

WITH LIBERTY AND JUSTICE
FOR ALL
THE UNEASY INTERSECTION OF LAW AND MEDICINE
STERILIZATION, MEDICAID, AND WAITING PERIODS

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DISCLOSURES

- The speaker has no financial conflicts to disclose
- She is a reproductive endocrinologist and family planning specialist
- She works at an academic medical center with a high percent of Medicaid and Emergency Medicaid births



FAMILY PLANNING

- The ability to choose when and how many children to have is currently considered a fundamental human right
- “Access to safe, voluntary family planning is a human right. Family planning is central to gender equality and women’s empowerment, and it is a key factor in reducing poverty” United Nations Population Fund

A woman with glasses and a blue sweater stands to the right of a historical marker. The marker is dark blue with gold lettering and a gold outline of the state of Indiana at the top. The text on the marker describes the 1907 Indiana Eugenics Law, its unconstitutionality in 1921, its reinstatement in 1927, and its repeal in 1974. The woman is looking towards the camera.

1907 INDIANA EUGENICS LAW

(Continued from other side)

Indiana Supreme Court ruled 1907 law unconstitutional 1921, citing denial of due process under Fourteenth Amendment. 1927 law reinstated sterilization, adding court appeals. Approximately 2,500 total in state custody were sterilized. Governor Otis R. Bowen approved repeal of all sterilization laws 1974; by 1977, related restrictive marriage laws repealed.

INSTALLED 1997 INDIANA HISTORICAL MARKER BOARD, INDIANA UNIVERSITY,
AND INDIANA UNIVERSITY FOUNDATION

STERILIZATION IN THE US

- Sterilization – the permanent removal of a person's ability to procreate – has a complex history in the US
- Social Darwinism and the eugenics movement in the US in the first half of the 20th Century led to forced sterilization of men and women



BUCK V BELL

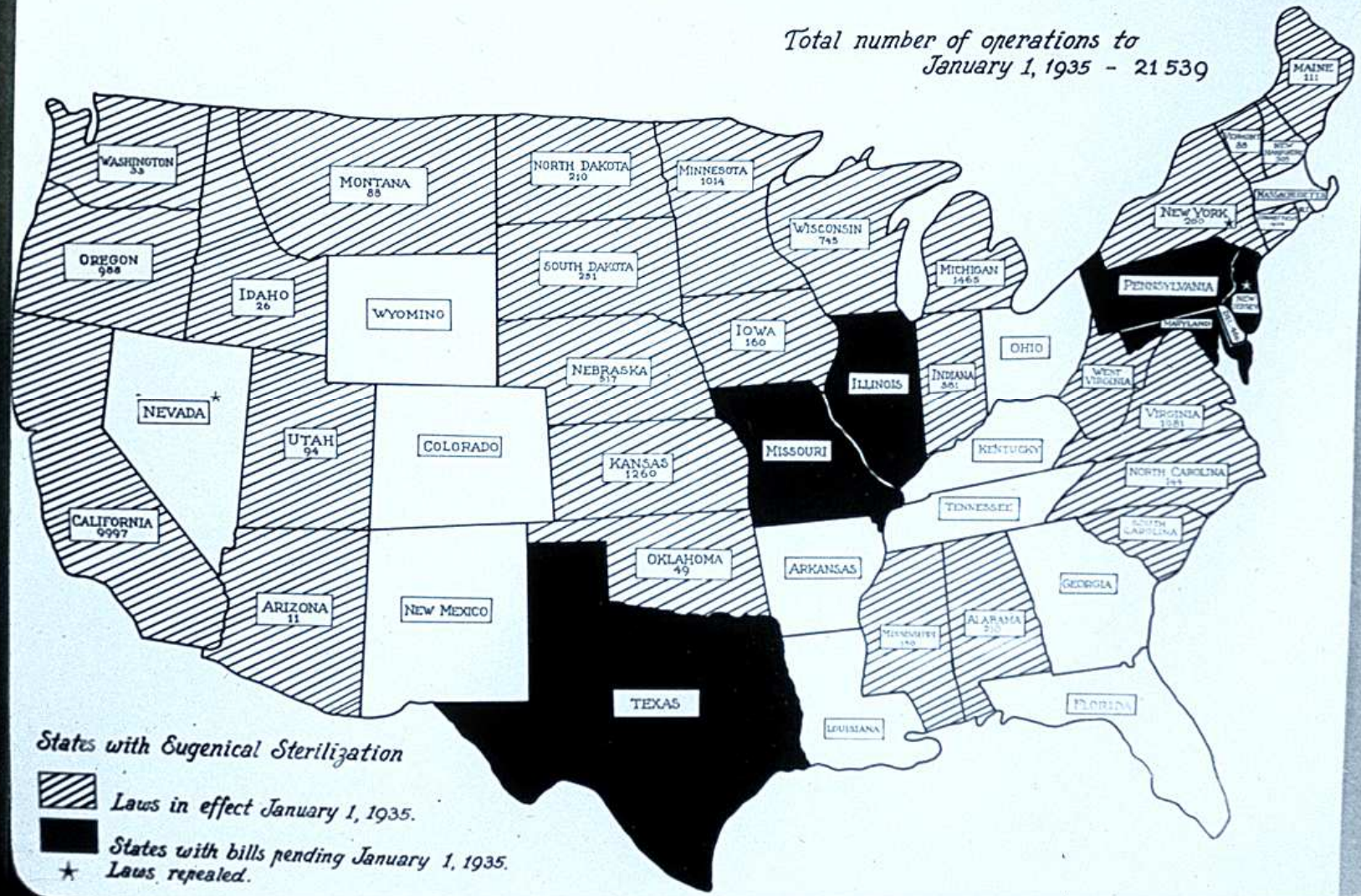
- Carrie Buck v. John Hendren Bell, Superintendent of State Colony for Epileptics and Feeble Minded
- On May 2, 1927, in an 8-1 decision, the Court judged that she, her mother and her daughter were "feeble-minded" and "promiscuous"
- "The principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes... Three generations of imbeciles are enough"
Justice Oliver Wendall Holmes



Commissary Smith
from
Oliver and John H. H. H.
March 8/90

LEGISLATIVE STATUS OF EUGENICAL STERILIZATION IN THE UNITED STATES AND THE TOTAL NUMBER OF OPERATIONS BY EACH STATE TO JANUARY 1, 1935.

*Total number of operations to
January 1, 1935 - 21 539*



SKINNER V OKLAHOMA

- Skinner v. State of Oklahoma, ex. rel. Williamson, 316 U.S. 535 (1942)
- United States Supreme Court ruling which held that laws permitting the compulsory sterilization of criminals are unconstitutional if the sterilization law treats similar crimes differently. The Oklahoma law applied to "habitual criminals," but the law excluded white-collar crimes from carrying sterilization penalties.
- The Court held that treating similar crimes differently violated the Equal Protection Clause of the 14th Amendment.



MEDICAID AND STERILIZATION REGULATIONS

- Sterilization procedures increased significantly in the 1960's and 1970's with the rise of effective contraceptive methods and new less invasive methods of sterilization (mini-laparotomy, laparoscopy)
- 1976 the Department of Health Education and Welfare created a standard consent form and a 72 hour waiting period
- 1978 the waiting period was extended to 30 days

MEDICAID STERILIZATION REGULATIONS

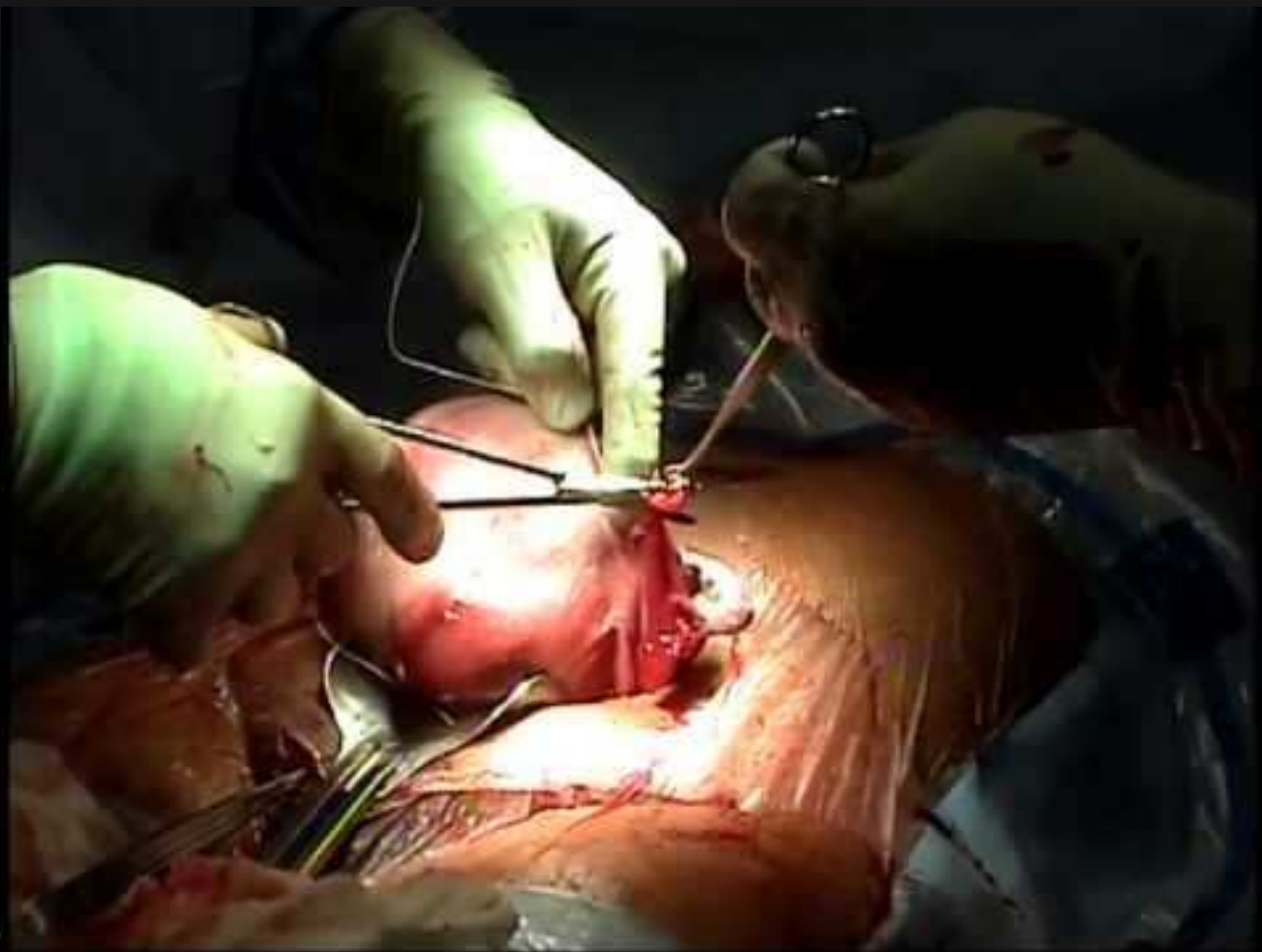
- There is an “emergency waiver” of the 30 day rule, but it still requires a 72 hour waiting period
- [“Emergencies” are emergencies and rarely wait for 72 hours]



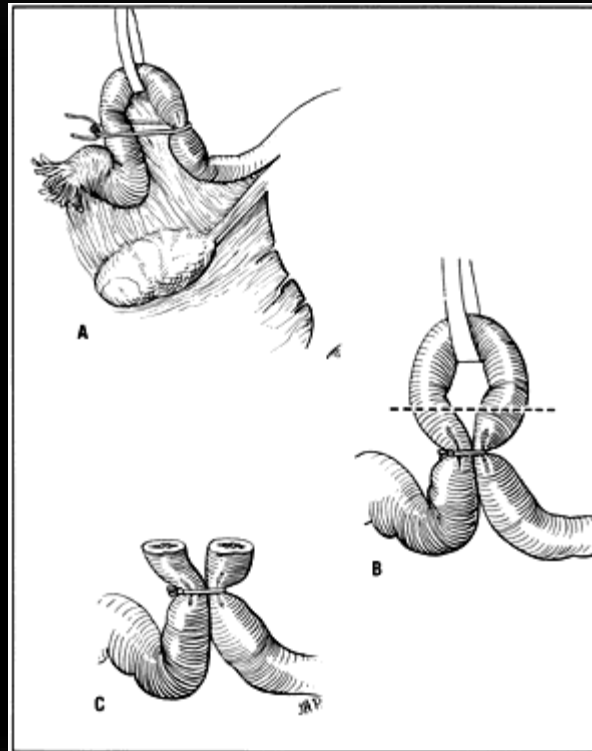
CONSENTS

- HHS consent is not written at the appropriate level for the targeted patient.
- Women with health insurance have access to information that is literacy appropriate
- <http://www.hhs.gov/opa/pdfs/consent-for-sterilization-english-updated.pdf>









MEN, MEDICAID STERILIZATION AND THE ACA

- Some state's Medicaid cover women's sterilization but not vasectomy
- The Affordable Care Act has clear language to cover contraception for women....but not for men.

MEDICAID POST PARTUM STERILIZATION PROCESS – IN PRACTICE

- Women must register for prenatal care in a timely manner
- The provider must go through the consent process in a timely manner (no less than 30 or greater than 180 days)
- The billing team must get a Medicaid approval number in a timely manner
- The Medicaid approval number must be placed in a retrievable place (where someone can find it)

POST PARTUM STERILIZATION FOR MEDICAID PATIENTS – IN PRACTICE

- The clinician didn't get the consent signed, faxed to the billing office, faxed to Medicaid
- The approval number isn't found anywhere
- The patient transferred her care – by choice or emergency transport and the documents are nowhere to be found

MEDICAID'S BIG STICK

- If a sterilization occurs with a patient's consent without a 30 day waiting period, or 72 hour "emergency waiting period", and without a Medicaid Approval Number, Medicaid will not pay for ANY of the entire hospitalization of the patient
- (not just the tubal, but the delivery, or cesarean section, and the entire hospital stay)

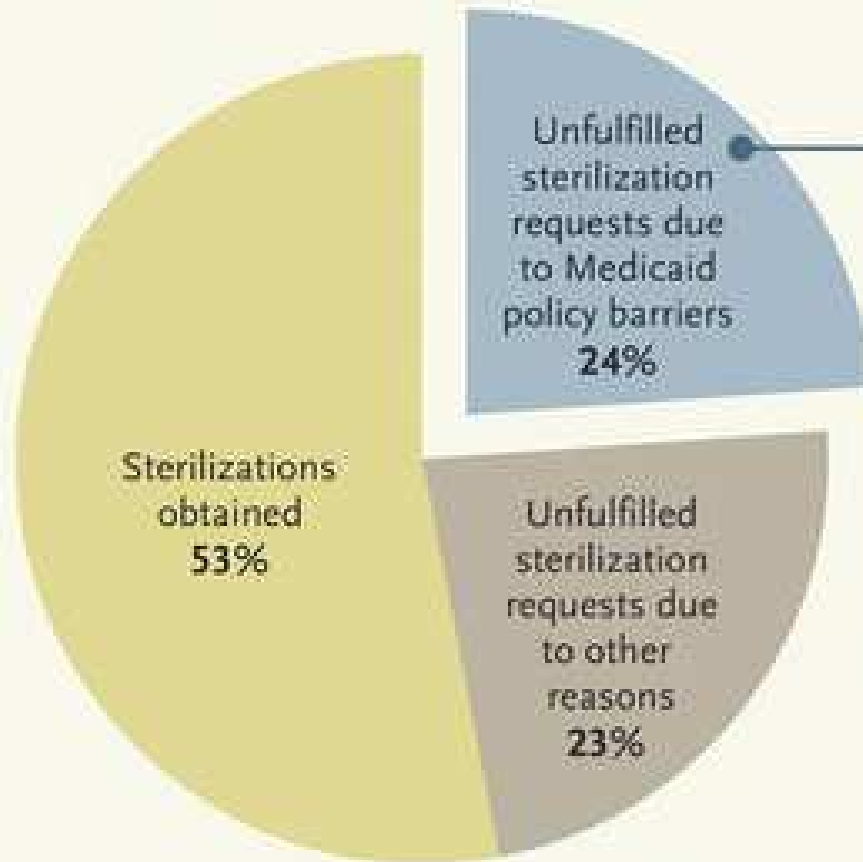
THE HOSPITAL'S BIG STICK

- It is ethically appropriate and legal for a physician to get informed consent for sterilization from a woman who is competent to give it when the patient is admitted to Labor and Delivery
- It is ethically appropriate and legal for the physician to perform the sterilization procedure
- The hospital might initiate disciplinary action....because it is the hospital that loses big

UNEQUAL TREATMENT...NOT JUSTICE FOR ALL

- Women with health insurance usually sign consents for their sterilization procedure just before their procedure
- It is uncommon for women with “private” health insurance not to get their post partum sterilization procedure
- It is common for women with Medicaid NOT to get their sterilization procedure

Outcomes of Postpartum Sterilization Requests





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MANDATED WAITING PERIODS AND REPRODUCTIVE HEALTH

- (Marriage in some states)
- Abortion in some states
- No other medical procedures including many extensive elective cosmetic procedures require waiting periods

WAITING PERIODS, AUTONOMY, AND PATERNALISM IN REPRODUCTIVE HEALTH

- Women do know their own minds
- Women do think about their options
- Women often make decisions based on the health and welfare of their families
- Waiting periods, particularly in time-sensitive and setting-sensitive situations like post partum sterilization should be normalized for patients with Medicaid...should be similar to women with other insurance...and similar to other procedures