

## The Waterbury Origins of *Roe v. Wade*

Katharine Houghton Hepburn had never doubted that Sallie Pease was an ideal president for the Connecticut Birth Control League (CBCL). Hepburn's next-door neighbor in Hartford since 1927, a Smith College graduate, and the mother of three school-age boys, Pease was only thirty-seven—nineteen years Hepburn's junior—when she became league president in 1934. For eleven years, since 1923, when nationally noted birth control crusader Margaret Sanger had first visited Hartford, Kit Hepburn had played a central role in holding the league together. Little headway had been made toward the league's goal of winning legislative repeal of Connecticut's unique 1879 criminal statute that made the use and/or prescription of any form of birth control a crime for both woman and doctor alike, but in the summer of 1935 Sallie Pease had taken the lead in the league's dramatic but initially unpublicized decision to go ahead and simply *open* a public birth control clinic in Hartford. Just as the league had hoped, no one moved to enforce the law or to close the clinic, and in its first year of operation the clinic's women doctors provided birth control counseling and devices to over four hundred married women, many of them first- or second-generation ethnic immigrants from Hartford's poorer neighborhoods.<sup>1</sup> Quietly ecstatic at their success in extending to poor women the same medical advice that privately was available to those who could afford family physicians, by the summer of 1936 the Connecticut League also had clinics functioning in Greenwich, New Haven, and Stamford. The following two years witnessed similar growth and expansion, as clinic services opened in Norwalk, Danbury, New Britain, New London, and Bridgeport.<sup>2</sup> The Bridgeport city prosecutor expressly told inquiring reporters that the 1879 statute represented no bar to the services that the Bridgeport clinic was providing,<sup>3</sup> and six months later, in October of 1938, the league achieved its hope

of having clinic services available in all of Connecticut's large cities when a one-morning-a-week clinic quietly opened in downtown Waterbury, Connecticut's most ethnically diverse—and most heavily Roman Catholic—city.

Sallie Pease and Kit Hepburn were rightfully proud of the tremendous progress that had been attained by simply going ahead and opening clinics, rather than by unsuccessfully continuing to petition each biennial session of the Connecticut legislature for a statutory change, as the league had from 1923 through 1935. Neither public officials nor religious groups seemed actively interested in mounting any effort to enforce a now seemingly dead-letter law, and the Connecticut League would be able to continue moving forward with its real purpose of providing actual services to more and more needy women who wanted to limit the number of their children.

So when the Connecticut League convened for its annual luncheon meeting at the Farmington Country Club on Thursday, June 8, 1939, Sallie Pease had no hesitancy in speaking plainly about their new successes. The general director of the national Birth Control Federation of America (BCFA)—the newly renamed organization that was the direct descendant of Margaret Sanger's initial work two decades earlier—Dr. Woodbridge E. Morris, had himself come up to central Connecticut for the luncheon, and while Hartford reporters took notes on Morris's remarks about the regrettable level of maternal mortality in America, they also listened to Sallie Pease's presidential report, in which she highlighted the opening of the Waterbury clinic as the league's most prominent achievement in the preceding year. What was especially notable, she stressed, was that the Waterbury clinic, unlike any of its other Connecticut predecessors, was operating "in a public institution," in the Chase Dispensary outpatient building of the Waterbury Hospital. So far, Pease said, it has "received no publicity, but it is there in working order and will grow."<sup>4</sup>

Sallie Pease was a brash and flashy person, quite different in style and persona from the Greenwich and Fairfield County women who comprised much of the Connecticut League, and she hadn't given any thought to the possible press coverage of her luncheon remarks.<sup>5</sup> Friday morning's *Hartford Courant* ran a modest story on page twenty-four, noting in passing the newly announced Waterbury clinic in the Chase Dispensary, but the Associated Press put the *Courant* story on the state news wire, and Friday morning's *Waterbury Republican* printed it on page fifteen, under a headline reading "U.S. Maternal Mortality Rate Reported Poor." Several paragraphs down, however, it stated how

Pease had reported “that during the year the first clinic in a public institution in Connecticut was opened at the Chase Dispensary in Waterbury.”<sup>6</sup>

The *Waterbury Republican*, and its sister paper, the afternoon *Waterbury American*, were not the city’s only newspapers, however. There was also the afternoon *Waterbury Democrat*, which in many ways—as its name indicated—was the antithesis of the *Republican*. *Republican-American* publisher William J. Pape had been an outspoken and crusading opponent of the city’s mostly corrupt Democratic political establishment, and it was in large part because of the *Republican*’s efforts that Waterbury Mayor—and Connecticut Lieutenant Governor—T. Frank Hayes and over twenty fellow defendants were currently on trial for looting the city treasury. The *Democrat* had spoken up for the Hayes regime, and if the Pape papers were a voice for the Anglo-Saxon Yankee population that found its political home in the Republican party, the *Democrat* was viewed as the voice for Waterbury’s Irish, Italian, French-Canadian, and Lithuanian immigrant populations. Some 72,000 of Waterbury’s 99,000 citizens were either first- or second-generation immigrants to America, and while the ethnic parishes where most of them attended church might differ greatly in custom and in language, they were almost all Roman Catholic.<sup>7</sup>

Friday afternoon’s *Waterbury Democrat* featured a front-page headline, “Birth Control Clinic Is Operating In City,” and quoted Chase Dispensary supervisor Jeannie Heppel as confirming Sallie Pease’s unintentional announcement. “Pastors of Catholic churches had no comment to make today,” the *Democrat* went on, but the paper hardly had to tell its readers that Connecticut’s Catholic hierarchy, the Diocese of Hartford, was a staunch and unyielding opponent of birth control. Church representatives had turned out at every legislative session from 1923 to 1935 to oppose the CBCL’s petitions for statutory change, and just four weeks earlier the Reverend John S. Kennedy, associate editor of the diocese’s weekly newspaper, the *Catholic Transcript*, had been prominently quoted in the *Democrat* as telling three hundred Waterbury Catholics at a special Mother’s Day Communion breakfast that he was puzzled as to why some Connecticut prosecutors were “so anxious” to go after bingo game operators “while birth control clinics were allowed to flourish.” One Hartford woman who had received a birth control circular, Kennedy said, had contacted the *Transcript* to complain. Kennedy’s remarks, the *Democrat* volunteered, had been “most inspirational.”<sup>8</sup>

Different readers reacted to the *Democrat*’s story in different ways.

Waterbury Hospital superintendent Dr. B. Henry Mason and gynecology clinic chief Dr. Charles L. Larkin both told reporters that no “birth control clinic” was operating at the Chase Dispensary, and Saturday’s *Republican* prominently headlined their claim—“Doctors Deny Birth Control Clinic in City”—despite Heppel’s statements to the contrary. The problem, Dr. Mason explained, was simply a matter of terminology. A gynecological clinic, the *Republican* said, “includes in the normal course of its work the giving of some information on birth control.” But such advice, Mason said, “is provided purely on a health basis. A woman whose health would be seriously endangered by child bearing might get medical advice at the clinic on birth control, but not robust, healthy women.” Dr. Larkin agreed: “That’s a long way from the popular conception of a birth control clinic where any woman may go who doesn’t want to have children.”<sup>9</sup>

By Saturday morning the hospital staffers finally had their stories straight, as that afternoon’s *American* emphasized: “Miss Heppel Agrees With Dr. Mason: Waterbury Has No Birth Control Clinic.” But Heppel’s actual statement, much like Mason’s and Larkin’s, did not exactly square with the headline: “Nobody can come here for information unless they are referred by doctors for reasons of their health,” supervisor Heppel explained. “People can’t just come in as they please and get information.” Clinic sessions were held each Tuesday, the *American* added, had begun last October, and were actually conducted by two young doctors, William A. Goodrich and Roger B. Nelson, who reported to Larkin.<sup>10</sup>

But the hospital officials were not the most significant readers of the Waterbury press. Friday’s *Democrat* had observed that the city’s Catholic clergy “might” refer the matter to Hartford Bishop Maurice F. McAuliffe, but Father Eugene P. Cryne, president of the Catholic Clergy Association of Waterbury, already had called a special meeting of the association for Saturday morning in the rectory of Immaculate Conception parish, Waterbury’s oldest Roman Catholic church. Cryne was not the most prominent or the most senior of Waterbury’s Catholic clergy, but Immaculate’s own pastor had been formally installed only one year earlier, and Monsignor Joseph Valdambri, pastor of Our Lady of Lourdes parish and the son of a Vatican banker with a royal title, was out of town on a four-month visit to Italy. A fifty-six-year-old Connecticut native, Cryne, like many Connecticut priests, had received his religious training at St. Thomas Seminary. He had become pastor of St. Patrick’s Church, one of Waterbury’s more modest parishes, but with seventeen hundred members, mostly of Irish

background, in 1933, after having previously served in a junior role at Immaculate and then in parishes just outside of Waterbury.<sup>11</sup>

Eugene Cryne was, however, in the eyes of his fellow priests, “a very forceful individual” who had a very definite sense of right and wrong. “When rules and regulations were made, they had to be abided by,” a younger priest who served under Cryne explained. Although a “very kind” man, Eugene Cryne was “a very determined person.” And the resolution that was drawn up at that special Saturday morning meeting of Waterbury’s Catholic clergy at the Immaculate rectory was a very determined and very forceful resolution:

Whereas, it is the teaching of the Catholic church that birth control is contrary to the natural law and therefore immoral, and

Whereas, it is forbidden by statute law to disseminate birth control information for any reason whatsoever or in any circumstance, and

Whereas, it has been brought to our attention that a so-called birth control clinic, sometimes called a maternal health center, is existing in Waterbury as admitted by the superintendent of Chase Dispensary, according to the papers, therefore, be it

Resolved, that this association go on record as being unalterably opposed to the existence of such a clinic in our city and we hereby urge our Catholic people to avoid contact with it and we hereby publicly call the attention of the public prosecutors to its existence and demand that they investigate and if necessary prosecute to the full extent of the law.<sup>12</sup>

William B. Fitzgerald, the State’s Attorney in Waterbury, had like Father Cryne seen the stories in the Friday and Saturday Waterbury newspapers. And while news of the Catholic Clergy resolution did not appear in the Sunday *Republican*, Bill Fitzgerald certainly heard of it Sunday morning at the latest, for he faithfully attended St. Margaret’s Roman Catholic Church, and that morning—as Bill Fitzgerald remembered even decades later—the text of the clergy’s resolution was read from the pulpit of each and every Catholic church in Waterbury and in surrounding towns.<sup>13</sup>

Bill Fitzgerald had been State’s Attorney for only one year. Thirty-seven years old, a Waterbury native, and an alumnus of Holy Cross College, Fitzgerald had opened a Waterbury law office immediately after graduating from Harvard Law School and passing the bar in 1926. Two years later he became a prosecutor in the city’s misdemeanor court, and in 1931 he became assistant state’s attorney, both part-time positions that supplemented an attorney’s private law practice. In May 1938, however, the special grand jury that had been impaneled to

investigate Mayor Hayes and the city's financial scandals issued a detailed, seventy-four-page report to accompany its charges, and included in it was a brief but harsh condemnation of Fitzgerald's boss, State's Attorney Lawrence L. Lewis, for failing until very recently to take any action against the presence of gambling devices in Waterbury social clubs. "The fact that these violations of the law were known but not prosecuted by State's Attorney Lewis," and others, "is a matter of distinct concern to this Grand Jury. The law enforcement authorities of the city and of the district are, therefore, deserving of the severest censure for having permitted this widespread and flagrant violation of law to continue."<sup>14</sup>

Larry Lewis felt he had no choice but to resign and return to full-time private practice in his firm of Bronson, Lewis & Bronson, but Bill Fitzgerald rebuffed Lewis's notion that Fitzgerald too had to step down, indicating instead that he'd like to be Lewis's successor. That choice lay with Waterbury's local judges, particularly resident Superior Court Judge Frank P. McEvoy, the first Roman Catholic member of Connecticut's premier trial court bench, and on June 6, 1938, Bill Fitzgerald received their official blessing and became the first Roman Catholic State's Attorney at Waterbury. Fitzgerald voiced high praise of Larry Lewis at his swearing in, but moved swiftly to eliminate gambling from the city, with widespread raids receiving coverage even in the *New York Times*.<sup>15</sup>

Bill Fitzgerald "had a first class mind," one lifelong attorney friend and courtroom adversary later remembered, but he was "a very, very strict Catholic." Another attorney friend, also once a communicant at St. Margaret's, agreed that Fitzgerald was "very bright," but was nonetheless "a very parochial, insular guy," someone "very strongly receptive to and influenced by the clergy." Bill Fitzgerald was active in a number of civic and church groups, and, like Judge McEvoy, served on the advisory board of Waterbury's Diocesan Bureau of Social Service, which was directed by Father Eugene Cryne. But most people who knew Bill Fitzgerald felt that the pressure to act came largely from within, rather than from without, that even in the absence of a phone call, Bill Fitzgerald believed there was only one thing to do. After all, just one year earlier his predecessor had had to resign because of public complaints that he had failed to enforce the often-ignored but nonetheless still-valid gambling laws aggressively, and the old 1879 prohibition against birth control was certainly still on the statute books. Yes, Bill Fitzgerald was a "devout" Catholic, but "I don't think Fitzgerald was any crusader at all," his one-time fellow member of St.

Margaret's emphasized. As almost everyone saw it, the state's attorney simply felt he had to do his duty. Eight days later Fitzgerald would indicate that he had been "acting upon complaints" in the wake of the newspaper stories, but probably as early as Saturday morning Bill Fitzgerald had decided that an active investigation of the Chase Dispensary clinic would have to be mounted.<sup>16</sup>

Monday morning's *Republican* headlined the Catholic Clergy Association's resolution, but devoted more attention to the continuing claims that the clinic was not what its critics said it was. Like Doctors Mason and Larkin, Dr. William A. Goodrich was portrayed as minimizing the clinic's work: "Out of 250 women who come to the clinic yearly, he said, an average of perhaps 15 come for birth control advice. They get the same advice, he said, that women who can afford personal physicians get from their own physicians." More pointedly, the *Republican* also highlighted a conversation the newspaper had had with a Hartford attorney who had represented the original CBCL clinic there. He asserted "that there is apparently no state statute under which a birth control clinic can be prosecuted as long as the clinic is operated on a health basis," the *Republican* said. "The lawyer pointed out that prohibiting the giving of birth control information to women for health reasons would run counter to the public health laws of the state. The Hartford authorities were asked to prosecute, he said, by the Hartford Catholic clergy, and decided at the time that there was no basis for prosecution."<sup>17</sup>

But the *Republican's* effort was in vain. Early Monday morning William Fitzgerald took a search warrant application to the chambers of Judge McEvoy. Fitzgerald's request stated "That he is informed and that he suspects and has reason to suspect that books, records, registers, instruments, apparatus and appliances used and kept for the purpose of violating the criminal laws," specifically Sections 6246 and 6562, "are kept, deposited, stored and used in" the Chase Dispensary at 43 Field Street.<sup>18</sup>

Birth control was not a new subject to Frank P. McEvoy. A sixty-year-old Waterbury native, an active member of Blessed Sacrament Roman Catholic Church, and, like Bill Fitzgerald, a member of the advisory board of Father Cryne's Diocesan Bureau of Social Service, Frank McEvoy had attended a small Roman Catholic college in New York, graduated from Yale Law School in 1907, and practiced law in Waterbury until being named a superior court judge in 1930. Friends thought of him as "soft spoken" and knew he was an "ardent horseman," but Waterbury attorneys considered him "narrow and reluctant

to accept change." A much younger fellow Catholic attorney remembered McEvoy as "wildly Irish Catholic" and "very parochial." Perhaps most notably, seven years earlier his wife had played the leading role in blocking any endorsement of birth control by the state convention of the Connecticut League of Women Voters. As the *Republican* had described it, Mrs. McEvoy "opposed it violently and threatened that she and all Catholic women would resign if it were adopted. Largely because of this, the proposal . . . was voted down," and Mrs. McEvoy had received nationwide praise from some Catholic spokesmen for her activism on the issue.<sup>19</sup>

Frank McEvoy immediately granted the warrant application that Bill Fitzgerald put in front of him: "I find probable cause exists for said complaint." Minutes later, a little before 10 a.m., Deputy Sheriff Al Francis and County Detective Koland G. Alling took the warrant and went the three short blocks that separated the Chase Dispensary from the state's attorney's office in the courthouse. Dispensary supervisor Jeannie Heppel had left on Saturday on vacation, but her assistant, Berta Verba, showed the two lawmen to the second floor rooms at the northwest corner of the building that the birth control clinic used. As the clinic operated only on Tuesday mornings, no one else was present, but as the *Waterbury Democrat* described it, the two officers "confiscated several bags and boxes of articles and returned with them to the courthouse."

Bill Fitzgerald declined comment to inquiring reporters and sat down with his assistant, Walter Smyth, and Detective Alling to review the seized materials. They prepared a show-cause order, signed later that day by Judge McEvoy, directing Waterbury Hospital superintendent B. Henry Mason to appear in court the following Monday to explain why the diaphragms and other contraceptive articles that had been seized should not be condemned and destroyed. But much more importantly, Bill Fitzgerald noted two other things as he examined what Alling and Francis had seized. First, all of the patient records, the clinical cards that would identify who had been seen and for what reasons, were not at the dispensary, but were in the possession of a young Junior League volunteer, Virginia Goss, who maintained the clinic's records and was married to a prominent young executive at Waterbury's most famous manufacturing firm, Scovill Brass. And then, second, Bill Fitzgerald also learned that the founder and moving force behind the Waterbury Maternal Health Center was not one or another of the doctors from Waterbury Hospital, but instead was his next-door neighbor and family friend, Clara Lee McTernan.<sup>20</sup>