of the coal companies by oil companies in the United States,[85] there is serious question as to the real public welfare served and the true economic interest benefited.

"The business of America is business."[86] Although air pollution agencies exist on all levels of government they have not yet shown themselves to be effective in ameliorating air pollution (as neither the private and earlier public nuisance actions) where substantial economic interests are involved. It is unlikely that this pattern will change. Consequently, all that can be hoped for is that the agencies will be able to tip the balancing process toward more reasonable uses of the limited natural resources by their counseling, supervision and regulation.

RICHARD C. RASTETTER, JR.

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[85] Wash. Post, Aug. 22, 1970; Forbes, March 15, 1968 at 68; Business Week, Aug. 23, 1969, at 64.

[86] Address by Calvin Coolidge, The Society of American Newspaper Editors, Jan. 17, 1925.

Case Notes

CRIMINAL LAW—THE IOWA ABORTION STATUTE IS NOT UNCONSTITUTIONALLY VAGUE AND DOES NOT DENY EQUAL PROTECTION.—*State v. Abodeely* (Iowa 1970).

The defendant was charged with aiding and abetting an attempt to produce an abortion. The defendant, one of three men involved in the crime, referred a woman to a physician who performed the abortion. Defendant pled guilty in district court and was sentenced to five years in the penitentiary and fined $100 plus costs. His motion in arrest of judgment and to vacate sentence was overruled. He appealed to the Supreme Court of Iowa alleging *inter alia* that Section 701.1[1] of the Code of Iowa, which makes abortion a crime, is unconstitutional because it is vague and denies him equal protection. *Held*, affirmed. Section 701.1 is not vague or uncertain and does not deny equal protection to the defendant. *State v. Abodeely*, 179 N.W.2d 347 (Iowa 1970). A petition for rehearing was subsequently submitted and denied.

The crucial portion of the statute in question is the phrase "unless such miscarriage shall be necessary to save her life,"[2] which is the only exception to the prohibition of abortion which Iowa allows. The Iowa court in this case reasoned that this wording is not vague or uncertain because it has for over 100 years been sufficiently clear for "satisfactory use."[3] It also pointed out[4] that no other state with a similar statute, except California,[5] had declared its statute unconstitutional.

The defendant also claimed that since the statute uses the words "any person,"[6] it should apply equally to laymen and doctors. But the Iowa court has held before that physicians acting on their examination and opinion are entitled to a presumption of correct judgment and good faith.[7] In *Abodeely* the court reaffirmed this interpretation stating it is not "unreasonable nor arbitrary" to allow a presumption of good faith and correct judgment and hence special excep-

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[1] IOWA CODE § 701.1 (1966) reads as follows:

> If any person, with intent to produce the miscarriage of any woman, willfully administer to her any drug or substance whatever, or, with such intent, use any instrument or other means whatever, unless such miscarriage shall be necessary to save her life, he shall be imprisoned in the penitentiary for a term not exceeding five years, and fined in a sum not exceeding one thousand dollars.

[2] *Id.*

[3] State v. Abodeely, 179 N.W.2d 347, 354 (Iowa 1970).

[4] *Id.*

[5] People v. Belous, 80 Cal. Rptr. 354, 458 P.2d 194 (1969), *cert. denied*, 397 U.S. 915 (1970).

[6] IOWA CODE § 701.1 (1966).

[7] State v. Dunklebarger, 206 Iowa 971, 974, 221 N.W. 592, 594 (1928).

tion in favor of physicians. But then the court states in *Abodeely*[8] that the *legislature* can make reasonable classifications among those people intended to come within the meaning of a law, and that such a law is constitutional if it applies equally to all those in the same class.

The first abortion law enacted in Iowa, as part of the homicide statute, made it a crime to administer any substance with the intention of producing a miscarriage of any woman with child.[9] In 1843, the legislature made it a crime of manslaughter to kill an unborn quick child by administering substances or by "any other means" with intent to produce a miscarriage.[10] It was in this statute that the words of Section 701.1 had their origin. The Code of 1851[11] repealed all Iowa laws which were not included in it, which caused the Iowa supreme court to declare that this left Iowa without any statute on abortion.[12] Since at common law it was not a crime if abortion was done before the quickening of the fetus, such abortions were legal until the next legislature again made abortion a crime by statute.[13] But it is important to note that an abortion before quickening was not a crime under the Act of 1858[14] if it was performed by the mother herself,[15] (the crime was foeticide if done after quickening). This seems to indicate the legislature did not view the unquickened child as a fetus. In *Abrams v. Foshee*,[16] the Iowa court stated that "an infant *in ventre sa mère*, is not a human being within the meaning of § 2508 of the Code."[17] However, in 1878, the Iowa supreme court declared that abortion was a crime whether done before or after quickening.[18] In 1915, the Iowa legislature struck the word "pregnant" from the statute,[19] thus making it a crime to intend to abort a woman whether she was pregnant or not.

In *State v. Dunklebarger*,[20] the Iowa supreme court held that one who aids and abets a physician in the performance of an abortion, provided the doctor acted in good faith, has committed no crime so long as it was necessary to save the life of the mother. Moreover, the burden has been held to be on the state to show that the abortion was not necessary to preserve the life of the mother and that the physician did not act in good faith.[21]

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[8] 179 N.W.2d 347, 354 (Iowa 1970). *See also* Dickenson v. Porter, 240 Iowa 393, 400, 35 N.W.2d 66, 72 (1948); State v. Wrenn, 194 Iowa 552, 554, 188 N.W. 697, 698 (1922), *aff'd*, 263 U.S. 688 (1924).

[9] IOWA (TERR.) STAT. § 18 (1838-1839).

[10] IOWA (TERR.) REV. STAT. §§ 10, 13 (1843). The wording of the phrase was "unless the same shall be necessary to preserve the life of the mother."

[11] IOWA CODE ch. 4, § 28 (1851).

[12] Abrams v. Foshee, 3 Cole 273, 278, 279 (Iowa 1856).

[13] Ch. 165, [1860] IOWA REV. LAWS § 4221.

[14] *Id.*

[15] Hatfield v. Gano, 15 Iowa 177 (1863). Perhaps this was a reluctance to invade a perceived right of the mother to do as she chooses with her unborn child. The court said it was clear the law's intent was to punish the abortionist and not the woman herself.

[16] 3 Iowa 273 (1856).

[17] *Id.* at 279.

[18] State v. Fitzgerald, 49 Iowa 260 (1878). Here the defendant was convicted under IOWA CODE § 3864 (1873) after performing an abortion before quickening.

[19] IOWA CODE § 4759 (1915).

[20] 206 Iowa 971, 221 N.W. 592 (1928).

[21] State v. Snyder, 244 Iowa 1244, 59 N.W.2d 223 (1953); State v. Rowley, 216 Iowa

The defendant's challenge to the constitutionality of the Iowa statute as to vagueness and denial of equal protection is based entirely on *People v. Belous*,[22] a 1969 California case. In *Belous*, the defendant was a physician who was charged with procuring an abortion for a woman in violation of Section 274 of the California Penal Code.[23] The Supreme Court of California held that the wording of the statute was vague and violative of due process because it did not give a relative-safety test (*i.e.*, some kind of guide to the hazard of having an abortion relative to that of having a child born) and thus did not meet the vagueness test set out in *Lanzetta v. New Jersey*.[24] The court emphasized that as a result of not setting out such a safety test the statute violated the fourteenth amendment by delegating to the physician the power to decide whether a woman has a right to an abortion.

The California court also held that a woman has the right to life and the right to choose whether to bear children, and that the right to life is involved because childbirth involves the risk of death.[25] The court said that a woman has the fundamental right to choose whether to bear children.[26] Citing *Griswold v. Connecticut*,[27] the court asserted that a woman has a "right to privacy" or "liberty" in matters related to marriage, family and sex.[28] Hence, the *Belous* court held the abortion statute was unconstitutional because it could not give the statute a construction which, even if it could satisfy legislative intent, would be sufficiently certain to satisfy due process requirements *and* not infringe on the mother's right to choose whether to bear children.[29]

The Iowa supreme court in *Abodeely* refused to accept the rationale of the majority opinion in *Belous*, but agreed with the dissent. The dissent in *Belous* argued that the wording of the statute had existed for 100 years, that it had stood the test of time, and that its meaning had been well established.[30] The

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140, 248 N.W. 340 (1933); State v. Shoemaker, 157 Iowa 176, 138 N.W. 381 (1912). *But see* Williams v. United States, 138 F.2d 81 (D.C. Cir. 1943), which held the burden of proving the abortion was justified is on the defendant. The D.C. CODE ANN. § 22-201 (1940), like the Iowa Code, has the exception of necessity to preserve the mother's life, and curiously enough the court said this exception exists to provide the defendant with an opportunity to justify his action. However, the Supreme Court has stated otherwise, holding the burden to be on the prosecution. United States v. Vuitch, 91 S. Ct. 1294 (1971).

[22] 80 Cal. Rptr. 354, 458 P.2d 194 (1969), *cert. denied*, 397 U.S. 915 (1970).

[23] CALIF. PENAL CODE § 274 (West 1970). The California statute used the words "unless the same is necessary to preserve her life," which is basically the same as the wording of the Iowa statute. Before the decision in *Belous*, the California legislature enacted a new abortion law: CAL. HEALTH & SAFETY CODE §§ 25950-54 (West Supp. 1971). It is, however, interesting to note it was also held unconstitutional in People v. Robb, N. 149005 (Cal. Orange County Mun. Ct., Jan. 9, 1970).

[24] 306 U.S. 451 (1939); *accord*, Connally v. General Constr. Co., 269 U.S. 385 (1926); People v. McCaughan, 49 Cal. 2d 409, 317 P.2d 974 (1957). However, recently the Supreme Court in Rowan v. United States Post Office Dept., 397 U.S. 728, 740 (1970) declared that "[a] statute is fatally vague only when it exposes a potential actor to some risk or detriment without giving him fair warning of the nature of the proscribed conduct."

[25] People v. Belous, 80 Cal. Rptr. 354, 359, 458 P.2d 194, 199 (1969).

[26] *Id.*

[27] 381 U.S. 479 (1965).

[28] People v. Belous, 80 Cal. Rptr. 354, 359, 458 P.2d 194, 199 (1969).

[29] *Id.* at 357, 458 P.2d at 197.

[30] *Id.* at 367, 458 P.2d at 207.

dissent also said that by "preserve" the legislature meant to save from death, and not to save from injury.[31]

In order to understand the problem, it is necessary to consider some of the more recent important decisions in this area. In *Skinner v. Oklahoma*,[32] the United States Supreme Court held that states may exercise police power against a class of offenders or offenses[33] except when procreation is involved, because it is "one of the basic civil rights of man. Marriage and procreation are fundamental to the very . . . survival of the race."[34] The Court seems to have said that while the basic right of procreation may be limited by the state police power, that power is itself not unlimited because of the fourteenth amendment. This was the position of the Court in *Loving v. Virginia*,[35] where it said there was no overrriding purpose justifying a classification between black and white persons (the statute involved prevented miscegenation solely on the basis of racial classification).

Another recent case which agrees in part with *Abodeely* is *Babbitz v. McCann*,[36] a decision from a federal district court in Wisconsin. Like the Iowa supreme court, the Wisconsin court in interpreting the statute,[37] rejected the argument of the majority in *Belous* that such language as "necessary" and "to save the life of the mother" is vague, but instead stated such words are "reasonably comprehensible in their meaning,"[38] and meet the test for vagueness[39] set out in *Connally v. General Construction Co.*[40] The Wisconsin court also found that there was no denial of equal protection. However, in citing the ninth amendment rights retained by the people the court said: "An examination of recent Supreme Court pronouncements regarding the ninth amendment compels our conclusion that the state of Wisconsin may not, in the manner set forth in § 940.04 (1) and (5), Wis. Stats., deprive a woman of her private decision whether to bear her unquickened child."[41] The court went on to say that the state cannot invade that right to make a private decision, unless it shows a compelling interest,[42] and that "we hold that a woman's right to refuse to carry an embryo during the early months of pregnancy may not be invaded by the state without a more compelling public necessity than is reflected in the statute in question. . . .[W]e also find no compelling state interest in a need to protect the mother's life."[43]

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31 *Id.* at 368, 458 P.2d at 208.
32 316 U.S. 535 (1942).
33 *Id.*
34 *Id.* at 541; *accord*, Maynard v. Hill, 125 U.S. 190 (1888).
35 388 U.S. 1 (1967).
36 310 F. Supp. 293 (E.D. Wis. 1970), *appeal dismissed*, 91 S. Ct. 12 (1970).
37 WIS. STAT. § 940.04 (1958).
38 Babbitz v. McCann, 310 F. Supp. 293 (E.D. Wis. 1970).
39 *Id.* at 298.
40 269 U.S. 385, 391 (1926). The Court said, "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law."
41 Babbitz v. McCann, 310 F. Supp. 293, 299 (E.D. Wis. 1970).
42 *Id.*
43 *Id.* at 301.

In *United States v. Vuitch*,[44] the United States District Court for the District of Columbia took a similar stand by declaring that there is an "unqualified right to refuse to bear children."[45] It may be limited, however, by Congress as to manner of exercise, for example, regulation of abortion practice by requiring it to be performed in a hospital.

The question which arises is whether regulation of the right to decide whether to bear a child, if there is such a right, is within the competency of the state to limit. The United States Supreme Court has stated before that "rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the state."[46] Interestingly enough, a Massachusetts court has held that discouragement of extramarital relations is a proper purpose and within the competency of the state,[47] and that the state may still regulate the private sexual lives of single individuals since by its interpretation *Griswold* referred only to married persons. However, a United States Court of Appeals recently held that a law allowing delivery of contraceptive devices or drugs to married persons only is "arbitrary" and "grossly discriminatory" even if health was the motive of the legislature and that prohibition of distribution of contraceptives to single persons was beyond the competency of the state.[48] The point is that such a statute must bear a substantial relation to the public health, safety, morals, or general welfare, or it is void.

A more substantial and particular question is whether a woman has a *fundamental* right secured under the constitution to decide whether she may bear her child. At least one United States district court has said it is not a fundamental right and has ruled that the Louisiana abortion statute[49] is constitutional.[50] In doing so it affirmed the lower state court's ruling.[51]

In Texas a federal district court ruled that part of the Texas Penal Code[52] is unconstitutional because it deprives a woman of the right to choose whether to bear children, a right secured by the ninth amendment.[53] The court not only found that the statutes were unconsitutionally vague under *Connally* and *Lan-*

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44 305 F. Supp. 1032 (D.D.C. 1969), *rev'd*, 91 S. Ct. 1294 (1971). The Supreme Court reversed only on the issue of whether the D.C. statute was unconstitutionally vague and did not discuss the other issues in the case. In upholding the statute the Court found the words "necessary for the preservation of the mother's life or health" to mean physical *and* mental health.

45 *Id.* at 1035.

46 Pierce v. Society of Sisters, 268 U.S. 510, 535 (1925).

47 Sturgis v. Attorney General, 260 N.E.2d 687 (Mass. 1970).

48 Baird v. Eisenstadt, 429 F.2d 1398, 1402 (1st Cir. 1970), *juris. noted*, 39 U.S.L.W. 3375 (U.S. Mar. 2, 1971).

49 LA. REV. STAT. ANN. 14:87 (1951).

50 Rosen v. Louisiana State Bd. of Medical Examiners, 318 F. Supp. 1217, 1232 (E.D. La. 1970).

51 State v. Pesson, 256 La. 201, 235 So. 2d 568 (1970). But Louisiana does allow an abortion by a physician if "done for the relief of a woman whose life appears in peril after due consultation with another licensed physician." LA. REV. STAT. ANN. 37:1285(6) (1964).

52 TEXAS PEN. CODE art. 1191-94, 1196 (1961).

53 Roe v. Wade, 314 F. Supp. 1217 (N.D. Tex. 1970).

zetta, but it also stated that while the abortion law may serve *some* compelling state interests, it cannot stand because it is overly broad due to its prohibition of all abortions except those necessary to save the mother's life: "[T]he Texas statutes . . . sweep far beyond any areas of compelling state interest."[54] The court found that the Texas abortion statutes clearly constituted an infringement upon the "plaintiffs' fundamental right to choose whether to have children . . . ."[55] The United States Supreme Court has declared: "Where there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling,"[56] and the means used by the state must be more than desirable, they must be necessary.[57] *Vuitch* did not provide an answer to whether a woman may choose to bear her own child, since the Court granted certiorari based on another issue. And while the defendant in *Abodeely* submitted a petition for rehearing, which alleged that Section 701.1 of the Code of Iowa is unconstitutional because it infringes upon "a women's [*sic*] right to control her body,"[58] it was denied as already noted. This was a question in both *Belous* and *Babbitz*, but the United States Supreme Court has already decided not to hear either.[59]

The trend now appears to be in the direction of abortion law reform. Hawaii has a new statute which appears to allow almost all abortions.[60] In addition, California,[61] Colorado,[62] and even Great Britain[63] seem to have responded by passing statutes which allow termination of pregnancy to protect the mental health of the mother. Best-known perhaps is the New York abortion law[64] which when passed in 1969 removed all restrictions on abortions if done within twenty-four weeks from the beginning of pregnancy, thus making it the most liberal abortion law in the nation.[65]

Iowa however has not followed this trend. After *Abodeely*, an attempt to liberalize the Iowa abortion law was made when a bill was introduced in the Iowa House for debate.[66] The bill, approved for passage by a 9 to 4 vote of the House Judiciary Committee, would have allowed abortion to take place only up

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[54] *Id.* at 1223.
[55] *Id.* at 1222.
[56] Bates v. Little Rock, 361 U.S. 516, 524 (1960); *accord*, Shelton v. Tucker, 364 U.S. 479 (1960).
[57] McLaughlin v. Florida, 379 U.S. 184, 196 (1964).
[58] Appellant's Petition for Rehearing at 6, State v. Abodeely, 179 N.W.2d 347 (Iowa 1970).
[59] People v. Belous, 80 Cal. Rptr. 354, 458 P.2d 194 (1969); *cert. denied*, 397 U.S. 915 (1970); Babbitz v. McCann, 310 F. Supp. 293 (E.D. Wis. 1970), *appeal dismissed*, 91 S. Ct. 12 (1970). *See also* Babbitz v. McCann, 312 F. Supp. 725 (E.D. Wis. 1970), *modified per curiam*, 320 F. Supp. 219 (E.D. Wis. 1970).
[60] TIME, Mar. 9, 1970, at 34.
[61] CAL. HEALTH & SAFETY CODE § 25951 (West Supp. 1971).
[62] COLO. SESS. LAWS Ch. 190 (1967).
[63] Abortions Act 1967, c. 87.
[64] N.Y. PENAL LAW § 125.05 (McKinney 1970).
[65] Unlike Hawaii's statute, the New York law has no hospital or residence requirements and does not outlaw all abortions after the twenty-fourth week since abortions may still be performed to save the life of the mother.
[66] H.F. 134, 64th G.A., 1st Sess. (1971). *See also* The Des Moines Tribune, Feb. 3, 1971, at 1, col. 2.

to twenty weeks after conception. It allowed the woman and her physician to make the decision whether or not to have an abortion, provided that the abortion could occur anywhere up to the twelfth week, and made abortion in a licensed hospital mandatory between twelve and twenty weeks. A residency requirement of sixty days was also added. However, after one day of debate the Iowa House not only voted 55 to 45 to defeat the bill (which had been amended to allow abortion within the first twelve weeks of pregnancy), it also passed a motion to block its consideration during the 1971-1972 legislature.[67] Several attempts to amend the bill were also defeated.

There is a need for a new abortion statute in Iowa which will not limit abortions to just those circumstances where the life of the mother is at stake. If the protection of the life of the mother is the main concern, one can ask whether the current Iowa statute really achieves this goal when studies now indicate abortion in a licensed hospital is safer than childbirth itself;[68] by contrast, illegal abortions are inherently dangerous.[69] The primary question is who will decide whether an abortion is to take place. The mother? Her physician? Or the statute? If the law allows the physician alone to decide, then it possibly allows an unconstitutional delegation of power to him. If the statute is to be the sole decision-maker, then it is arguable that it infringes upon a woman's personal right to choose not to bear her child. Perhaps the best solution is to allow the mother to decide, after having discussed the matter with her physician. In this way the state could still regulate the act of abortion itself, for example by requiring that it be performed in a licensed hospital by a licensed physician, without interfering with the mother's choice not to bear her child. However, the California, Colorado, Oregon, and North Carolina statutes are submitted as additional examples that might be considered.[70]

At this writing a United States district court has just recently declared the Illinois abortion law unconstitutional.[71] The law[72] allowed abortions only to

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[67] The Des Moines Register, Feb. 12, 1971, at 1, col. 8; The Des Moines Tribune, Feb. 12, 1971, at 8, col. 3.

[68] People v. Belous, 80 Cal. Rptr. 354, 360, 361, 458 P.2d 194, 200, 201 n.7 (1969).

[69] Recognized in *Belous* at 361, 458 P.2d at 201.

[70] The California statute requires an abortion to be approved by a medical staff committee of an accredited hospital. CAL. HEALTH & SAFETY CODE § 25951 (West Supp. 1971); the Colorado statute is similar. COLO. SESS. LAWS Ch. 190 (1967); in North Carolina an abortion must first be approved by three physicians. N.C. GEN. STAT. § 14-45.1 (1969). North Carolina and Colorado both allow termination of pregnancy where the risk is substantial that the child will be born defective. In Oregon a physician can terminate a pregnancy if he believes in good faith that (1) there is a substantial danger to the physical or mental health of the mother, (2) the child will be born with a serious mental or physical defect, or (3) the pregnancy resulted from felonious intercourse. The physician is allowed to base his decision on the total present or "reasonably foreseeable" environment. The statute allows termination only by a licensed physician in a licensed hospital. There is no termination without approval by two independent physicians, and no termination after 150 days except in emergency situations where the mother's life is in danger. ORE. REV. STAT. §§ 435.415, 435.425 (1970).

[71] Doe v. Scott, 321 F. Supp. 1385 (N.D. Ill. 1971). The court very bluntly stated that "a statute which requires a woman to risk physical and emotional harm short of death when a therapeutic abortion would remove that risk does not bear scrutiny as a health measure for the benefit of women." *Id.* at 1390, 1391.

[72] ILL. REV. STAT. Ch. 38, § 23-1 (1961).

preserve the life of the mother; the court held that the statute infringed on the woman's right to privacy and that the state had no compelling interest. However, a few days after that ruling an order staying the district court's ruling came down from Justice Marshall of the United States Supreme Court.[73] Thus, the Illinois statute is still law.

The reasons cited for reform of abortion laws are many:[74] doctors hesitate to perform abortions due to uncertainty of the law and possible professional ruin; women risk "back-street" operations; the population is exploding; and serious social and criminal problems are likely to result from children who are born and yet were never wanted in the first place. Whether one accepts these reasons or not, they lie largely within the domain of legislative judgment. It is the constitutionality of the statutes which the courts are now considering. The United States Supreme Court has yet to provide an answer to this.

In conclusion, there is certainly a good possibility that Iowa may be left without an abortion statute if the legislature fails to act and the present statute is declared unconstitutional. While it is true the court did not grant the petition for rehearing in *Abodeely*, which took the position used by courts in other states to overturn their abortion laws (viz., the woman's right to choose), this may only have been due to Mr. Abodeely's particular standing in the case (*i.e.*, since he was neither a doctor nor a woman who had had an abortion). Thus, the Iowa supreme court may yet act on this issue in a future case.

BRUCE W. FOUDREE

TORTS—REPEATED TELEPHONE CALLS BY CREDITOR TO DEBTOR AT DEBTOR'S PLACE OF EMPLOYMENT WERE NOT SUCH WILLFULL AND MALICIOUS ACTS AS TO CONSTITUTE INVASION OF DEBTOR'S PRIVACY.—*Beneficial Finance Company of Waterloo v. Lamos* (Iowa 1970).

Defendants, husband and wife, were co-makers of a promissory note entered into with plaintiff finance company. The husband was later discharged in bankruptcy, but subsequently revived the note by written agreement. When defendants failed to satisfy the revived debt, plaintiff's employees repeatedly telephoned the wife at her place of employment regarding the overdue indebtedness. When these calls proved ineffective, plaintiff brought an action for payment and defendants counterclaimed, alleging mental anguish and invasion of privacy resulting from creditor harassment. The district court entered judg-

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[73] The Des Moines Register, February 12, 1971, at 1, col. 6.

[74] Those given are listed and discussed in Samuels, *Termination of Pregnancy. A Lawyer Considers the Arguments*, 7 MED. SCI. & LAW 10 (1967).

On May 3, 1971, the United States Supreme Court denied certiorari in State v. Abodeely. *See* 39 U.S.L.W. 3485 (U.S. May 3, 1971).—*Ed.*

ment in favor of the plaintiff and dismissed the counterclaim. The defendants appealed to the Supreme Court of Iowa. *Held*, affirmed. The court stated *inter alia* that plaintiff's acts were not so willful or malicious as to constitute a basis for recovery. *Beneficial Finance Company of Waterloo v. Lamos*, 179 N.W. 2d 573 (Iowa 1970).

Plaintiff's records disclosed that in a two month period its employees made thirteen telephone calls to Mrs. Lamos at the hospital where she was employed as a surgical nurse. Some reached her during working hours which necessitated that she be called from the operating room. The calls disturbed Mrs. Lamos considerably and on one occasion arrangements were made to send her home because she was so upset. Based on these facts, a cogent argument exists that defendant's counterclaim should not have been summarily dismissed.

A debtor's remedy against a creditor who is allegedly involved in extrajudicial harassment can be based upon invasion of privacy,[1] intentional infliction of mental anguish,[2] defamation,[3] or trespass.[4] The remedy which will best afford recovery must necessarily depend on the circumstances of each case.

The right to privacy as an actionable tort was initially recognized in this country in 1890,[5] but Iowa did not adopt this theory until 1956.[6] It is a tort which has been given multifarious definitions and interpretations.[7] In *Bremmer v. Journal-Tribune Publishing Co.*,[8] the Iowa court cited with approval the *Restatement of Torts*: "A person who *unreasonably* and *seriously* interferes with another's interests in not having his affairs known to others or his likeness exhibited to the public is liable to the other."[9] This traditional definition of the tort requires publication to a third person before an action can accrue. It has been noted that there are now four distinct kinds of invasions which are actionable under the "right to privacy" theory,[10] including the intrusion upon plaintiff's solitude or his private affairs.[11] This concept expands the traditional definition and alleviates the necessity for publication to a third person. Consequently, creditors have been held liable not only for placing a large sign in a store

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1 Yoder v. Smith, 253 Iowa 505, 112 N.W.2d 862 (1962).
2 Barnett v. Collection Serv. Co., 214 Iowa 1303, 242 N.W. 25 (1932).
3 Ragland v. Household Fin. Corp., 254 Iowa 976, 119 N.W.2d 788 (1963).
4 Girard v. Anderson, 219 Iowa 142, 257 N.W. 400 (1934).
5 In a now-famous article, Samuel D. Warren and Louis D. Brandeis contended that there was a great need for such a remedy and courts have subsequently adopted their argument. Warren and Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193 (1890).
6 Bremmer v. Journal-Tribune Pub. Co., 247 Iowa 817, 76 N.W.2d 762 (1956).
7 W. PROSSER, LAW OF TORTS 833-42 (3d ed. 1964) [hereinafter cited as PROSSER].
8 247 Iowa 817, 76 N.W.2d 762 (1956).
9 RESTATEMENT OF TORTS § 867 (1939) (emphasis added).
10 1. Intrusion upon plaintiff's seclusion or solitude, or into his private affairs.
2. Public disclosure of embarassing facts about the plaintiff.
3. Publicity which places plaintiff in a false light in the public eye.
4. Appropriation for defendant's advantage, of the plaintiff's name or likeness.
PROSSER, *supra* note 7, at 833-842.
11 *Id.* at 833.