven meeting that had reported Miller’s Address included:

A communication was received from the Judiciary Committee of the Connecticut Legislature, to which was referred the Memorial of this Association concerning Criminal Abortions, requesting the appointment of a committee to frame a suitable bill to serve as a guide for their action.

On motion, the paper was accepted, and the Chair authorized to appoint the Committee asked for, and the following gentlemen were appointed: Drs. Worthington Hooker, Conn.; David L Daggett, Conn.; D. Humphreys Storer, Mass.¹⁰

Had Dr. Horatio Storer been at New Haven meeting he no doubt would have been selected for the committee. It is possible that he assisted his father, David Humphreys Storer, in preparing the result, which was a unique piece of legislation that combined “into a single forceful act the denial of the

quickening doctrine, the notion of women’s liability, and anti-advertising principles. This 1860 Connecticut law, which remained virtually unchanged for over a century, set the tone for the kind of legislation enacted elsewhere in the United States during the succeeding twenty years.”^{1, p 202}

James Mohr documented the immediate and extended effect of these Storer-written AMA documents in a chapter, “Anti-Abortion Legislation, 1860-1880.” It began: “Between 1860 and 1880 the regular physicians’ campaign against abortion in the United States produced the most important burst of anti-abortion legislation in the nation’s history. At least 40 anti-abortion statutes of various kinds were placed upon state and territorial law books during the period; over 30 in the years from 1866 through 1877 alone.”^{1, p 200}

The first article by Dr. Storer in the *North American Medico-Chirurgical Review*, which was an enclosure to the Memorial sent to State and Territorial Governors and Legislators, concludes with a paragraph showing Dr. Storer’s primary concern for the unborn abortion victims, which has been disputed by several historians,¹¹ and one showing his revulsion for anyone or anything connected to abortion.

If we have proved the existence of foetal life before quickening has taken place or can take place, and by all analogy, and a close and conclusive process of induction, its commencement at the very beginning, at conception itself, we are compelled to believe unjustifiable abortion always a crime.

And now words fail. Of the mother, by consent or by her own hand, imbrued with her infant's blood; of the equally guilty father, who counsels or allows the crime; of the wretches who by their wholesale murders far out-Herod Burke and Hare; of the public sentiment which palliates, pardons, and would even praise this so common violation of all law, human and divine, of all instinct, of all reason, all pity, all mercy, all love,—we leave those to speak who can.¹²

Dr. Storer repeated his "Of the mother" sentence in *Why Not? A Book for Every Woman* and *Is It? A Book for Every Man*, books he wrote to convince non-medical persons to avoid and oppose abortion. The "Burke and Hare" reference refers to William Burke and William Hare who were indicted in 1828 for 16 murders they carried out in Edinburgh, Scotland, within a single year. The murders were highly salient to Horatio Storer because of his year in medical training at the same Edinburgh University Medical School that had innocently bought the bodies of the murder victims for dissection by medical students.

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REFERENCES

1. Mohr JC. *Abortion in America: The Origins and Evolution of National Policy, 1800-1900*. New York, N.Y.: Oxford University Press; 1978:147-170.
2. Hoyte JW. Letter to HR Storer, Mar 20, 1857. Countway Library, Boston: Storer Abortion File.
3. Special Committee, AMA. Minutes of the tenth annual meeting. *Transactions of the American Medical Association* 1857;10:30.
4. Dyer FN. *The Physicians' Crusade Against Abortion*. Sagamore Beach, Mass.: Science History Publications/USA; 2005:56-76,63-64.
5. Report on criminal abortion, *Transactions of the American Medical Association* 1859;12:75-78. Available at: <https://horatiostorer.net/ama-vs-abortion/>. Accessed June 22, 2021.
6. Minutes of the twelfth annual meeting. *Transactions of the American Medical Association* 1859;12:27-28.
7. Blatchford TW. Letter to HR Storer, May 3, 1859, Countway Library, Boston: Storer Abortion File.
8. Miller H. President's address. *Transactions of the American Medical Association* 1860;13:55-76.
9. Dyer FN. *Champion of Women and the Unborn, Horatio Robinson Storer, M.D.* Sagamore Beach, Mass.: Science History Publications/USA; 1999.
10. Minutes of the thirteenth annual meeting. *Transactions of the American Medical Association* 1860;13:41-42.
11. Dellapenna JW. *Dispelling the Myths of Abortion History*. Durham, N.C.: Carolina Academic Press; 2006;358.
12. Storer HR. Contributions to obstetric jurisprudence: no. 1.—criminal abortion, *North-American Medico-Chirurgical Review* 1859;3:64-72. Available at: <https://horatiostorer.net/>. Accessed June 22, 2021.

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