To the Editor:

The report by Myra Gerson Gilfix, *Electronic Fetal Monitoring: Physician Liability and Informed Consent,* 10 AM. J. LAW & MED. 31 (1984) has recently come to my attention. In my opinion criticism is deserved by the slanted presentation of the article due to selected exclusion of references to certain works. The article could consequently be misconstrued as having been preconceived.

Myra Gilfix relies quite heavily for medical views and studies of electronic fetal monitoring on the work of H. David Banta, M.D. and Stephen B. Thacker, M.D., but does not delve into the commentary of same by John C. Hobbins, M.D., Roger Freeman, M.D. and John T. Queenan, M.D., *The Fetal Monitoring Debate,* 54 OBSTET. GYNECOL. 103 (1979) which was followed by an exchange of published letters entitled, *Fetal Monitoring,* 54 OBSTET. GYNECOL. 667 (1979) between messieurs Banta and Thacker on the one hand and messieurs Hobbins, Freeman and Queenan on the other hand. Lest it be overlooked, the latter are distinguished professors and researchers in the field of obstetrics and gynecology whereas the former are not.

There was no mention of the report by Ingemarsson, E., Ingemarsson, I. & Svenningsen, N., *Impact of Routine Fetal Monitoring During Labor on Fetal Outcome with Long-term Follow-up,* 141 AM. J. OBSTET. GYNECOL., 29 (1981), which concluded, "The improved short-term and long-term fetal outcomes seem to be largely a result of *routine* fetal monitoring with all its implications for obstetric and neonatal management; the significant reduction in neurological sequelae, even after correction for other changes in obstetric routines supports this suggestion." (emphasis added).

Perhaps the report by Erkkola, R. Gronroos, M. Punnonen, R., & Kilkku, P., *Analysis of Intrapartum Fetal Deaths: Their Decline with Increasing Electronic Fetal Monitoring,* 63 ACTA OBSTET. GYNECOL. SCAND. 459 (1984) is too recent to have been included in the report by Myra Gilfix, but all patients received electronic fetal monitoring AND watched carefully while in labor by a nurse-midwife resulting in a reduction of intrapartum fetal deaths from 1.7 to .03 per thousand births.

I believe these aforementioned reports dispute the statement made by Myra Gilfix on page 89 of her article that "[i]n the absence of evidence of any benefits of routine EFM . . . women's informed choices should be given special importance." In fact, the benefits far outweigh the risks of EFM as analysis of current data shows.

Now, as I leave the medical aspects of EFM and enter the legal ones I may well display ignorance of the law, but I do believe that any analysis of EFM must include a discussion of the interests not only of the pregnant laboring and delivering mother, but also the interest of the undelivered fetus. These may well be in conflict with each other as discussed in R. Jurow

& R. H. Paul, *Cesarean Delivery for Fetal Distress without Maternal Consent,* 63 OBSTET. GYNECOL. 596 (1984); E. Raines, *Editorial Comment,* 63 OBSTET. GYNECOL. 598 (1984). I can tell you from very practical, frontline, at the bedside obstetrical experience that the interests of pregnant patients may well place the life of the fetus, the yet unborn baby, in real and actual jeopardy. This may be so even when diligent efforts are made to comply with the full disclosure requirements of informed consent. To date, I have been informed by legal colleagues that the fetus is not a person and so the interests of the mother take legal precedence. However, it would seem that this is also in a state of flux as indicated by the recent Arizona Supreme Court ruling in the case of Jack and Charlene Summerfield, Mesa, Maricopa County, Arizona, where Justice Stanley G. Feldman writing for the Supreme Court wrote, "There is no logic in the premise that if a viable infant dies immediately before birth it is not a 'person' but that if it dies immediately after birth it is a 'person.' "

I wish to make quite clear that this communication is an expression of my own personal opinion and in no way reflects any expression or statement from the Kaiser Permanente Southern California Medical Group.

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To the Editor:

The comments of Dr. Fribourg are to my mind quite appropriate. The communication by Myra Gilfix indeed deserves criticism, coming as it appears to from a less than fair and uncritical point of view. She appears to be fulfilling a preconceived bias with a wealth of citations but she offers little insight. She ignores the burgeoning and persuasive evidence that electronic fetal monitoring does indeed improve outcome by diminishing the risk of both antepartum and intrapartum stillbirth, and by ameliorating the outcome of babies as measured by Apgar scores and neurological performance. Furthermore, these benefits are not restricted to mothers identified as high risk.

Electronic fetal monitoring offers insight into the fetal state, well-being, mechanism of distress, and likelihood of fetal depression from asphyxia, as well as the severity of respiratory distress syndrome in babies delivered prematurely. No other technique approaches this specificity or permits this insight. The studies confirming these benefits comprise more than 200,000 patients but do not pretend to offer conclusive proof of the benefit of electronic fetal monitoring. The implications, however, are compelling.