

# Birth Control Turns Thirty-Five

BY JONI BAIRD

Ask most unmarried people how they attained their right to use birth control and, if you aren't given blank looks, you'll receive a host of responses rarely resembling the truth.

In fact it was just thirty-five years ago that humanist and reproductive rights pioneer Bill Baird's tenacious challenge in *Baird v. Eisenstadt* ended victoriously on March 22, 1972. In that decision Associate Justice William Brennan wrote:

If the right of privacy means anything it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision to bear or beget a child.

The case began when Baird responded to a petition signed by nearly 700 Boston University students asking him to challenge the 1879 Massachusetts law that denied unmarried individuals access to birth control. On April 6, 1967, he lectured at Boston University to more than 2,500 people and, in a prearranged move, handed a nineteen-year-old unmarried woman a free condom and a package of contraceptive foam. The police thereupon made the necessary arrest and his case was launched.

Unfortunately, all wasn't well among Baird's supporters. The prearranged representation by the American Civil Liberties Union fell through two weeks after his arrest when the organization began questioning the constitutional merits of Baird's case.

Another setback came when Jackie Ceballos of the newly formed National Organization for Women declined to support his efforts, stating that if his name were "Wilhelmina Baird" they would have backed him. NOW never did file a "friend of the court" brief in support of the case at any point during its five-year climb through the courts. Betty Friedan called Baird's work "irrelevant" and even launched a rumor, initiated in the *New York Post* in 1971, that Baird was a CIA agent.

Probably the biggest shock was Planned Parenthood's response. The director of the Planned Parenthood League of Massachusetts wrote that their lawyers had found no violation of constitutional rights in the law that was being challenged. Planned Parenthood President Alan Guttmacher called Baird "overly enthusiastic." Another organizational representative added, "The League feels it can live with the present law and Baird's efforts are an embarrassment to our group."

Despite this mixture of apathy and hostility from leading allies in the larger struggle for reproductive freedom, Baird pressed on, serving three months in the Charles Street Jail for distributing birth control. In handing down the sen-

tence, Judge Donald Macauley declared Baird "a menace to this nation."

But the case finally reached the Supreme Court, where Associate Justice William O. Douglas wrote, "While the teachings of Bill Baird and Galileo are of a different order, the suppression of either is equally repugnant." The decision was six to one with Chief Justice Warren Burger dissenting. With that decision every birth control statute in the nation was struck down.

On the day the Court ruled, Baird predicted to reporters that antiabortion laws would be repealed within one year. Ten months later the Court ruled in *Roe v. Wade*, quoting Baird's case six times in its legalization of abortion.

Nonetheless, Baird was effectively written out of history. Leading reproductive rights organizations have preferred to cite an earlier case, *Griswold v. Connecticut* (1965), in which a right of privacy was established in regard to the use of contraceptives by married couples. But it was the extension of privacy to unmarrieds that made the right complete, which is why Baird's case, in the words of the late *Roe v. Wade* attorney Roy Lucas, "supplanted" *Griswold*. Lucas adds in his 2004 *Roger Williams University Law Review* article, "New Historical Insights on the Curious Case of *Baird v. Eisenstadt*," that "one must acknowledge that the decision is among the most influential in the United States during the entire century by any manner or means of measurement" and says the case has impacted international law in Canada, Ireland, and England. It was even quoted five times in the 2003 Supreme Court decision in the gay rights case, *Lawrence v. Texas*.

Only lately, however, has Baird begun to be rediscovered by his own allies. New York State NOW President Marcia Pappas invited him to speak at the group's fortieth anniversary celebration held in Albany, New York, in October 2006, writing, "I am continually surprised by the revisionism of some who are unwilling to give credit to people who have had a major impact on our freedom." University of Massachusetts history professor Joyce Avrech Berkman stated in a 2006 news article that she was "quite convinced" Baird was right that he'd been marginalized by some feminists.

It can be said that true pioneers must sometimes forge lonely paths. At the age of seventy-four Baird continues lecturing as he's been doing non-stop since the 1960s, delivering the same message he started with: that women must have the right to control their reproductive destinies. [H](#)

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