DEFINING MOMENTS
ROE v. WADE

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> 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.
>
> —Justice Harry A. Blackmun, announcing the U.S. Supreme Court decision in *Roe v. Wade,* January 22, 1973

After hearing the reargument of *Roe v. Wade,* the nine justices of the U.S. Supreme Court held a private conference to discuss their views of the case. As before—despite the appointment of two new justices by President Richard Nixon—the majority expressed a willingness to overturn the Texas anti-abortion law. Chief Justice Warren Burger once again assigned Justice Harry Blackmun to prepare the majority opinion.

The majority opinion is the document that explains the Court's decision. At least five of the nine justices must agree with the decision for it to become the opinion of the Court. Justices who agree with the majority opinion are still allowed to prepare concurring opinions, which are documents that describe their individual reasoning or make comments about specific points of law. Justices who do not agree with the majority opinion are allowed to explain their findings and objections in dissenting opinions. All of these documents are released together by the Court and become part of the legal record.

Even though the majority favored overturning the Texas law, Blackmun knew that his colleagues differed in their reasoning. He set out to craft an opinion that would balance the competing interests and gain the support of

his fellow justices. In preparation for this task, Blackmun had spent much of the summer between the argument and reargument of *Roe v. Wade* at home in Minnesota, where he had worked for nine years as an attorney for the prestigious Mayo Clinic. He used the facility's vast medical library to conduct research on fetal development and abortion.

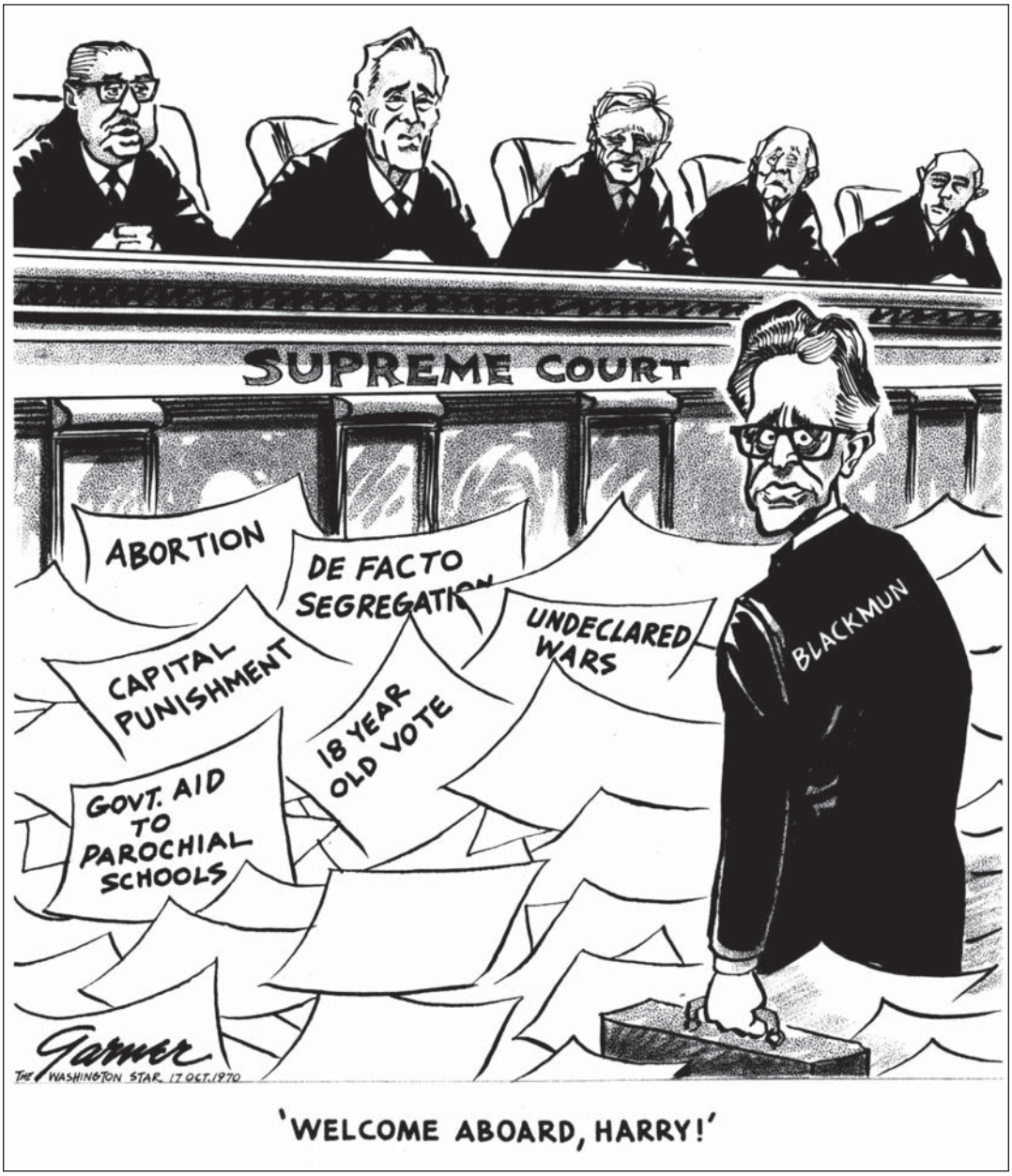
Despite his extensive study of the subject, Blackmun still struggled to prepare an opinion that would unite the Court. After five weeks of writing and rewriting, he finally sent a 48-page draft to his colleagues on November 22, 1972. Based on his medical research, Blackmun proposed dividing a typical nine-month pregnancy into trimesters, or three-month periods. During the first trimester (the first three months following conception), he suggested that the decision to terminate a pregnancy should be left to a woman and her doctor. During the second trimester, Blackmun said that the state's interest in regulating abortion should be limited to protecting the mother's health. During the third trimester, the draft opinion said that the state could restrict abortion in order to protect the life of the fetus.

Gaining a Majority

Blackmun's original draft won the support of liberal Justices William O. Douglas and Potter Stewart. Surprisingly, one of Nixon's new appointees, Justice Lewis Powell, immediately joined the majority opinion as well. Powell viewed *Roe v. Wade* as a case about women's rights. "The concept of liberty was the underlying principle," he noted. He felt that the decision to terminate a pregnancy was a highly personal one that rightfully belonged to the woman involved.

Justice Thurgood Marshall liked Blackmun's approach, but he wanted the point at which the state was allowed to regulate abortion moved back later in pregnancy. He argued that the state's interest in protecting the fetus only became compelling when the fetus became viable, or able to survive outside of its mother's body. "Drawing the line at viability accommodates the interests at stake better than drawing it at the end of the first trimester," he wrote in a memo to Blackmun. Once Blackmun agreed to change the point that the state could begin restricting abortion to 28 weeks, Marshall signed on to the opinion.

Justice William Brennan soon became the sixth supporter of Blackmun's opinion. Like Marshall, Brennan wanted to prohibit states from restricting abortion until the late stages of pregnancy. He asserted that state abortion laws



This 1970 editorial cartoon from the *Washington Star* depicts Justice Harry Blackmun joining the Supreme Court, which is swamped with cases dealing with such controversial issues as abortion, segregation, and capital punishment.

had historically been enacted for the purpose of protecting the health and welfare of the pregnant woman. He felt that this state interest did not become compelling enough to justify restricting abortion until late in pregnancy.

Blackmun's opinion thus received the support of six members of the Supreme Court. Justices William Rehnquist and Byron White (see "Justice Byron R. White," p. 60) indicated that they planned to dissent, or disagree, with the majority. Blackmun waited to hear how Chief Justice Warren Burger would vote. Some observers wondered whether Burger intentionally delayed his vote so that the Court's decision would not be announced until after President Nixon took office for a second term on January 20, 1973. Nixon had spoken out against abortion during his 1972 re-election campaign, declaring that "unrestricted abortion policies, abortion on demand, I cannot square with my belief in the sanctity of human life—including the life of the yet unborn." The president thus seemed likely to be embarrassed by the fact that three of his four Supreme Court appointees had voted to legalize abortion. In the end, though, Burger decided to join the majority and explain his reasoning in a concurring opinion.

"We forthwith acknowledge our awareness of the sensitive and emotional nature of the abortion controversy," wrote Justice Harry Blackmun in his majority opinion. "Our task, of course, is to resolve the issue of constitutional measurement free of emotion."

Announcing the Decision

The U.S. Supreme Court announced its decision in *Roe v. Wade* and released a final, revised version of Blackmun's majority opinion on January 22, 1973, the Monday after Nixon's inauguration (see "Justice Harry A. Blackmun Announces the Court's Decision," p. 174). Instead of reading the entire 51-page document to the assembled reporters, Blackmun read an 8-page summary of the Court's findings. Blackmun's opening statement showed that the Court recognized the strong feelings involved in the debate over abortion. "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," he stated. "Our task, of course, is to resolve the issue of constitutional measurement free of emotion."

Blackmun went on to explain the Court's finding that the constitutional right to privacy in reproductive decisions, which had been established in the

1965 birth-control case *Griswold v. Connecticut,* "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." Although this ruling meant that states could no longer outlaw abortion entirely, Blackmun insisted that the Court did not support abortion on demand at any point in pregnancy. "The Court's decisions recognizing a right of privacy also acknowledge that some state regulation ... is appropriate," he explained. "The 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 regulate] the factors that govern the abortion decision."

In the opinion itself, Blackmun began by noting that the laws making abortion a crime in the states of Texas and Georgia had been passed more than a century apart. He pointed out that medical knowledge had advanced significantly during this period, as had American legal and social ideas about race, poverty, and population issues.

The majority opinion went on to address some of the technical legal issues involved in the cases, including the plaintiffs' standing. Then, based on his research, Blackmun covered the history of legal and medical thought about abortion. He pointed out that doctors in ancient Greece had performed abortions, and that English common law considered the fetus a part of its mother's body until the time of birth. Blackmun noted that laws prohibiting abortion did not appear in the United States until the middle of the nineteenth century, and that these early statutes were intended to protect women from medical practices that posed a threat to their health. Blackmun concluded that "a woman enjoyed a substantially broader right to terminate a pregnancy [early in the nation's history] than she does in most states today," even though twentieth-century medical advances had made abortion less dangerous than carrying a pregnancy to full term.

The Trimester Formula

The majority opinion also discussed the right to privacy that the Court drew from the Ninth and Fourteenth Amendments to the Constitution. Blackmun wrote, however, that a woman's right to privacy in reproductive decisions did not provide her with an absolute right to abortion. Instead, he

argued that this right must be balanced against the state's interest in protecting the fetus, which increased as the pregnancy progressed. Blackmun said that it was not the Court's place to decide the point at which life begins. Rather, he offered the trimester formula as a legal guideline to show when the state's interests became compelling and justified restrictions on abortion.

Under this formula, the state could not restrict abortion during the first trimester, and the only restrictions allowed during the second trimester were for the purpose of protecting the mother's health. During the third trimester, as the fetus reached the stage of viability, the state could restrict or even outlaw abortion, except when it was deemed medically necessary to preserve the life or health of the mother.

Blackmun's trimester formula did not follow a legal precedent or have a basis in constitutional law. It was a creative solution that tried to balance the competing interests and legal rights of the woman and the fetus. Roe's attorney, Sarah Weddington, had made it possible for the Court to impose such a solution by seeking an injunction to force Texas to stop enforcing its abortion law. When a plaintiff requests an injunction, judges have the power to come up with an equitable remedy, or a solution that the court feels is fair to all parties involved in the case. "Equitable remedies need not have precedent in the language of the law or the prior ruling of courts," N.E.H. Hull and Peter Charles Hoffer explained in *Roe v. Wade: The Abortion Rights Controversy in American History.* "Such relief must only be narrowly tailored to do justice, and that is what Blackmun intended."

Some legal experts compared Blackmun's trimester formula to the remedies federal judges used to enforce the Supreme Court's 1954 *Brown v. Board of Education* ruling, which had banned segregation in the nation's public schools. When some school districts were slow to comply with the ruling, federal judges came up with a plan to integrate schools by busing minority children into white districts.

Other Justices Have Their Say

Although six other justices joined Blackmun's majority opinion, three chose to expand upon it by writing concurring opinions. Chief Justice Burger wrote that he would have preferred for a woman to obtain the approval of two doctors before undergoing an abortion. The language of the majority opinion said only that the abortion decision should be left to the woman "in consultation

with her doctor" during the first trimester. Nevertheless, Burger also declared that the Court's decision in *Roe* did not allow for "abortion on demand."

Justice Douglas used his concurrence to discuss the constitutional right to privacy that he had first outlined in the *Griswold* decision. He described privacy as the freedom to control one's personality, make basic decisions about one's personal life, and avoid bodily restraint and compulsion. He argued that state laws banning abortion amounted to government compulsion for a woman to remain pregnant and give birth to a child. He also said that these laws ignored the psychological effects of unwanted pregnancy. Justice Stewart, in his concurring opinion, explained his view that the Constitution's guarantee of liberty needed to change with the times. In the context of the women's rights movement of the 1970s, he claimed that it applied to freedom of choice in reproductive issues.

In a somewhat unusual move that some observers considered confrontational, Justices Rehnquist and White read their dissenting opinions immediately following Blackmun's summary of the majority opinion (see "Justice William H. Rehnquist Dissents," p. 186, and "Justice Byron R. White Dissents," p. 190). White strongly disagreed with the Court's ruling that the Constitution supported a right to abortion. He argued that state legislatures must be allowed to regulate abortion, because they were in the best position to weigh the "relative importance of the continued existence and development of the fetus on the one hand against a spectrum of possible impacts on the mother on the other hand." White was particularly critical of the majority opinion because he felt that it sanctioned abortion on demand. "The Court for the most part sustains this position," he wrote. "During the period prior to the time the fetus becomes viable, the Constitution of the United States values the convenience, whim, or caprice of the putative mother more than the life or potential life of the fetus."

In contrast, Rehnquist's dissent focused more on technical issues of law. For instance, he disputed Roe's standing in the case, arguing that since she was not pregnant at the time of the hearing, the Court should not have provided a remedy. Rehnquist also claimed that the right of privacy did not apply to a woman's decision to have an abortion because the doctor and fetus were also involved. Finally, Rehnquist pointed out that several states had already passed anti-abortion laws when the Fourteenth Amendment was ratified in 1868. According to Rehnquist, this timing proved that the framers of the amendment did not intend for it to prevent states from restricting abortion.

Justice Byron R. White

U.S. Supreme Court Justice Byron White—author of one of the two dissenting opinions in the *Roe v. Wade* case—was born on June 8, 1917, in Fort Collins, Colorado. His father, Alpha A. White, managed a lumber company and also served as the mayor of Wellington, Colorado. His mother was Maude Burger White.

White attended the University of Colorado and became a star running back on the football team. After earning his bachelor's degree in economics in 1938, he joined the Pittsburgh Pirates (now the Steelers) and led the National Football League (NFL) in rushing yards during his rookie season. White took the 1939 season off to attend Oxford University in England as a Rhodes Scholar, then returned to play two more NFL seasons for the Detroit Lions. He led the league in rushing for a second time in 1940.

White combined his NFL career with studies at Yale Law School. He interrupted both in order to serve as an intelligence officer in the U.S. Navy during World War II. When the war ended, White completed his law degree, finishing at the top of his class at Yale in 1946. He also married Marion Stearns that year, and they eventually had two children. In 1946-47 White served as a law clerk for Fred Vinson, the Chief Justice of the U.S. Supreme Court.

Abortion Becomes Legal

As soon as the Supreme Court announced its decision in *Roe v. Wade,* it became the law of the land. Abortion was legal across the country. All state laws that banned abortion or restricted it during the first trimester became invalid. The decision affected the laws of nearly every state. Even New York, which allowed unrestricted access to abortion during the first 24 weeks of

White then returned to Denver and entered private practice with a flourishing business law firm. In 1960 he became chairman of the Colorado campaign to elect Democratic Senator John F. Kennedy as president of the United States. After winning the election, Kennedy rewarded White with a position as deputy attorney general in his administration. White thus became the second-highest-ranking member of the U.S. Department of Justice, under Attorney General Robert F. Kennedy. In May 1961 he led 400 federal marshals into Selma, Alabama, to protect demonstrators in the civil rights movement.

In 1962, upon the retirement of Justice Charles Evans Whittaker, President Kennedy appointed White to the U.S. Supreme Court. Although White was only 44 years old and had no judicial experience, his sharp legal mind and personal integrity had impressed many members of the Kennedy administration. Over the next seven years, as Chief Justice Earl Warren led the Court in a number of liberal decisions, White became known as a moderate. He favored clear but limited government powers and resisted broad interpretations of the Constitution.

Although White voted to strike down a state ban on birth control in the 1965 case *Griswold v. Connecticut,* he wrote a strongly worded dissent a few years later in *Roe v. Wade.* Calling it "an exercise in raw judicial power," White remained critical of the *Roe* decision throughout the remainder of his 31-year term. Upon his retirement in 1993, President Bill Clinton appointed Ruth Bader Ginsburg to replace him. White died in Denver on April 15, 2002, at the age of 84. The NFL Players Association presents an annual award for humanitarian work in his honor, and the federal courthouse in Denver is named after him.

pregnancy, had to adjust its statute to meet the new 28-week standard. Many other states had to revise their laws to comply with the Supreme Court's ruling in the companion case *Doe v. Bolton*, which had disallowed specific restrictions on abortion, like residency requirements.

Women's rights and abortion rights activists were delighted with the decision. Many expressed surprise that the Supreme Court had gone so far as

In the wake of the 1973 *Roe v. Wade* decision legalizing abortion in the United States, family planning clinics—like this Planned Parenthood center in Austin, Texas—opened across the country.

to remove all restrictions on abortions performed during the first trimester. "It scaled the whole mountain," Planned Parenthood of America attorney Harriet Pilpel said of the ruling. "We expected to get there, but not on the first trip." Lawrence Lader, founder of the National Abortion Rights Action League (NARAL), described the decision as "a thunderbolt."

Sarah Weddington—who had used the fame and connections she had gained from the *Roe* case to win a seat in the Texas House of Representatives during the fall 1972 elections—viewed the ruling as a victory for women's rights. "The Court's decision was an opportunity for all women. The battle was never 'for abortion'—abortion was not what we wanted to encourage. The battle was for the basic right of women to make their own decisions," she wrote in her autobiography. "The Court's decision in *Roe* was a declaration for human liberty, and was faithful to the values of the nation's founders. They had created a country where the government would not be allowed to control their most private lives."

Weddington expressed surprise about the trimester formula that Blackmun included in the decision. She felt that the author of the majority opinion may have wanted to provide details about what the Court would consider acceptable restrictions on abortion, in order to avoid an endless stream of cases dealing with that issue. Weddington still recognized, though, that the ruling would create controversy. She worried about the majority's decision to link abortion rights to viability of the fetus, because this meant that abortion could be restricted in earlier stages of pregnancy as medical technology

advanced. She also noted that some abortion rights supporters might object to the Court not granting a woman complete control over her decision to terminate a pregnancy, but rather saying that she should make the decision "in consultation with her doctor."

Despite such concerns, most abortion rights activists applauded the *Roe v. Wade* ruling and set about the task of ensuring that American women had widespread access to legal abortion services. Organizations like Planned Parenthood opened new clinics and began offering safe, low-cost medical abortions in addition to birth control and family planning information. Several African-American groups launched referral services to provide poor and minority women with increased access to abortion providers.

Rise of the Pro-Life Movement

Although the Supreme Court's decision to legalize abortion was popular in some quarters, it generated a great deal of controversy in others. For instance, a number of constitutional law scholars criticized the ruling. They claimed that the Court had overstepped the bounds of its authority by creating "a new and formidable set of rights without express and substantive enabling language in the Constitution," according to Hull and Hoffer. Some legal experts felt that the sweeping nature of the ruling forced the American people to accept major social changes for which they were not yet ready. They expressed concern that the Court's action would deepen the national divide over the abortion issue. Others felt that the weak constitutional basis for the ruling would encourage future challenges. Finally, some scholars argued that the legality of abortion was a matter that should be decided by the states rather than imposed by the Supreme Court. They argued that the decision ignored widespread public disapproval of abortion, as evidenced by the defeat of repeal referenda in several states during the 1972 elections.

In addition to those who questioned the legal reasoning behind the *Roe* decision, many people opposed the ruling on moral grounds. Anti-abortion activists expressed sadness, outrage, and disbelief upon learning that the Supreme Court had overturned state laws restricting abortion. Many of these activists viewed abortion as the equivalent of murder, and they were appalled that it was now legal in the United States. John Cardinal Krol, president of the National Catholic Conference, described the ruling as an "unspeakable tragedy" in the *New York Times,* and said that the Supreme Court had

"opened the doors to the greatest slaughter of innocent life in the history of mankind."

In the immediate aftermath of the *Roe* decision, the Roman Catholic Church took a leading role in organizing the opposition. The Church encouraged priests to speak out against abortion during Mass and to deny communion to Catholics who had abortions or supported abortion rights. The Church also forbade doctors in 600 Catholic hospitals across the country from performing abortions and lobbied for the addition of a Human Life Amendment to the U.S. Constitution.

Opposition to legalized abortion also provided a rallying point for evangelical Protestants. Many Christian fundamentalists viewed the Supreme Court's decision as a moral evil that threatened to destroy traditional family values. Leaders of the evangelical movement, like the Reverend Jerry Falwell, then decided to move beyond preaching against abortion and become more politically active. Falwell, who had already achieved a national reach with his "Old Time Gospel Hour" radio program, founded the Moral Majority in 1979. This Christian organization pushed for changes that would reflect its members' conservative religious beliefs and values on abortion and other social issues.

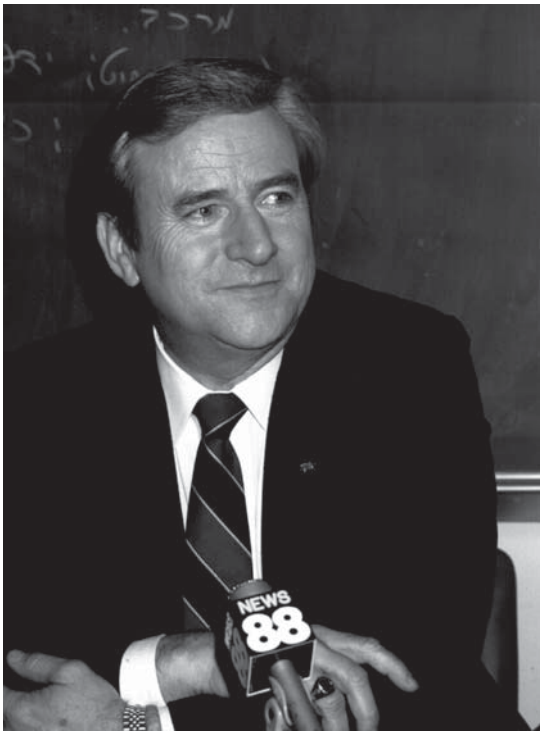
A number of other anti-abortion groups were founded in the aftermath of the *Roe* ruling, while those that had existed beforehand generally became more visible and increased their membership. Such organizations as Americans United for Life, the National Right to Life Committee, Operation Rescue, the Army of God, and the Lambs of Christ collectively referred to themselves as the pro-life movement for their desire to protect the unborn.

Working to Overturn *Roe*

Pro-life groups pursued several different legal and political strategies to try to reverse or at least limit the effects of the *Roe* decision. At the same time, they declared their intention to work toward the passage of a new amendment to the U.S. Constitution that specifically banned abortion. But although changing the Constitution offered pro-life activists the most permanent solution to the abortion issue, new amendments are typically very difficult to pass. A proposed amendment must receive the votes of two-thirds majorities in both houses of the U.S. Congress before it is sent to the states for ratification. Then it must be approved by voters in three-quarters of the 50 states

before it can take effect. Despite the length and uncertainty of the ratification process, however, pro-life forces promoted amendments that would have granted legal rights to the fetus or outlawed abortion.

Introducing constitutional amendments also provided pro-life groups with a way to gauge the views of members of Congress about the abortion issue. This information proved helpful in implementing a second strategy for overturning the *Roe* decision: electing pro-life representatives to serve in state and federal governments. Abortion opponents especially hoped to elect pro-life presidents, who they felt would be likely to appoint federal judges willing to overturn *Roe*. They also supported the campaigns of pro-life members of Congress in hopes of gaining the passage of anti-abortion legislation.



In 1979 evangelist Jerry Falwell founded the Moral Majority, a conservative Christian organization dedicated to ending abortion and defending traditional "family values."

Finally, as they worked toward the long-term goal of outlawing abortion, pro-life groups also pursued a strategy of making legal abortions more difficult to obtain. They promoted a variety of state laws restricting abortion in ways that the *Roe* ruling had not directly addressed, including mandatory 24-hour waiting periods, clinical record-keeping requirements, and parental or spousal consent laws. Although the Supreme Court eventually struck down most of the laws that restricted access to abortion during the first trimester, pro-life activists continued working to erect barriers to prevent women from having abortions. For instance, they had considerable success in convincing hospitals across the country not to offer the procedure. By 1977, according to Rickie Solinger in *Pregnancy and Power,* 80 percent of public hospitals and 70 percent of private hospitals in the United States did not permit abortions in their facilities.

Abortion on TV

One of the earliest demonstrations of the growing power of the pro-life movement came in August 1973, when the Roman Catholic Church led a coalition of other groups in a boycott of the CBS television network. CBS had announced plans to broadcast a rerun of a controversial episode of the hit situation comedy "Maude," in which the title character decided to have an abortion.

"Maude" ran on CBS from 1972 to 1978. The main character—an independent, outspoken, politically and socially liberal feminist named Maude Findlay (played by Beatrice Arthur)—was first introduced on the groundbreaking series "All in the Family." Like that show, "Maude" used comic situations as a way to explore controversial social and political issues of the times. For example, various episodes covered topics like race relations, gender roles, alcoholism, depression, birth control, and divorce.

The two-part episode dealing with the abortion issue first aired in November 1972, two months before the Supreme Court decision in *Roe v. Wade* legalized abortion throughout the United States. The storyline begins when Maude—who is 47 years old, married to her fourth husband, and the mother of an adult daughter—finds out that she is pregnant. She finds the news very upsetting and feels that having a baby is not safe or wise at her age. After consulting with her husband and daughter, Maude makes the difficult decision to have an abortion, which is legal in her home state of New York.

Abortion Becomes a Political Issue

Recognizing the strength of opposition to legalized abortion, political conservatives in the Republican Party began reaching out to religious conservatives following the *Roe* decision. Although these two groups held opposing views on some social issues, they shared strong pro-life views. The alliance between Republicans and fundamentalist Christians of the Religious Right helped turn abortion into a major issue in American politics. "Thus *Roe*, a legal decision meant to take abortion out of politics, had not only thrust abor-

"Maude" thus became the first prime-time American television series to deal with the abortion issue. The episode was controversial when it first aired, and CBS received thousands of letters of protest from angry viewers who felt it promoted abortion. Once the *Roe* decision was announced in January 1973, however, millions more Americans became concerned about the issue. When the network made plans to broadcast the episode again over the summer, the pro-life movement organized a boycott.

By threatening not to buy their products, pro-life groups convinced all major national advertisers not to place commercials on the controversial episode of "Maude." The groups, joined by an organization called Stop Immorality on Television (SIT), also convinced 39 of the CBS network's 217 local affiliate stations not to air the episode. Their ultimate goal was to force CBS to cancel the program, but the network refused. After all, "Maude" ranked among the most popular shows on television at that time.

Concerns about "Maude" and other shows dealing with controversial topics did have an effect on the networks, however. By the time the series concluded in 1978, prime-time TV programming had shifted away from social and political commentary and toward more traditional, family-oriented topics. Furthermore, very few TV series have dealt with the abortion issue since that time. "Unlike such once-taboo issues as date rape, gay relationships, and teenage sex, abortion on television remains an aberration," Kate Arthur wrote in the *New York Times.* "[It] is the very rare character who actually has one; what's even more rare is that she doesn't regret it afterward."

tion back into politics but made abortion into the central domestic political issue for the next quarter century," Hull and Hoffer wrote.

Politicians responded to the increasing strength and visibility of the pro-life movement by introducing bills and amendments designed to restrict or outlaw abortion. Just eight days after the *Roe* decision was announced, for instance, U.S. Representative Lawrence Hogan of Maryland proposed a Constitutional amendment to define a fetus as a person under the Fourteenth Amendment. The next day, Senator James F. Buckley introduced a Right to

Pro-choice activists like these demonstrators at the 1976 Democratic National Convention opposed any efforts to weaken abortion rights.

Life Amendment to outlaw abortion. However, these and later draft amendments did not receive the votes needed to be sent to the states for ratification.

In the three years following the *Roe* decision, more than 50 bills intended to ban or limit abortion were introduced in the U.S. Congress. State legislatures considered more than 400 similar bills during this time, and a number of the bills restricting abortion became law. These laws created a patchwork of regulations that generally made it more time-consuming and expensive for women to have abortions. For example, some new state laws required married women to obtain the consent of their spouses. Others required minors to obtain the consent of a parent before having an abortion. Finally, some laws were passed that prohibited the use of public funds to provide abortion services to poor women. In the 1976 case *Planned Parenthood v. Danforth,* the Supreme Court overturned a series of state restrictions aimed at limiting access to abortion. That same year, however, the Court decided in *Maher v. Roe* that states could legally refuse to provide public funding for abortions for poor women.

Shortly after the *Maher* decision was announced, Henry Hyde—a conservative Republican congressman from Illinois—led an effort to ban all federal funding for abortion. During debate over an appropriations bill to establish a new budget for the Department of Health, Education, and Welfare (HEW), Hyde added wording to prevent HEW from providing abortions to poor women on Medicaid. Before this time, the government-sponsored health care program known as Medicaid had paid for around one-third of all legal abortions performed in the United States, or about 300,000 annually. "For opponents of abortion, a ban on all Medicaid-funded abortions was thought to represent one of the most effective means of reducing the number of abortions short of overturning *Roe,*" Laurence Tribe explained in *Abortion: The Clash of Absolutes.* "It would constitute an important moral statement by the federal government and provide a means of showing politicians that the pro-life movement could flex its muscle in Congress on an issue of substance."

The original Hyde amendment banned all government funding for abortion, even if a doctor deemed the procedure medically necessary. The U.S. Senate added exceptions that allowed a poor woman to receive a Medicaid-funded abortion if her pregnancy resulted from rape or incest or posed a threat to her life. Although President Gerald Ford vetoed that version of the HEW appropriations bill, Congress overrode his veto and the funding ban became law.

In 1980 the Supreme Court heard a challenge to the law in *Harris v. McRae*. The Court upheld the funding ban, saying that state and federal governments did not have to pay for abortions in order to comply with *Roe*. "Although government may not place obstacles in the path of a woman's exercise of her freedom of choice, it need not remove those not of its own creation," Justice Potter Stewart wrote. "Indigency [poverty] falls in the latter category." In effect, the Court said that *Roe* had not established a constitutional right to abortion, but had only protected women from "unduly burdensome interference with [their] freedom to decide" whether to terminate a pregnancy.

In upholding a ban on federal funding for abortion, Justice Potter Stewart wrote that "although government may not place obstacles in the path of a woman's exercise of her freedom of choice, it need not remove those not of its own creation," such as poverty.

The issue of public funding for abortion generated strong feelings on both sides. Pro-life activists argued that their tax money should not be spent on abortion, which they considered morally wrong. They also believed that withholding Medicaid funding would prevent some women from having abortions, and therefore save the lives of some babies.

Abortion rights activists, on the other hand, argued that the American political system did not allow citizens to direct their tax dollars only to programs they personally favored. They pointed out that many Americans opposed the Vietnam War, for example, but that a portion of their taxes went toward paying for that war anyway. Abortion rights supporters also claimed that denying public funding for abortion amounted to discrimination against poor women. They also worried that the Hyde amendment would endanger women's lives by forcing them to resort to cheap but dangerous abortion methods.

Despite the heated debate, some politicians viewed the funding ban as an appealing middle ground on the abortion issue. They claimed that the federal government could stay out of the abortion controversy by neither banning nor funding abortion.

Abortion in the 1976 Presidential Election

The abortion issue also played a role in the 1976 presidential campaign. "It did not take *Roe* to make politicians' views on abortion crucial to their chances of election and reelection," Hull and Hoffer noted, "but *Roe* gave focus and urgency to the political efforts of both sides." The growing pro-life

Abortion first emerged as a major campaign issue during the 1976 presidential election, which Democratic nominee Jimmy Carter (shown at left) eventually won.

movement proved to be particularly effective in promoting candidates who shared their views.

Gerald Ford, who had taken office in 1974 following President Nixon's resignation, received the Republican nomination. He personally opposed abortion except in limited circumstances, but he did not favor an outright ban. Instead, he supported a constitutional amendment that would return the power to regulate abortion to state legislatures. His wife Betty shed some doubt on his commitment to the pro-life cause, however, by speaking out in favor of abortion rights.

In the meantime, the support of pro-life groups helped Georgia Governor Jimmy Carter, a born-again Christian, win the Democratic nomination.

Carter personally opposed abortion and supported the ban on federal funding, but he too stopped short of calling for a constitutional amendment to overturn the *Roe* decision. After defeating Ford in the general election, Carter pleased many of his supporters by appointing Joseph Califano, a pro-life Catholic, as secretary of HEW. In the years following the 1976 presidential election, the abortion issue assumed an even more prominent role in American politics.

Norma McCorvey (1947-)
Plaintiff in the 1973 Roe v. Wade *Case Known in Court Documents by the Fictitious Name Jane Roe*

Norma McCorvey was born Norma Leah Nelson on September 22, 1947, in Lettesworth, Louisiana, a small town about sixty miles north of Baton Rouge. Her father was Olin "Jimmy" Nelson, a radio and television repairman. Her mother was Mary Mildred Gautreaux. She had one older brother, Jimmy.

Norma's father was a leader in Lettesworth's Jehovah's Witness religious community. According to her autobiography *I Am Roe,* however, the home life that he and her mother created for their two children was a terrible one. Her parents fought and drank constantly, and her mother in particular routinely subjected Norma to physical and verbal abuse. Norma responded with disobedient and angry behavior, which further fueled the cycle of abuse.

A Troubled Childhood

When Norma was nine the family moved to Texas, but her home environment did not improve. Relations between mother and daughter became so bad that Norma was sent to a Catholic boarding school at age ten. When she was kicked out of that institution for her rebellious behavior, she was sent to a reform school in Gainesville, Texas. Norma spent four years at the all-girls reform school, and she later described these years as the happiest ones of her childhood. She developed close friendships with several other girls, and she had her first lesbian experiences. School authorities periodically tried to release Norma back to her family, but as soon as she was deposited at her mother's doorstep in Dallas, she ran away so that she could be sent back to her friends in Gainesville.

Authorities finally told Norma that if she ran away again, they would send her to jail instead of the reform school. Norma reluctantly agreed to

return to Dallas, where her mother arranged for her to stay at the home of a male relative. But Norma was raped by the relative on a nightly basis for three weeks, until her mother realized what was happening and brought her home.

Norma found work as a waitress in a Dallas restaurant, where she met an older man named Woody McCorvey. Their relationship quickly became a romantic one, and on June 17, 1964, the sixteen-year-old girl married McCorvey. The marriage was a disaster from the outset. She became pregnant shortly after they relocated to California, and her husband responded to this news by beating her. His violent outbursts became so frequent that Norma McCorvey moved back to Dallas and filed for divorce. She gave birth to a daughter, Melissa, but signed her parental rights over to her mother. Years later, McCorvey claimed in her autobiography that her mother deceived her into signing away these rights. She also described the loss of Melissa as one of the greatest regrets of her life.

Drifting without Direction

McCorvey floundered for the next several years. She barely managed to support herself in a variety of jobs, working as a waitress, apartment cleaner, bartender, carnival worker, and hospital staffer. But she became heavily dependent on both alcohol and illegal drugs, and she went through a series of lesbian and heterosexual relationships that ended badly.

McCorvey's relationship with her mother also remained troubled, partly because of Melissa and partly because of her mother's deep anger about McCorvey's lesbianism. McCorvey occasionally got permission from her mother to visit Melissa, but she was kept from her daughter for long periods of time.

McCorvey also became pregnant two more times from brief relationships with men. She carried the second pregnancy to term and quietly gave the baby up for adoption. But when she became pregnant a third time in the fall of 1969, she desperately searched for someone who would perform an abortion. "This wasn't like the other times," she recalled in *I Am Roe*. "I didn't want to give birth to another unwanted child. I didn't want to have to give up another child. I didn't want a child to be born with me as its mother. There was no good reason to bring this poor thing into the world. I simply didn't want to be pregnant. *I didn't want to be pregnant.*"

Texas state law, however, only permitted abortions if the life of the mother was endangered. Unable to find anyone who would perform the illegal pro-

cedure, McCorvey "nearly went out of [her] mind with anger and panic," according to her account in *I Am Roe*. Finally, she met an attorney who urged her to contact Sarah Weddington and Linda Coffee, two young lawyers who were looking for a pregnant woman who wanted an abortion. They needed such a woman to serve as the plaintiff in a lawsuit designed to overturn the Texas law against abortion.

Becoming Jane Roe

McCorvey met Coffee and Weddington in January 1970 and agreed to be the plaintiff in their lawsuit—despite their warning that the case might not be resolved in time for her to obtain an abortion. To protect McCorvey's identity, the lawyers gave her the alias "Jane Roe." Over the next few months McCorvey watched from the sidelines as the *Roe v. Wade* court case moved forward (the *Wade* in the title was Henry Wade, the district attorney responsible for enforcing the Texas anti-abortion law in the Dallas area). "I stayed invisible, burying myself in drugs [and] alcohol, as Linda and Sarah made history in my name," McCorvey recalled.

On June 17, 1970, the Texas Fifth Circuit Court ruled in favor of McCorvey/Roe, declaring that Texas's abortion law violated the Ninth Amendment to the Constitution. Wade promptly announced that he would appeal the ruling—and that until that appeal was decided, he would prosecute any doctor who performed an abortion. By this time, McCorvey realized that she would be continuing her pregnancy to term. "This lawsuit was not really for me," she wrote in *I Am Roe*. "It was about me, and maybe all the women who'd come before me, but it was really for all the women who were coming after me."

McCorvey gave birth in June 1970 and gave the baby up for adoption. Meanwhile, the *Roe v. Wade* case progressed until it reached the U.S. Supreme Court in May 1971. The legal battle continued for another nineteen months until January 1973, when the Court declared the Texas abortion law unconstitutional. The justices ruled 7-2 that the Texas statute violated Jane Roe's constitutional right to privacy. The Court argued that the Constitution's First, Fourth, Ninth, and Fourteenth Amendments protect an individual's "zone of privacy" against intrusive state laws in such areas as marriage, contraception, child rearing, and "a woman's decision whether or not to terminate her pregnancy."

This decision paved the way for the legalization of abortion across America. McCorvey, though, had virtually no involvement in the case once it reached

the Supreme Court. In fact, she learned about the Supreme Court's *Roe v. Wade* decision by reading the newspaper, just like millions of other Americans.

A Change of Heart

For much of the 1970s and 1980s, McCorvey lived a quiet existence. She established a long-term lesbian relationship with Connie Gonzales, and the couple established a successful apartment cleaning and rehabilitation business. In 1984 McCorvey revealed that she had been "Jane Roe" in the landmark case that had invalidated America's abortion laws. But it was not until 1989, when she took part in a huge pro-choice rally in Washington, D.C., that her identity became widely known.

During the early 1990s McCorvey maintained a low public profile. She knew that many people hated her for her role in making abortion legal, and she felt that many pro-choice organizations were ambivalent about having a woman with such a checkered past as a spokesperson. According to McCorvey, she was not even invited to attend a massive twentieth-anniversary celebration of the *Roe v. Wade* decision in 1993.

In the mid-1990s, though, McCorvey once again found herself in the public spotlight. In 1994 she published her autobiography, *I Am Roe*. One year later, she publicly announced that she had become a born-again Christian and no longer believed in abortion. McCorvey explained that this dramatic change came about after the pro-life group Operation Rescue (OR) opened offices next door to a Dallas family services clinic where she volunteered. She became friends with several OR members, including Ronda Mackey. Over time, she also developed a close relationship with Mackey's seven-year-old daughter.

McCorvey's growing ambivalence about abortion became outright opposition after she attended a church service with Ronda and Emily. "I no longer felt the pressure of my sin pushing down on my shoulders," she remembered. "The release was so quick that I felt like I could almost float outside." Her transformation into a pro-life activist was completed a few months later when she examined a fetal development poster in the OR offices. "I had worked with pregnant women for years," she recalled. "I had been through three pregnancies and deliveries myself. I should have known. Yet something in that poster made me lose my breath. I kept seeing the picture of that tiny, ten-week-old embryo, and I said to myself, 'That's a baby!' It's as if blinders just fell off my eyes and I suddenly understood the truth—'That's a baby!'"

McCorvey spent the next two years as an activist for Operation Rescue, but she left the organization in 1997 because of conflicts with movement leaders and discomfort with the group's confrontational tactics. She remained strongly pro-life, however, and proclaimed her continued dedication to conservative Christian beliefs. McCorvey even asserted that she ended her sexual relationship with Gonzales, though the two women continued to live together. McCorvey went on to serve as national director of the Crossing Over Ministry (formerly Roe No More Ministry), which is dedicated to overturning the *Roe v. Wade* decision.

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Anna Quindlen Describes Her Conflicting Feelings about Abortion

In this 1986 piece from the New York Times, Pulitzer Prize-winning columnist Anna Quindlen recalls the evolution of her views on abortion. Although she describes herself as pro-choice, she also acknowledges feelings of doubt and ambivalence about the divisive issue. Quindlen concludes that "the issue of abortion is difficult for all thoughtful people."

It was always the look on their faces that told me first. I was the freshman dormitory counselor and they were the freshmen at a women's college where everyone was smart. One of them could come into my room, a golden girl, a valedictorian, an 800 verbal score on the SAT's, and her eyes would be empty, seeing only a busted future, the devastation of her life as she knew it. She had failed biology, messed up the math; she was pregnant.

That was when I became pro-choice.

It was the look in his eyes that I will always remember, too. They were as black as the bottom of a well, and in them for a few minutes I thought I saw myself the way I had always wished to be—clear, simple, elemental, at peace. My child looked at me and I looked back at him in the delivery room, and I realized that out of a sea of infinite possibilities it had come down to this: a specific person, born on the hottest day of the year, conceived on a Christmas Eve, made by his father and me miraculously from scratch.

Once I believed that there was a little blob of formless protoplasm in there and a gynecologist went after it with a surgical instrument, and that was that. Then I got pregnant myself—eagerly, intentionally, by the right man, at the right time—and I began to doubt. My abdomen still flat, my stomach roiling with morning sickness, I felt not that I had protoplasm inside but instead a complete human being in miniature to whom I could talk, sing, make promises. Neither of these views was accurate; instead, I think, the reality is something in the middle. And that is where I find myself now, in the middle, hating the idea of abortions, hating the idea of having them outlawed.

For I know it is the right thing in some times and places. I remember sitting in a shabby clinic far uptown with one of those freshmen, only three months after the Supreme Court had made what we were doing possible, and watching with wonder as the lovely first love she had had with a nice boy unraveled over the space of an hour as they waited for her to be called, degenerated into sniping and silences. I remember a year or two later seeing them pass on campus and not even acknowledge one another because their conjoining had caused them so much pain, and I shuddered to think of them married, with a small psyche in their unready and unwilling hands.

I've met 14-year-olds who were pregnant and said they could not have abortions because of their religion, and I see in their eyes the shadows of 22-year-olds I've talked to who lost their kids to foster care because they hit them or used drugs or simply had no money for food and shelter. I read not long ago about a teenager who said she meant to have an abortion but she spent the money on clothes instead; now she has a baby who turns out to be a lot more trouble than a toy. The people who hand out those execrable little pictures of dismembered fetuses at abortion clinics seem to forget the extraordinary pain children may endure after they are born when they are unwanted, even hated or simply tolerated.

I believe that in a contest between the living and the almost living, the latter must, if necessary, give way to the will of the former. That is what the fetus is to me, the almost living. Yet these questions began to plague me—and, I've discovered, a good many other women—after I became pregnant. But they became even more acute after I had my second child, mainly because he is so different from his brother. On two random nights 18 months apart the same two people managed to conceive, and on one occasion the tumult within turned itself into a curly-haired brunet with merry black eyes who walked and talked late and loved the whole world, and on another it became a blond with hazel Asian eyes and a pug nose who tried to conquer the world almost as soon as he entered it.

If we were to have an abortion next time for some reason or another, which infinite possibility becomes, not a reality, but a nullity? The girl with the blue eyes? The improbable redhead? The natural athlete? The thinker? My husband, ever at the heart of the matter, put it another way. Knowing that he is finding two children somewhat more overwhelming than he expected, I asked if he would want me to have an abortion if I accidentally became pregnant again right away. "And waste a perfectly good human being?" he said.

Coming to this quandary has been difficult for me. In fact, I believe the issue of abortion is difficult for all thoughtful people. I don't know anyone who has had an abortion who has not been haunted by it. If there is one thing I find intolerable about most of the so-called right-to-lifers, it is that they try to portray abortion rights as something that feminists thought up on a slow Saturday over a light lunch. That is nonsense. I also know that some people who support abortion rights are most comfortable with a monolithic position because it seems the strongest front against the smug and sometimes violent opposition.

But I don't feel all one way about abortion anymore, and I don't think it serves a just cause to pretend that many of us do. For years I believed that a woman's right to choose was absolute, but now I wonder. Do I, with a stable home and marriage and sufficient stamina and money, have the right to choose abortion because a pregnancy is inconvenient right now? Legally I do have that right; legally I want always to have that right. It is the morality of exercising it under those circumstances that makes me wonder.

Technology has foiled us. The second trimester has become a time of resurrection; a fetus at six months can be one woman's late abortion, another's premature, viable child. Photographers now have film of embryos the size of a grape, oddly human, flexing their fingers, sucking their thumbs. Women have amniocentesis to find out whether they are carrying a child with birth defects that they may choose to abort. Before the procedure, they must have a sonogram, one of those fuzzy black-and-white photos like a love song heard through static on the radio, which shows someone is in there.

I have taped on my VCR a public television program in which somehow, inexplicably, a film is shown of a fetus in utero scratching its face, seemingly putting up a tiny hand to shield itself from the camera's eye. It would make a potent weapon in the arsenal of anti-abortionists. I grow sentimental about it as it floats in the salt water, part fish, part human being. It is almost living, but not quite. It has almost turned my heart around, but not quite turned my head.

Source: Quindlen, Anna. "Hers." *New York Times,* March 13, 1986, p. C2.

IMPORTANT PEOPLE, PLACES, AND TERMS

Abortifacient
A substance that induces or causes an abortion

Abortion
The intentional termination of a pregnancy at any time before birth

Akron v. Akron Center for Reproductive Health
A 1983 Supreme Court ruling that struck down a series of Ohio abortion restrictions

Alito, Samuel (1950-)
Justice of the Supreme Court appointed in 2006

AMA
Acronym for the American Medical Association

American Medical Association
A professional organization for doctors that was formed in 1847

***Amicus Curiae* Brief**
A document submitted for judges' consideration by an interested party, or "friend of the court," in a lawsuit

Barnum Law
Connecticut state law prohibiting the distribution and use of contraceptives

Barnum, Phineas T. (1810-1891)
Circus showman, politician, and social reformer who led the anti-birth control movement in Connecticut

Blackmun, Harry A. (1908-1999)
Justice of the Supreme Court who wrote the majority opinion in *Roe v. Wade*

CHRONOLOGY

1821

Connecticut becomes the first state to outlaw abortion. *See p. 6.*

1854

Texas passes a law—later challenged in *Roe v. Wade*—making abortion illegal except when necessary to save the life of the mother. *See p. 37.*

1869

The Roman Catholic Church abandons the concept of "quickening" and declares that human life begins at the moment of conception. *See p. 10.*

1873

March 3—The U.S. Congress passes the Comstock Act, outlawing birth control, abortion, and the distribution of materials considered immoral or obscene. *See p. 12.*

1916

Margaret Sanger opens the first birth control clinic in the United States. *See p. 15.*

1928

Supreme Court Justice Louis Brandeis first argues that the Constitution supports a citizen's right to privacy. *See p. 22.*

1953

Estelle Griswold becomes executive director of the Planned Parenthood League of Connecticut. *See p. 22.*

1955

Planned Parenthood medical director Mary S. Calderone organizes a conference, "Abortion in America," that draws public attention to the abortion-reform movement.

1959

The American Law Institute recommends the reform of all state abortion laws. *See p. 28.*

1962

Children's TV host Sherri Finkbine's decision to abort a deformed fetus brings national attention to the abortion-reform issue. *See p. 26.*

SOURCES FOR FURTHER STUDY

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