3

Abortion Privacy / Abortion Secrecy

In 1970 Jane Roe, described by the Supreme Court as "a single woman . . . residing in Dallas County, Texas," filed a suit in federal court against Henry Wade, the elected district attorney of Dallas County.[1] Henry Wade was the name of Dallas County's chief prosecutor, the man responsible for enforcing Texas's criminal abortion statute. But a quick footnote following the Court's first mention of the other party "Jane Roe" informs us only that "the name is a pseudonym."[2] This raises an interesting and little discussed aspect of the famous case: just when can a party to litigation decide not to use his or her own name but to sue under a fictitious one instead? A basic requirement of our adversarial system is that a complaint—the first document filed in any lawsuit—must name all of the parties. Not only does the defendant have a right to know who has sued him, but the press has a right to report on it to the rest of us. As the Supreme Court explained in 1975, "what transpires in the courtroom is public property."[3] Twenty years later, the Seventh Circuit Court of Appeals made clear that identifying the parties "is an important dimension of publicness. The people have a right to know who is using their courts."[4]

What then are we to make of Jane Roe? What characteristics of the plaintiff or of the case so "overwhelms the presumption of disclosure mandated by procedural custom" that anonymity trumps the cherished values of publicness and transparency?[5] Without digging too deeply into the Federal Rules of Civil Procedure, it is enough to know that cases involving abortion—along with "mental illness, personal safety [same-sex prison rape], homosexuality, transsexuality, and illegitimate or abandoned children in welfare cases"—are among the few exceptions where courts permit adults to proceed anonymously.[6] One