

DOCUMENT 30-2

Roe v. Wade and Abortion Rights

One of the important activities of the women's rights movement was setting up clinics to advise women about birth control, pregnancy, and abortion. In many states, abortions were illegal. In 1970, Sarah Weddington, a lawyer from the Women's Liberation Birth Control Information Center in Austin, Texas, filed suit in federal court to overturn the Texas antiabortion law. Weddington's client took the name Jane Roe in the legal documents to preserve her privacy. Jane Roe was actually Norma McCorvey, a pregnant young high school dropout who sought an abortion, an action opposed by Henry Wade, the district attorney of Dallas County. In 1973, a 7 to 2 majority of the U.S. Supreme Court decided the case of Roe v. Wade. Justice Harry A. Blackmun wrote the majority opinion, the source of the following selection.

Supreme Court Decision, 1973

We forthwith acknowledge our awareness of the sensitive and emotional nature of the abortion controversy, of the vigorous opposing views, even among physicians, and of the deep and seemingly absolute convictions that the subject inspires. One's philosophy, one's experiences, one's exposure to the raw edges of human existence, one's religious training, one's attitudes toward life and family and their values, and the moral standards one establishes and seeks to observe, are all likely to influence and to color one's thinking and conclusions about abortion.

In addition, population growth, pollution, poverty, and racial overtones tend to complicate and not to simplify the problem.

Our task, of course, is to resolve the issue by constitutional measurement free of emotion and of predilection. We seek earnestly to do this, and, because we do, we have inquired into, and in this opinion place some emphasis upon, medical and medical-legal history and what that history reveals about man's attitudes toward the abortive procedure over the centuries. . . .

Jane Roe, a single woman who was residing in Dallas County, Texas, instituted this federal action in March 1970 against the District Attorney of the county. She sought a declaratory judgment that the Texas criminal abortion statutes were unconstitutional on their face, and an injunction restraining the defendant from enforcing the statutes.

Roe alleged that she was unmarried and pregnant; that she wished to terminate her pregnancy by an abortion "performed by a competent, licensed physician, under safe, clinical conditions"; that she was unable to get a "legal" abortion in Texas because her life did not appear to be threatened by the continuation of her pregnancy; and that she could not afford to travel to another jurisdiction in order to secure a legal abortion under safe conditions. She claimed that the Texas statutes were unconstitutionally vague and that they abridged her right of personal privacy, protected by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments. By an amendment to her complaint Roe purported to sue "on behalf of herself and all other women" similarly situated. . . .

On the merits, the District Court held that the “fundamental right of single women and married persons to choose whether to have children is protected by the Ninth Amendment, through the Fourteenth Amendment,” and that the Texas criminal abortion statutes were void on their face because they were both unconstitutionally vague and constituted an overbroad infringement of the plaintiffs’ Ninth Amendment rights. . . .

It perhaps is not generally appreciated that the restrictive criminal abortion laws in effect in a majority of States today are of relatively recent vintage. Those laws, generally proscribing abortion or its attempt at any time during pregnancy except when necessary to preserve the pregnant woman’s life, are not of ancient or even of common law origin. Instead, they derive from statutory changes effected, for the most part, in the latter half of the 19th century. . . .

Three reasons have been advanced to explain historically the enactment of criminal abortion laws in the 19th century and to justify their continued existence. . . .

It has been argued occasionally that these laws were the product of a Victorian social concern to discourage illicit sexual conduct. Texas, however, does not advance this justification in the present case, and it appears that no court or commentator has taken the argument seriously. . . .

A second reason is concerned with abortion as a medical procedure. When most criminal abortion laws were first enacted, the procedure was a hazardous one for the woman. This was particularly true prior to the development of antiseptics. . . . Abortion mortality was high. . . . Thus it has been argued that a State’s real concern in enacting a criminal abortion law was to protect the pregnant woman, that is, to restrain her from submitting to a procedure that placed her life in serious jeopardy. . . .

The third reason is the State’s interest—some phrase it in terms of duty—in protecting prenatal life. . . .

. . . [A]s long as at least *potential* life is involved, the State may assert interests beyond the protection of the pregnant woman alone. . . .

It is with these interests, and the weight to be attached to them, that this case is concerned.

The Constitution does not explicitly mention any right of privacy. In a line of decisions, however, going back perhaps as far as . . . [1891], the Court has recognized that a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution. . . .

This right of privacy, whether it be founded in the Fourteenth Amendment’s concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment’s reservation of rights to the people, is broad enough to encompass a woman’s decision whether or not to terminate her pregnancy. The detriment that the State would impose upon the pregnant woman by denying this choice altogether is apparent. Specific and direct harm medically diagnosable even in early pregnancy may be involved. Maternity, or additional offspring, may force upon the woman a distressful life and future. Psychological harm may be imminent. Mental and physical health may be taxed by child care. There is also the distress, for all concerned, associated with the unwanted child, and there is the problem of bringing a child into a family already unable, psychologically and otherwise, to care for it. In other cases, as in this one, the additional difficulties and continuing stigma of unwed motherhood may be involved. . . .

On the basis of elements such as these, appellants and some *amici*¹ argue that the woman's right is absolute and that she is entitled to terminate her pregnancy at whatever time, in whatever way, and for whatever reason she alone chooses. With this we do not agree. . . . [A] state may properly assert important interests in safeguarding health, in maintaining medical standards, and in protecting potential life. At some point in pregnancy, these respective interests become sufficiently compelling to sustain regulation of the factors that govern the abortion decision. The privacy right involved, therefore, cannot be said to be absolute. . . .

We therefore conclude that the right of personal privacy includes the abortion decision, but that this right is not unqualified and must be considered against important state interests in regulation. . . .

Where certain "fundamental rights" are involved, the Court has held that regulation limiting these rights may be justified only by a "compelling state interest," . . . and that legislative enactments must be narrowly drawn to express only the legitimate state interests at stake. . . .

. . . The appellee and certain *amici* argue that the fetus is a "person" within the language and meaning of the Fourteenth Amendment. . . .

The Constitution does not define "person" in so many words. . . . All this, together with our observation . . . that throughout the major portion of the 19th century prevailing legal abortion practices were far freer than they are today, persuades us that the word "person," as used in the Fourteenth Amendment, does not include the unborn. . . .

Texas urges that, apart from the Fourteenth Amendment, life begins at conception and is present throughout pregnancy, and that, therefore, the State has a compelling interest in protecting that life from and after conception. We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer.

It should be sufficient to note briefly the wide divergence of thinking on this most sensitive and difficult question. . . .

In areas other than criminal abortion the law has been reluctant to endorse any theory that life, as we recognize it, begins before live birth or to accord legal rights to the unborn except in narrowly defined situations and except when the rights are contingent upon live birth. . . . [T]he unborn have never been recognized in the law as persons in the whole sense.

. . . [T]he State does have an important and legitimate interest in preserving and protecting the health of the pregnant woman, whether she be a resident of the State or a nonresident who seeks medical consultation and treatment there, and that it has still another important and legitimate interest in protecting the potentiality of human life. These interests are separate and distinct. Each grows in substantiality as the woman approaches term and, at a point during pregnancy, each becomes "compelling."

With respect to the State's important and legitimate interest in the health of the mother, the "compelling" point, in the light of present medical knowledge, is at approximately the end of the first trimester. This is so because of the now estab-

¹*amici*: A legal term for "friends of the court," people who are not party to the litigation but offer advice to the court on the litigation.

lished medical fact, referred to above, that until the end of the first trimester mortality in abortion is less than mortality in normal childbirth. It follows that, from and after this point, a State may regulate the abortion procedure to the extent that the regulation reasonably relates to the preservation and protection of maternal health. . . .

With respect to the State's important and legitimate interest in potential life, the "compelling" point is at viability. This is so because the fetus then presumably has the capability of meaningful life outside the mother's womb. State regulation protective of fetal life after viability thus has both logical and biological justifications. If the State is interested in protecting fetal life after viability, it may go so far as to proscribe abortion during that period except when it is necessary to preserve the life or health of the mother. . . .

To summarize and to repeat:

1. A state criminal abortion statute of the current Texas type, that excepts from criminality only a *life saving* procedure on behalf of the mother, without regard to pregnancy stage and without recognition of the other interests involved, is violative of the Due Process Clause of the Fourteenth Amendment.

(a) For the stage prior to approximately the end of the first trimester, the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician.

(b) For the stage subsequent to approximately the end of the first trimester, the State, in promoting its interest in the health of the mother, may, if it chooses, regulate the abortion procedure in ways that are reasonably related to maternal health.

(c) For the stage subsequent to viability the State, in promoting its interest in the potentiality of human life, may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother. . . .

The decision leaves the State free to place increasing restrictions on abortion as the period of pregnancy lengthens, so long as those restrictions are tailored to the recognized state interests. The decision vindicates the right of the physician to administer medical treatment according to his professional judgment up to the points where important state interests provide compelling justifications for intervention. Up to those points the abortion decision in all its aspects is inherently, and primarily, a medical decision, and basic responsibility for it must rest with the physician. If an individual practitioner abuses the privilege of exercising proper medical judgment, the usual remedies, judicial and intraprofessional, are available.

It is so ordered.

DOCUMENT 30-3

Norma McCorvey Explains How She Became “Roe” of Roe v. Wade

Norma McCorvey, who became the “Roe” of Roe v. Wade, grew up in Houston, Texas. After giving birth to two children when she was in her late teens—both given up for adoption—she sought an abortion when she was 21 and pregnant with her third child. Since abortions were illegal in Texas, she was directed to a Dallas attorney who filed the legal case that resulted in Roe v. Wade in 1973. In a legal affidavit of 2000, excerpted below, McCorvey described her involvement in the case and accused her attorneys and the Supreme Court of misleading her and other American women about the realities of abortion. By the time she filed the affidavit, McCorvey had lived in Dallas for many years in a long-term lesbian relationship, converted to Christianity, become active in the antiabortion (or pro-life) movement, converted to Roman Catholicism, and renounced lesbianism. McCorvey’s affidavit highlights the personal story behind the famous Supreme Court case and describes some of the issues that generated passionate debate between pro-choice and pro-life advocates, that is, between supporters and opponents of Roe v. Wade.

Affidavit, United States District Court, District of New Jersey, 2000

My name is Norma McCorvey, and I reside in Dallas, Texas. I was the woman designated as “Jane Roe” as plaintiff in *Roe v. Wade*, the United States Supreme Court decision that legalized abortion in the United States. . . .

Because of my role in *Roe v. Wade*, how that decision came about, and my experiences working at abortion clinics, I can provide the Court with information and a perspective unavailable from other sources. . . . My case was wrongfully decided and has caused great harm to the women and children of our nation. . . .

Virtually the entire basis for *Roe v. Wade* was built upon false assumptions. No meaningful trial to determine the real facts was ever held. The misrepresentations and deceptions that plagued *Roe v. Wade* . . . show why there is a dire necessity for a trial to ensure that the true facts regarding the nature of abortion and the interests of women are heard. . . . [W]e obtained a decision in *Roe v. Wade* based upon what abortion advocates wanted women to be able to do, not what women were truly capable of. . . .

While the experience of being Jane Roe over the past twenty-seven years has been very difficult, my life has been filled with hardship from the beginning.

Although I was an emotionally abused child, and a sexually abused teenager, I believe the worst abuse was inflicted by the judicial system. In retrospect, I was exploited by two self-interested attorneys. Worse, the courts, without looking into my true circumstances and taking the time to decide the real impact abortion would have upon women, I feel used me to justify legalization of terminating the lives [of] over thirty-five million babies. Although on an intellectual level I know I was exploited, the responsibility I feel for this tragedy is overwhelming. Because the courts allowed my case to proceed without my testimony, without ever explaining to me the reality of abortion, without being cross-examined on my erroneous perception of what . . . abortion really is, a tragic mistake was made by the courts. . . .

Prior to my pregnancy with the “Roe” baby, I gave birth to two other children. My first, a daughter, was adopted by my mother. It is difficult to part with my child, yet I have always been comforted by the fact that my daughter is alive and cared for. My second daughter was raised by her father, a young intern at Baylor Methodist Medical School. He was kind enough to want to get married and make a home, but I wasn’t ready for that kind of commitment. Later, when I became pregnant with the “Roe” baby, I was really in a predicament. My mother expressed her disapproval of my having given birth out of wedlock. She told me how irresponsible I had been. My mother made it clear that she was not going to take care of another baby.

Certain that I was pregnant, I waited for a while before I went to the doctor. While I was waiting to be examined, I questioned the ladies there about whether they knew where a woman could go to have an abortion. A lady told me where an illegal clinic was located and told me that it would cost \$250.00. Following our discussion, I told the doctor that I wanted to have an abortion, but he refused stating that abortion was illegal. He didn’t believe in abortion and gave me the phone number of an adoption attorney.

When I had saved about two hundred dollars, I took a cross-town bus to the illegal clinic, which turned out to be a dentist’s office that had been closed down the previous week. For some reason, I felt relieved yet angry at the same time. All my emotions were peaking; first, I was angry, then I was happy, and then I’d cry. From the abortion clinic, I took the bus to my dad’s apartment and decided to speak with the adoption attorney. The adoption attorney set up the meeting and referred me to Sarah Weddington, the attorney who represented me in *Roe v. Wade*.

Although Weddington and I were about the same age, our lives were quite different. She was a young attorney, and I was homeless and lived in a park. Unconcerned about politics, I sold flowers and an underground newspaper describing the types and availability of illegal narcotics. I am not proud of my jobs. At the time I sought simply to survive.

Following the adoption attorney’s introduction, Weddington invited me out to dinner. I agreed. At our initial meeting, I met with Sarah Weddington and Linda Coffee, her friend. Both Weddington and Coffee had recently finished law school and they wanted to bring a class action suit against the State of Texas to legalize abortion, not nationally. We discussed the case over a few pitchers of beer and pizza at a small restaurant in Dallas.

Weddington, Coffee, and I were drinking beer and trying to come up with a pseudonym for me. I had heard that whenever women were having illegal abortions, they wouldn’t carry any identification with them. An unidentifiable woman was often referred to as Jane Doe. So we were trying to come up with something

that would rhyme with "Doe." After three or four pitchers of beer, we started with the letter "a" and eventually we reached "r" and agreed on "Roe." Then I asked "What about Jane for the first name?" Janie used to be my imaginary friend as a child. I told them about her and how she always wanted to do good things for people, and it was decided—I became Jane Roe, by the stroke of a pen.

The young lawyers told me that they had spoken with two or three other women about being in the case, but they didn't fit their criteria. Although I did know what "criteria" meant, I asked them if I had what it is that it took to be in their suit. They said yes, "You're white. You're young, pregnant, and you want an abortion." At that time, I didn't know their full intent. Only that they wanted to make abortion legal and they thought I'd be a good plaintiff. I came for the food, and they led me to believe that they could help me get an abortion.

During our meeting, they questioned me, "Norma don't you think that abortion should be legal?" Unsure, I responded that I did not know. In fact, I did not know what the term "abortion" really meant. Back in 1970, no one discussed abortion. It was taboo, and so too was the subject of abortion. . . . "Abortion," to me, meant "going back" to the condition of not being pregnant. I never looked the word up in the dictionary until after I had already signed the affidavit. I was very naive. For their part, my lawyers lied to me about the nature of abortion. Weddington convinced me that "It's just a piece of tissue. You just missed your period." I didn't know during the *Roe v. Wade* case that the life of a human being was terminated. . . .

My lawyers never discussed what an abortion is, other than to make the misrepresentation that "it's only tissue." I never understood that the child was already in existence. I never understood that the child was a complete separate human being. I was under the false impression that abortion somehow reversed the process and prevented the child from coming into existence. In the two to three years during the case no one, including my lawyers told me that an abortion is actually terminating the life of an actual human being. The courts never took any testimony about this and I heard nothing which shed light on what abortion really was.

In 1972, Sarah Weddington argued in the courts, presumptuously on my behalf, that women should be allowed to obtain a legal abortion. The courts did not ask whether I knew what I was asking for. . . . Weddington and the other supporters of abortion used me and my circumstance to urge the courts to legalize abortion without any meaningful trial which addressed the humanity of the baby, and what abortion would do to women. At that time, I was a street person. I lived, worked, and panhandled out on the streets. My totally powerless circumstance made it easy for them to use me. My presence was a necessary evil. My real interests were not their concern.

As the class action plaintiff in the most controversial U.S. Supreme Court case of the twentieth century, I only met with the attorneys twice. Once over pizza and beer, when I was told that my baby was only "tissue." The other time at Coffee's office to sign the affidavit. No other personal contacts. I was never invited into court. I never testified. I was never present before any court on any level, and I was never at any hearing on my case. The entire case was an abstraction. The facts about abortion were never heard. Totally excluded from every aspect and every issue of the case, I found out about the decision from the newspaper just like the rest of the country. In a way my exclusion, and the exclusion of real meaningful findings of fact in *Roe v. Wade*, is symbolic of the way the women of the nation and

their experiences with abortion have been ignored in a national debate by the abortion industry. . . .

My personal involvement in *Roe v. Wade* was not my only experience with abortion. Unskilled and uneducated, with alcohol and drug problems, finding and holding a job was always a problem for me. But with my notoriety, abortion facilities, usually paying a dollar an hour more than minimum wage, were always willing to add Jane Roe to their ranks. . . .

I worked in several abortion facilities over the years . . . and they were all the same with respect to the condition of the facilities and the “counseling” the women receive. One clinic where I worked in 1995 was typical: Light fixtures and plaster falling from the ceiling; rat droppings over the sinks; backed up sinks; and blood splattered on the walls. But the most distressing room in the facility was the “parts room.” Aborted babies were stored here. There were dead babies and baby parts stacked like cordwood. . . . Veterinary clinics I have seen are cleaner and more regulated than the abortion clinics I worked in.

While all the facilities were much the same, the abortion doctors in the various clinics where I worked were very representative of abortionists in general. The abortionists I knew were usually of foreign descent with the perception that the lax abortion laws in the United States present a fertile money-making opportunity. One abortionist, in particular, would sometimes operate bare-chested, and sometimes shoeless with his shirt off, and earned a six-figure income. . . .

The lack of counseling provided the women was perhaps the greatest tragedy. Early in my abortion career, it became evident that the “counselors” and the abortionists were there for only one reason—to sell abortions. The extent of the abortionists’ counseling was, “Do you want an abortion? Ok, you sign here and we give you abortion.” . . . There was nothing more. There was never an explanation of the procedure. No one even explained to the mother that the child already existed and the life of a human was being terminated. No one ever explained that there were options to abortion, that financial help was available, or that the child was . . . unique and irreplaceable. No one ever explained that there were psychological and physical risks of harm to the mother. There was never time for the mother to reflect or to consult with anyone who could offer her help or an alternative. There was no informed consent. In my opinion, the only thing the abortion doctors and clinics cared about was making money. No abortion clinic cared about the women involved. As far as I could tell, every woman had the name of Jane Roe.