



## Teaching Notes: *Roe v. Wade* 1973

The Background of *Roe v. Wade*: (00:00 to 2:05)

1. Where did James Madison get many of his ideas for the rights he listed in the Bill of Rights?

**He got many of them from the states that had their own Bill of Rights.**

2. Why did Madison feel that we needed the Ninth Amendment which states...” The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.” ?

**He was afraid that there was no way to list all the rights the people should have to be truly protected from government interference and intrusion into their lives.**

**Stop and Think:** It was approximately one hundred and seventy-five years before there was a case involving the rights that might be guaranteed by the Ninth Amendment. Why do you think that was so? What rights can you think of that are not in the Bill of Rights that might be inferred by the Ninth?

Facts of the Case: (2:05 to 3:50)

3. Who was Norma McCorvey (pseudonym Jane Roe) and what was her situation in 1969?  
**She was a 21 year-old pregnant woman living in Texas. At this time it was against Texas law for a woman to obtain a legal abortion except when the mother’s life was in danger.**
4. Why did Norma McCorvey retain attorneys, Linda Coffee and Sarah Weddington?  
**She wanted an abortion in a safe clinical environment. The attorneys filed a class action suit against the District Attorney of Dallas County, Henry Wade, and asked the court to issue an injunction prohibiting Wade from enforcing the Texas law.**
5. What did she and her attorneys hope to get from the lawsuit filed in a U.S. District Court?  
**She wanted a declaratory judgment, which would declare the Texas law prohibiting abortion unconstitutional, and an injunction restraining District Attorney Wade from enforcing the law.**
6. How did the three-judge U.S. District Court rule?  
**It ruled that Jane Roe’s right to privacy under the Ninth and Fourteenth Amendments was violated by the Texas law, but stopped short of issuing the injunction.**

7. Why did both Jane Roe and the state of Texas appeal the District Court's decision to the U.S. Supreme Court?

**Roe appealed because even though the district court ruled that the Texas law was unconstitutional, it did not order the state to stop enforcing the law. Texas appealed the decision because it believed the state had the right to pass this law because the state had a compelling interest in protecting the life of the unborn.**

**Stop and Think: Do you agree or disagree with the district court's decision? Explain your answer.**

**The Supreme Court Case: (3:51 to 5:25)**

8. What was the question the U.S. Supreme Court had to answer?

**Does a state law that outlaws abortion unless the life of the mother is endangered by the pregnancy violate the woman's constitutional rights under the Ninth and Fourteenth Amendments?**

9. What did the attorneys for Jane Roe argue?

**The Texas law prohibiting a woman's right to choose an abortion was a violation of her right to privacy which is inferred by the Ninth and Fourteenth Amendments.**

10. What did the state of Texas argue?

**The state argued that it had a compelling reason for wanting to protect the life of an unborn child, and that the legislature which had been elected by the people had the right to pass the law making an abortion illegal.**

11. What was the Supreme Court's decision handed down on January 22, 1973?

**The U.S. Supreme Court ruled 7-2 in favor of Roe. It thus upheld the District Court's decision that declared the Texas abortion law unconstitutional.**

**Stop and Think: Do you agree or disagree with the Supreme Court's decision. Explain your reasoning.**

**The Decision: (5:28 to 10:14)**

12. What Supreme Court Justice wrote the opinion of the Court?

**Justice Harry Blackmun wrote the opinion of the court.**

13. What two justices wrote dissenting opinions?

**Justice Byron White and Justice William Rehnquist both wrote dissents.**

14. What did Justice Blackmun mean when he said the state had to have a compelling interest if it was going to intrude into an individual's zone of privacy?

**Justice Blackmun believed that an individual's rights of privacy came first and that only in very special circumstances did the interests of the state trump the individual's rights. However, he did acknowledge that the interests of the state were important and therefore should be balanced with his trimester test.**

15. According to the trimester test, what is true about an abortion in the first trimester?

**Since the fetus is unable to survive outside the womb, the woman's interests in making the decision to continue the pregnancy or to terminate it should be hers alone. The state should not be able to prohibit her from carrying out her decision to abort the pregnancy if she chooses.**

16. What is true about an abortion in the second trimester?

**Since an abortion in the second trimester is more dangerous than one in the first trimester due to the fact that the fetus is more developed, the state has an interest in regulating how an abortion should be performed during this time.**

17. What is true about an abortion in the third trimester?

**Since it is possible for the fetus to live outside the womb in the third trimester, the state does have an interest in protecting its life. In addition, a late term abortion is more dangerous, and therefore the state's interest trumps the woman's. Therefore, the state can forbid an abortion in the third trimester.**

**Stop and Think:** What is your opinion of the trimester test concerning abortions? Explain your reasoning.

18. Has the U.S. Supreme Court ruled that a fetus is a person protected by the laws of this country?

**The Supreme Court has ruled that a fetus is not a person legally protected by the laws until he/she is born and living on its own.**

**Analyzing the Opinions:** (5:28 to 6:28 and then 10:30 to 12:10)

19. Read the following quotes from the opinions in the case of *Roe v. Wade*. Select the one that best fits your personal opinion of the case. Explain what the individual writing the quote is saying as well as the reasoning for your selection.

- "...the Court has recognized that a right of personal privacy, or a guarantee of certain areas of zones of privacy does exist under the Constitution. The Ninth Amendment's reservation of rights to the people is broad enough to encompass a women's decision whether or not to terminate her pregnancy." Justice Blackmun
- "The Constitution does not define person in so many words...the use of the word is such that it has application only post-natally (after birth)...This persuades us that the word person in the Fourteenth Amendment does not include the unborn." Justice Blackmun

- **“I find nothing in the language or history of the Constitution to support this Court’s judgment. The Court simply fashions and announces a new constitutional right for pregnant mothers and with scarcely any reason or authority for its actions invests that right without sufficient substance to override most existing state abortion statutes.”  
Justice White**
- **“The decision here to break pregnancy into three distinct terms and to outline the permissible restrictions the state may impose in each one, for example, partakes more of judicial legislation than it does of a determination of the intent of the drafters of the Fourteenth Amendment.” Justice Rehnquist**

**Conclusion: The debate over abortion has continued to divide the country. It is also a debate about how rights are defined in the Constitution. Answer the following question and explain your reasoning:**

**Should judges and courts make decisions in which they determine what rights the people have or should the rights of the people be determined by a vote of the people and their elected representatives?**