Of Causes and Clients: Two Tales of Roe v. Wade

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Consider the following situation. It is the late 1960s and criminal statutes prohibiting abortion are common throughout the country. A lawyer wants to challenge the constitutionality of one such statute and interviews a pregnant woman to be the plaintiff in the case. The lawyer is bright, idealistic, and committed to the cause of women's reproductive choice. Having had an illegal abortion herself, she is working without pay and determined to change the law limiting access to abortion. The would-be plaintiff is unsophisticated, nearly destitute, and neither aware of nor committed to any cause. Having once before given a child up for adoption, she is desperate to abort her current pregnancy. Finding a plaintiff has not been easy, and the lawyer feels this woman meets her criteria: she is pregnant, wants an abortion, and is too poor to travel to a state where abortion is legal.

There is one complication: the young woman says she was raped. This allegation confronts the lawyer with a strategic choice. The criminal statute in question has no rape exemption, so she could rely on the rape allegation and argue that the statute is unconstitutional because of its failure to exempt rape victims. Or she could ignore the rape allegation in favor of a broad challenge to the statute's general prohibition of abortion.

Which strategy is the lawyer to choose? The narrower strategy probably has a greater chance for success, at least in the abstract. Of all aspects of the criminalization of abortion, banning abortion in rape cases is perhaps the least popular and most difficult to defend. Thus,
it may be the statute's most vulnerable point. Higher likelihood of success on the merits may also speed resolution of the case and increase the availability of injunctive relief in the trial court.\footnote{Likelihood of success on the merits is one part of the standard used to grant a preliminary injunction. 11A CHARLES A. WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2948.3 (1995). The clarity of one's right to relief on the merits is also used in determining the availability of a permanent injunction. \textit{Id.} § 2942, at 43.} Because the prospective plaintiff is already pregnant, she must prevail and probably also obtain injunctive relief in the trial court in a matter of months to have any hope of aborting her pregnancy.

The lawyer, though, has concerns about the rape allegation. The woman states that she failed to report the rape and there were no corroborating witnesses. Weakness on the rape allegation might undermine the entire case. In addition, the broad strategy would advance the cause of reproductive choice more significantly than the rape strategy, appealing to the lawyer's sense of responsibility to a broad female constituency dedicated to expanding abortion rights and to women in the future who will seek to abort pregnancies not resulting from rape.

May the lawyer agree to represent the woman but reject using the rape allegation? If so, on what ground? Suspected falsity? Inadequate proof? Because it would be in the woman's best interest or because the broader challenge would better serve the abortion rights cause?

normative questions, this literature also examines how public interest lawyers and their clients actually do interact. Do public interest lawyers serve client interests or advance their own political and social agendas? Do public interest lawyers empower or dominate their clients? Do they respect or silence client voices? Often these empirical questions are hard to answer. Doctrines of privilege and confidentiality impede inquiry, and public records seldom reveal much about relations between lawyer and client.  

4 We rarely have access to detailed accounts of public interest litigation from both the lawyer's and the client's perspectives. In Lucie White's article telling the story of her interaction as a legal aid lawyer with a client, for example, we hear the lawyer's version, but not the client's.  

Two recent books on Roe v. Wade, however, give us both the lawyer's and the client's stories of that case. Norma McCorvey, the individual plaintiff fictitiously named "Jane Roe," writes from a client's perspective in I Am Roe.  

Sarah Weddington, the most celebrated of the Roe lawyers, provides a lawyer's account in A Question of Choice.  

As the issues raised in their initial encounter may suggest, these books are engaging and provocative resources for those interested in how public interest lawyers do treat, and should treat, their clients.  

Participant accounts such as these have their strengths and their limitations. The accuracy of any witness's account of an event depends on the reliability of the witness's perceptions, memory, and narration of that event. Participation by McCorvey and Weddington in many of the events they recount and the fact that the events were important to each help enhance reliability. Participation provided


4. Tushnet, supra note 3, at 200 n.35. As Professor Tushnet writes: With a few exceptions . . . most recent discussions of the ethics and politics of public interest law have relied on anecdotes . . . . The reason is clear. Concern about the confidentiality of communications between lawyers and clients has made it difficult to obtain information about their relations. Public records such as the transcripts of trials and hearings rarely disclose enough about the relevant issues.  

5. See White, supra note 3, at 21-32.  


each author the opportunity to observe many of the things she writes about, and the significance of the events in each author’s life suggests that her attention would have been well focused.

Other factors, though, weigh against accuracy. Participation and significance, as potential sources of stress, may distort perception and memory. Memory fades with time, and these books were written roughly two decades after the *Roe* litigation. In the intervening years, much has been written about the highly publicized and controversial *Roe* decision, creating opportunities for memory distortion as multiple reconstructions of past events shape and blend with one another. Also, the motives of a witness may prompt conscious and unconscious selection and addition of facts. Among the objectives that might distort McCorvey’s and Weddington’s accounts are possible desires to influence current abortion politics, to defend past conduct, or simply to tell a better story.\(^8\) McCorvey’s book was written with a coauthor, another possible source of distortion. Accordingly, these books may be viewed with some measure of skepticism as historically precise reconstructions of the *Roe* litigation.

Nonetheless, these books merit our attention. Though perhaps imperfect witnesses, the lawyer and the client are often the only witnesses to what transpires between them. Regardless of flaws in historical accuracy, how each author talks about the case, about herself, and about others involved in the case teaches us something about Weddington as lawyer and McCorvey as client. Weddington’s account in particular reveals the attitudes and assumptions of a prominent public interest lawyer regarding legal ethics issues encountered in law reform litigation.

I

These books have three facets. Each is part autobiography, part commentary on the abortion issue, and part a story of *Roe v. Wade*. The autobiographical portions provide context for understanding and evaluating each woman’s role in the case and their interaction. They serve as a useful preface to discussion of the issues raised by the narratives of *Roe*.

\(^8\) See, e.g., Tushnet, *supra* note 3, at 204:

[Thurgood] Marshall is a great raconteur, and his reconstructions of what happened thirty or forty years before must be accepted with a skepticism born of the knowledge that he is at least as much concerned with telling a good story as with telling the true one. Sometimes, of course, the true story is a good story, too.
A. Sarah Weddington

As Sarah Weddington tells her life story, several themes recur. Perhaps the most prominent is a deep identification with and commitment to women's rights and, in particular, the cause of reproductive choice. She describes her victory in Roe, for example, as "an integral part of my values and my self-concept." A second theme is Weddington's image of herself as a pathbreaking representative for a broad female constituency. She refers to her years in elected and appointed office as ones spent "winning legislative and administrative battles for women." In preparing to argue before the Supreme Court, she speaks of owing "my best effort to the women who would continue to be forced to seek illegal abortions if we lost" and of her allotted time for argument as "[t]hirty minutes to make them hear the voices of women who had been through illegal or legal abortions." Weddington's subordination of her own interests to the interests of the cause of reproductive choice provides a third recurring theme. She tells of turning down a job with the American Bar Association in 1969 "with a heavy heart" to spend "the Christmas holidays in the library researching for Roe." After leaving a prominent position in the Carter White House, she recounts that no law firms offered her a job for fear that her "ongoing involvement in the abortion issue would cause them to lose clients." The failure of her marriage, not having remarried, and not having had children are also mentioned by Weddington as costs of her involvement in the abortion rights cause.

Weddington tells of chafing at an early age under sexist restrictions on women, deciding on law school when a college dean told her it would be "too strenuous." In the summer of 1965, she entered the University of Texas law school, one of five women in a class with 120 men. In 1967, Weddington encountered first-hand the constraints of the same Texas abortion statute she would argue to overturn a few years later in Roe. Unmarried and in her third year of law school, she unexpectedly became pregnant and decided on an abortion. The restrictions of the Texas criminal ban, allowing abortions only "by medi-

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10. Id. at 236.
11. Id. at 107.
12. Id. at 108.
13. Id. at 262.
14. Id.
15. Id. at 187, 263.
cal advice for the purpose of saving the mother," led Weddington to a back alley abortion clinic in a Mexican border town where she paid $400 in cash to an unknown doctor. Weddington describes in detail her desperation and fear, the memories of which proved lasting. She begins her book with the story of her abortion, describing it as one of "three scenes" that "summarize my life."

Weddington describes becoming active during law school in a "women's liberation consciousness raising group" in Austin. In these passages, Weddington's image of herself as a representative for the collective interests of women emerges. She describes sharing with the women in her group "a dedication to the protection of women and a goal of righting the wrongs we perceived." Members of the group started an abortion referral service, providing counseling and information on safe, and sometimes illegal, abortions both in and out of Texas. Weddington assisted the abortion referral project with fundraising and legal research into possible criminal liability for providing abortion referrals. Her research on criminal liability led her to the constitutional cases which provided the raw material for the arguments in Roe.

As Weddington tells the story, the Roe case "really started because of . . . the abortion referral project volunteers." These women came up with the idea for the suit and, despite the fact that Weddington "had never been involved in a contested case," recruited Weddington to handle the case. This fact later proves significant when Weddington consistently views Roe as a case brought on behalf of women such as the abortion project volunteers rather than on behalf of McCorvey. To Weddington, her work on Roe is simply one facet of a collective effort to expand women's reproductive rights. She has a deep sense of shared commitment to the abortion rights cause and responsibility to a broad female constituency.

Despite her rank in the top quarter of her law school class, Weddington had difficulty finding employment in a male-dominated legal profession. Months of job interviews produced no offers. Weddington finally got her first job as a practicing lawyer as an assistant city

17. WEDDINGTON, supra note 7, at 11-15.
18. Id. at 35.
19. Id. at 36.
20. Id.
21. Id. at 45.
attorney in Fort Worth Texas, the first female lawyer hired by that office. Once it was clear the Supreme Court would review her trial court victory in Roe, her boss handed her a note: "No more women's lib. No more abortion." Despite the difficulty she encountered finding a job, when forced to choose between that job and the Roe case, Weddington, seemingly without hesitation, chose the case. In Weddington's view, the good of the cause trumps individual self-interest.

While Roe was still under submission with the Supreme Court, Weddington was elected to the Texas House of Representatives, the first woman to represent her county and one of only five women in the 150-member Texas House. Weddington describes the decision to run as an exercise in collective female political action. Weddington and four female friends with shared political goals felt that women needed "more champions" in the legislature. Together they decided that Weddington should run. She saw in her election the chance to carry on the battle to "free women from the horrors of illegal abortion." She describes her determination, once elected, to do "an extraordinarily fine job" because her "presence there [was] an opportunity to open the door for many other women." Her agenda throughout her five years in the Texas legislature was filled with women's issues: an equal credit bill, employment protection for pregnant teachers, rape law reform, and work on both the Texas and national Equal Rights amendments.

Roe brought Weddington national prominence. In 1975, she became president of the National Association for the Repeal of Abortion Laws and testified in that capacity before Congress. In 1977, Weddington received a federal appointment with the Carter administration as general counsel to the United States Department of Agriculture. She resigned her seat in the Texas House to seek "the bigger levers of power in Washington" which she thought "could be used to advance the position of women." Soon after her arrival in Washington, she was appointed an assistant to President Carter, responsible for finding women qualified for various federal positions and generally "the point person for any issue of special interest to women."

The later chapters of Weddington's book focus on recent abortion politics and are explicitly aimed at rallying interest in and commit-

22. Id. at 83.
23. Id. at 144.
24. Id. at 145.
25. Id. at 187.
26. Id. at 194.
ment to the abortion rights cause. Weddington's autobiography becomes sketchy after her years in the Carter Administration, but Weddington's continued national prominence as a spokesperson for the pro-choice viewpoint is clear. In 1989, for example, when the Supreme Court revisited abortion in *Webster v. Reproductive Health Services*, Weddington spoke at NOW's national demonstration in support of abortion rights and provided nationally broadcast commentary for ABC television. In 1991, she testified against the confirmation of Supreme Court Justice Clarence Thomas on abortion rights grounds.

**B. Norma McCorvey**

The life story Norma McCorvey recounts also has its recurring themes. The most prominent is McCorvey's search for identity and her transformation from accidental symbol to spokesperson for abortion rights. McCorvey's description of herself prior to and during the *Roe* litigation, for example, reveals no allegiance on her part to any political or social cause. By 1994, though, McCorvey was giving pro-choice speeches and writing that "the cause of reproductive freedom has become a part of me." A second theme is McCorvey's view of herself as powerless and voiceless, someone whose life is shaped by others with power and authority to act and speak. Whether it is the judge who sends her to reform school or the mother who tricks her into relinquishing custody of her first child, someone other than McCorvey regularly seems to be calling the shots in her life.

Born in rural Louisiana in a house with an outdoor privy, McCorvey describes her childhood with details such as drinking coffee and beer at age seven, having a grandmother who was the madam of a brothel, and being physically beaten by her mother. She was a "tough girl" who "ditched" school, shoplifted, and hung out at a local bowling alley where men shared beer with her. McCorvey had her first encounter with the legal system at age ten. She stole money from a local service station and ran away from home, only to be returned handcuffed in the back of a police car. After a Catholic boarding school expelled her as a "bad influence," McCorvey spent the years from age eleven to fifteen at a Texas state reform school. She describes these

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29. *Id.* at 229.
30. *MCCORVEY*, *supra* note 6, at 5.
years as "the happiest of my childhood."\textsuperscript{31} Her home situation was such that she ran away twice in order to be sent back to reform school.

Schooling ended and work began for McCorvey at age fifteen with a job as a roller-skating carhop at a drive-in restaurant. A customer with a pompadour and a shiny '57 Ford Fairlane became her first boyfriend and, as soon as she turned sixteen, her husband. Not far into the marriage, McCorvey began to experience physical symptoms her landlady explained might mean she was pregnant. When McCorvey went to a local free clinic for a pregnancy test, she left without being tested rather than reveal her ignorance as to what a urine sample was. Her husband beat her upon learning of the pregnancy and she returned to her mother to have the baby.

McCorvey again encountered the legal system, though somewhat indirectly, when she lost custody of her daughter to her mother. On returning home, McCorvey discovered and began to frequent the lesbian and gay bar scene in Dallas. One morning after McCorvey had confessed her lesbian sexual orientation to her mother and while McCorvey was still hung over from a night of heavy drinking, her mother asked her to sign some "insurance papers" for her baby. The papers turned out to be legal documents granting custody to her mother. For years afterward, McCorvey saw the child only sporadically.

Despite being lesbian, McCorvey continued to have casual affairs with men. One such week-long affair resulted in a second unplanned pregnancy. McCorvey gave birth to the baby, never saw it, and gave it up for adoption. In addition to drinking heavily, McCorvey began both to use and sell drugs such as LSD and diet pills. She worked as a bartender, a pool hustler, then as a Barker "running the freak show" in a traveling carnival. When the carnival closed for the season, McCorvey found herself in Florida, twenty-one years old, nearly destitute, and pregnant again. This third unplanned pregnancy led to the \textit{Roe} case.

McCorvey describes herself as a rough and unsophisticated woman who has lived much of her life "at the bottom edge of American society"\textsuperscript{32} and who has "not been able to spend a lifetime thinking of big issues or political strategies."\textsuperscript{33} She has worked much of her life as a cleaning woman gauging economic success by being able to buy "new sneakers or do a whole week's worth of grocery shopping in one

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\textsuperscript{31} \textit{Id.} at 35.
\textsuperscript{32} \textit{Id.} at 5.
\textsuperscript{33} \textit{Id.} at 2.
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trip.”\textsuperscript{34} In the pages devoted to the years from 1969 until 1973, when the \textit{Roe} suit was pending, she clearly does not consider herself part of the abortion rights movement. She describes becoming involved in \textit{Roe} because “I was simply at the end of my rope.”\textsuperscript{35}

McCorvey tells of an awakening in herself in the 1980s of interest in women’s issues and the abortion rights cause. In describing herself more than a decade after the \textit{Roe} case was litigated, she says: “I knew almost nothing about [\textit{Roe v. Wade}] except what I had seen with my own two eyes. For the first time, I was curious. I went to the library and checked out some books on women’s rights.”\textsuperscript{36} She describes studying “more and more about the women’s and pro-choice movements” and reading “the \textit{Roe} decision . . . with a dictionary alongside.”\textsuperscript{37} In 1984, fortified by vodka and valium, she publicly revealed her role in \textit{Roe} in a local television interview that brought her to the attention of such well-known journalists as Carl Rowan and Fred Friendly. In 1989, nearly twenty years after becoming the plaintiff in \textit{Roe}, McCorvey reached what she terms “a turning point.”\textsuperscript{38} “My commitment to pro-choice began to surge,” she writes, and “I finally accepted myself as Jane Roe and stepped out of the political closet.”\textsuperscript{39}

McCorvey’s relationship with what she terms “the women’s movement” has been awkward and ambivalent. “[T]o some in the women’s movement,” she states, “I am . . . a nuisance. An embarrassment. An accidental part of their lives.”\textsuperscript{40} McCorvey tells of volunteering at a women’s health clinic providing abortion services near her home in Texas until one day the clinic was visited by an unnamed “major figure in the women’s movement.”\textsuperscript{41} McCorvey describes the encounter as follows:

She walked around the office, standing very tall and sure of herself, shaking hands with everyone. “Hi, I’m Norma McCorvey,” I said to her. And then, for some reason—in order to make more contact with her? or because she looked so cool and confident and together, and I was so intimidated?—I blurted out, “I’m the Jane Roe of \textit{Roe v. Wade}.” She looked at me, smiled, and shook her head. “No, No,” she said. “I know who Jane Roe is. She wouldn’t be here

\begin{itemize}
\item \textsuperscript{34} \textit{Id.} at 150.
\item \textsuperscript{35} \textit{Id.} at 115.
\item \textsuperscript{36} \textit{Id.} at 180.
\item \textsuperscript{37} \textit{Id.} at 184.
\item \textsuperscript{38} \textit{Id.} at 191.
\item \textsuperscript{39} \textit{Id.} at 207.
\item \textsuperscript{40} \textit{Id.} at 2.
\item \textsuperscript{41} \textit{Id.} at 157.
\end{itemize}
doing this kind of work.” She moved on. I put down my work, went home and cried. I didn’t go back.  

When McCorvey approached the stage at a pro-choice rally in the early 1990s, at first she was not recognized and was told she “had no business being there.” When she informed the organizers who she was, McCorvey was given a VIP sash and a place on the speakers’ platform, but no one asked her to speak.

Symbolic of her newly discovered political consciousness and conversion to the pro-choice cause is a move she describes making to Northern California to live for a while near “a community consisting mostly of feminists and lesbians and strongly pro-choice women.” She went to public speaking school and emerged a sort of self-appointed spokeswoman for abortion rights, appearing in places as varied as local women’s clubs and the “Good Morning America” television show. The pro-choice speech she delivered on these occasions, captioned “The Jane Roe Speech,” appears at the end of her book. In it she calls on others to “stand up and be counted” and support organizations such as Planned Parenthood and the National Organization for Women. The last lines of this speech and her book are: “Silence no more! We will not go back!”

McCorvey, though, recently realigned herself on the abortion issue. This development provides a postscript to her book that is both peculiar in light of its pro-choice political message but also fitting with its themes of transformation and being subject to other people’s power. McCorvey in her book seems to view Operation Rescue, the militant pro-life group, as the very antithesis of her political orientation. Yet in August of 1995, little more than a year after the publication of her book, McCorvey was baptized by the national director of Operation Rescue and quoted in the press as saying, “I’m pro-life. I think I have always been pro-life, I just didn’t know it.” In subsequent interviews, McCorvey clarified that she “hasn’t changed sides all the way” and still supports a woman’s right to choose an abortion in the first trimester of pregnancy.

42. Id. at 158.
43. Id. at 194.
44. Id. at 196.
45. Id. at 209.
46. See id. at 187 (McCorvey describes Operation Rescue as a group that is “run by a small circle of men” whose strategies “stretch and break the limits of civil disobedience.”).
Sarah Weddington responded to the news of McCorvey's conversion by discounting McCorvey's significance. Weddington is quoted as saying, "All Jane Roe did was sign a one page affidavit. She was pregnant and didn't want to be. That was her total involvement in the case."  

II

As the autobiographical portions of their books indicate, Weddington and McCorvey brought to the Roe case some common experiences and interests. Each knew first-hand what it was like to experience an unplanned pregnancy and to be desperate for an abortion but unable to obtain one because of the Texas criminal ban on abortion. Weddington and McCorvey each had an interest in having the Texas abortion statute abrogated and each needed the other to accomplish this end. Unlike some lawyers and clients in public interest practice, no barriers of sex or race divided them.

But their experiences and interests also diverged significantly. Weddington was well educated, politically aware and committed, while McCorvey was poorly educated, and neither politically aware nor committed. Weddington was interested in making history, changing the law to "somehow, someday . . . free women from the horrors of illegal abortion." 50 McCorvey, by contrast, was simply "at the end of [her] rope," 51 interested in terminating the pregnancy that was the source of her current dilemma. In more abstract terms, their relationship reflected a tension between McCorvey's present individual interest in obtaining an abortion and the future collective interests of other women in greater access to abortion. In a legal system in which individual cases both resolve present disputes and generate future legal norms, any case may be subject to such a tension between the present individual interests of parties affected by the case as a dispute resolution mechanism and the future collective interests of those affected by the case as a precedent. In Roe, this tension was particularly acute. McCorvey was desperate and had no one other than her lawyer to look out for her interests. At the same time, the case also held the potential to dramatically advance the emotionally charged collective

49. Id.
50. Weddington, supra note 7, at 144.
51. McCorvey, supra note 6, at 115.
interests animating the abortion rights cause, to undo in one bold stroke a century of restrictive abortion legislation.  

How, then, did this mix of similar and dissimilar interests play itself out in the Roe case? A good starting point for answering this question is Weddington's handling of McCorvey's rape allegation.

A. The Rape Allegation

As the introductory paragraphs of this essay indicate, McCorvey in her first meeting with Weddington claimed that her pregnancy resulted from rape. More than ten years later, McCorvey would admit in an interview with Carl Rowan that this claim was false. But in 1970 and for years thereafter, McCorvey maintained that she had been raped. A detailed version of McCorvey's rape story was even published in a magazine a few months after the Supreme Court announced its decision in Roe. Weddington chose not to use the allegation. Her description of and justification for this decision tell a great deal about her attitude toward and treatment of McCorvey.

When Weddington met McCorvey in 1970, abortion rights activists in the United States were pursuing two distinct strategies in attacking the criminal prohibition of abortion. The nature of each is critical to appreciating Weddington's response to McCorvey's rape claim. A reform strategy sought to liberalize the law of abortion by decriminalizing certain categories of abortion, such as those of pregnancies resulting from rape or incest, but otherwise left the criminal ban on abortion intact. An abolition strategy sought complete repeal of criminal abortion laws, including liberalized statutes such as those advocated by the reform strategy. Exemplified by the American Law Institute's Model Penal Code abortion provision, the reform strategy had succeeded in a number of states and was gaining momentum at the time Weddington met McCorvey in early 1970. By 1970, states such as Colorado, North Carolina, California, Georgia, Oregon,

52. See Lawrence M. Friedman, The Conflict over Constitutional Legitimacy, in The Abortion Dispute and the American System 16 (1983) ("Thus in one bold, cataclysmic move the Court [in Roe v. Wade] undid about a century of legislative action. It swept away every abortion law in the country, just as in the first death penalty case the Court undid all capital punishment laws and emptied every death house in the land.").
53. Id. at 179-80.
54. See Joseph N. Bell, A Landmark Decision, Good Housekeeping, June 1973, at 77.
55. These strategies are described in detail in David J. Garrow, Liberty and Sexuality: The Right to Privacy and the Making of Roe v. Wade 270-388 (1994).
New Mexico, and Delaware had adopted reform statutes, though reform efforts had failed elsewhere. Weddington and her colleagues, for example, supported an unsuccessful reform bill brought before the Texas legislature in 1969. By 1973, when *Roe* was decided, about one-third of the states had adopted reform statutes. The abolition strategy, by contrast, supported by groups such as the National Organization for Women, had met with little success in state legislatures in the late 1960s. In 1973, the abolitionist strategy ultimately prevailed in *Roe*, which invalidated restrictive abortion statutes, and in its companion case, *Doe v. Bolton*, which invalidated liberalized abortion statutes.

McCorvey's rape claim, then, had strategic significance because it raised the possibility for Weddington of choosing either a reform or an abolition strategy in pursuing *Roe*. Weddington was clearly cognizant of both strategies. In 1970, both reform and abolition strategies were being actively pursued by abortion reformers around the United States. Indeed, Weddington describes herself as "moderating ... a conflict among pro-choice forces" in Texas in 1970 about whether to back reform or abolition legislation, describing the dispute between reform and abolition strategies as a "conflict between what was possible and what was ideal." How should Weddington have handled this choice? Was she required to reject the rape allegation because of suspected falsity? If Weddington had known McCorvey was lying, she would have been required to reject the allegation. Because she did not know McCorvey was lying, she was not barred on that ground from using the allegation. Was she required to reject the rape allegation for lack of corroborating witnesses? If Weddington had been a prosecutor pursuing a criminal rape charge, Texas law at the time would have barred her from using McCorvey's uncorroborated rape allegation. But Weddington was a private lawyer filing a civil case, so the Texas rape corroboration requirement did not apply. So neither suspected falsity

56. *Id.*
58. *See Garrow, supra* note 55, at 335-88.
60. WEDDINGTON, supra note 7, at 75.
61. *See Model Code of Professional Responsibility DR 7-102(A)(4) (1981) ("In his representation of a client, a lawyer shall not ... knowingly use perjured testimony or false evidence.") (emphasis added); Model Rules of Professional Conduct Rule 3.3(a)(4) (1994) ("a lawyer shall not knowingly ... offer evidence that the lawyer knows to be false.") (emphasis added).
62. *See infra* note 75.
nor lack of corroboration required Weddington to reject McCorvey's rape claim.

What decision was best for McCorvey? A reform strategy relying on the rape allegation probably had the better chance of success, as Weddington's own description of reform legislation as representing the "possible" and abolition the "ideal" suggests. Of all aspects of the criminalization of abortion, banning abortions in rape cases is perhaps the least popular and most difficult to defend; thus the Texas criminal abortion statute's lack of a rape exemption may have been the statute's most vulnerable point. A reform strategy might also have been more likely to succeed since it would have sought from the federal trial court a more modest exercise of judicial power and less severe infringement on state authority than the abolition strategy by seeking to overturn only part of the Texas statute. In addition, the reform strategy's objective—decriminalization of abortion in rape cases—was apparently more politically palatable than that of the abolition strategy, because it had already been legislatively adopted in a number of states. Conversely, the abolition of criminal abortion laws in their entirety had met with much less political success in state legislatures. Higher likelihood of success on the merits would have increased the chances of a speedier resolution and obtaining injunctive relief, both significant for McCorvey's chances for obtaining an abortion since she was already pregnant.

But there were also significant risks associated with use of the rape allegation. If proof of the rape allegation was weak and its truth suspect, it might provide the opposing side a point of vulnerability for attacking and undermining the plaintiff's entire case. In other words, lack of credibility on that one issue might result in loss of credibility and sympathy on other factual and legal issues. It also might raise a contested factual issue which could delay resolution of the case and thus decrease McCorvey's chances for obtaining an abortion.

What decision on the rape allegation was best for the abortion rights cause? This is not an easy question to answer. The advantages and disadvantages of both the reform and abolition strategies were widely debated at the time by abortion reformers. Some favored an incremental approach of attempting to liberalize abortions laws, while others favored the more ambitious strategy of seeking complete abolition. The suspected falsity of the rape claim weighed against its use.

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63. See WRIGHT ET AL., supra note 1, § 2948.3.
If it was later exposed as false, it could cause a public relations nightmare for the abortion rights cause.

Weddington and her cocounsel Linda Coffee, who was present at Weddington's first meeting with McCorvey, opted not to rely on McCorvey's rape claim. They chose instead an abolition strategy. Weddington offers the following justification for the decision not to rely on the rape claim:

As the conversation continued, Jane Roe asked if it would help if she had been raped. We said no; the Texas law had no exception for rape. It was just as illegal for a doctor to do an abortion for someone who had been raped as it was in any other situation. I did ask, "Were there any witnesses? Was there a police report? Is there any way that we could prove a rape occurred?" Her answer in each instance was no.

Neither Linda nor I questioned her further about how she had gotten pregnant. I was not going to allege something in the complaint that I could not back up with proof. Also, we did not want the Texas law changed only to allow abortion in cases of rape. We wanted a decision that abortion was covered by the right of privacy. After all, the women coming to the referral project were there as a result of a wide variety of circumstances. Our principles were not based on how conception occurred.64

Though rejection of McCorvey's rape claim may well have been appropriate, this justification is problematic for several reasons. Weddington fails to confront directly the strategic significance of the decision being made or even to mention the possibility of a reform strategy. Nor does she mention the interests of her client, McCorvey, or how Weddington's decision about the rape allegation and choice of strategy might affect her client's interests. In a concurring opinion in Roe, Chief Justice Burger noted that "[i]n oral argument, counsel for the State of Texas informed the Court that early abortion procedures were routinely permitted in certain exceptional cases, such as nonconsensual pregnancies resulting from rape and incest."65 If such a prosecutorial policy of allowing abortions in rape and incest cases existed, McCorvey's rape allegation might have gained her access to an abortion. Weddington quotes this very passage from the Burger opinion in her book more than a hundred pages after the passage in which she describes her response to McCorvey's rape allegation.66 But she never connects the two. She does not mention the possibility of such a

64. Weddington, supra note 7, at 52-53.
65. 410 U.S. at 208.
66. Weddington, supra note 7, at 163.
policy in assessing the significance of McCorvey’s rape allegation, and she fails to explore whether such a policy actually existed.

What Weddington does offer in support of her decision not to use the rape allegation is a justification based on three rationales: irrelevance, lack of proof, and “our principles.”

(I) Irrelevance

Weddington tells us that McCorvey asked “if it would help if she had been raped.” In an earlier published speech, she describes McCorvey as asking “whether her case would be stronger if she had been raped.” 67 Weddington describes herself as answering “no; the Texas law had no exception for rape.” 68 Weddington’s reasoning here seems to be that since the Texas abortion statute had no exception for rape, rape as the source of the pregnancy would not help or strengthen McCorvey’s case. In other words, the rape allegation was simply irrelevant.

Is this an adequate assessment of the potential relevance of rape to McCorvey’s legal situation? Certainly Weddington’s description of the Texas statute as lacking a rape exemption is accurate. Her relevance assessment would also be correct if McCorvey had been charged with a criminal violation of the Texas statute. To be relevant, evidence must prove a fact which is “of consequence to the determination of the action.” 69 Since the Texas statute did not exempt cases of rape, rape would not be a fact “of consequence to the determination” of a criminal abortion case under that statute and evidence offered to prove rape would thus be irrelevant.

But of course McCorvey had not been charged with a criminal violation of the Texas abortion statute, nor apparently could she have been. As Weddington later advised the Supreme Court in her oral argument, under Texas law a woman receiving an illegal abortion “is guilty of no crime whatsoever.” 70 Rather, Weddington and McCorvey

68. WEDDINGTON, supra note 7, at 52.
69. FED. R. EVID. 401 (“‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”) (emphasis added).
were discussing a civil challenge to the Texas abortion statute. In such a case, the relevance of rape depended on the strategy chosen by the lawyers. Under an abolition strategy, rape would be irrelevant since the entire statute, rather than just its application to rape victims, would be challenged. Under a reform strategy, rape would have been relevant since it would have been critical to McCorvey's standing to challenge the statute's application to rape victims. The Texas abortion statute's lack of a rape exemption, the very feature emphasized by Weddington in explaining that the rape allegation was irrelevant, was precisely what would have made rape relevant if Weddington had chosen a reform strategy.

Ultimately, then, it was Weddington's choice not to pursue a reform strategy rather than the language of the Texas statute that rendered McCorvey's rape allegation irrelevant. Weddington's justification obscures this point with its suggestion that the terms of the Texas statute rather than the lawyer's choice of strategy dictated exclusion of the rape allegation from the *Roe* complaint. Here a facade of apparent legal inevitability masks Weddington's exercise of power and disregard of McCorvey's interests and insulates them from scrutiny or challenge.

(2) Lack of Proof

Weddington also justifies her rejection of the rape claim by telling us she lacked proof of the rape. She asks McCorvey about witnesses, a police report, or "any way that we could prove" the rape.\(^71\) When McCorvey answers no, Weddington, without asking her any further questions, concludes that she "was not going to allege something in the complaint that I could not back up with proof."\(^72\) What Weddington appears here to disregard entirely is the possibility of McCorvey herself testifying about the alleged rape. Using McCorvey's own

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\(^71\) *Weddington*, supra note 7, at 52.

\(^72\) *Id.* at 52-53.
words as proof is neither mentioned nor evaluated. In fact, Weddington's description suggests that, rather than probing McCorvey's story, she made a conscious choice to avoid learning whatever details McCorvey might have been willing to provide. Her failure to make a detailed inquiry into McCorvey's rape allegation is confirmed later in the book, when Weddington tells us she "was startled by many of the details" of McCorvey's rape allegation when she read about them three years later in a magazine.\textsuperscript{73}

Uncorroborated words from McCorvey do not seem to count as proof in Weddington's eyes, whose choice not to probe the details of the rape allegation treats McCorvey's voice as either unreliable or unimportant. Weddington's emphasis on corroboration along with her failure to ask McCorvey for the details of her uncorroborated rape story also resonate uncomfortably with the sexist attitudes found in rape law's corroboration doctrine, under which the uncorroborated testimony of an alleged rape victim was treated as inadequate proof in a criminal rape case.\textsuperscript{74}

Perhaps Weddington's concern with corroboration and her apparent disregard of McCorvey's possible testimony reflects her anticipation that McCorvey's rape claim would later be subjected to the corroboration doctrine then in existence in Texas. When Weddington interviewed McCorvey in 1970, Texas law did require corroboration of a rape charge in which the alleged victim failed promptly to make a report.\textsuperscript{75} But Weddington was contemplating filing a civil case in which rape might have been alleged, not a criminal rape prosecution. The criminal law's corroboration requirement would not have applied to McCorvey's case, though Weddington may have mistakenly analogized to the proof requirements in a criminal rape prosecution.

Perhaps Weddington was concerned with how McCorvey would fare as an uncorroborated witness testifying and being cross-examined in what was likely to be a high-profile, controversial trial. She could reasonably anticipate both resistance from the lawyers representing

\textsuperscript{73} Id. at 256.

\textsuperscript{74} The corroboration doctrine is discussed in Susan Estrich, Real Rape 42-47 (1987); Sanford H. Kadish & Stephen J. Schulhofer, Criminal Law and Its Processes 369-72 (6th ed. 1995); White, supra note 3, at 19 n.74; Note, The Rape Corroboration Requirement: Repeal Not Reform, 81 Yale L.J. 1365 (1972).

\textsuperscript{75} See Thomas v. State, 476 S.W.2d 305, 307 (Tex. Crim. App. 1972) ("Corroboration is ordinarily required in those forcible rape cases where a belated outcry was made.") (citation omitted); Hughes v. State, 124 S.W.2d 349, 351 (Tex. Crim. App. 1939) ("In this case the prosecutrix makes a complete case. But having failed to make any complaint until four or five days after the occurrence, the case falls within the rule requiring corroboration of her testimony in order to sustain a conviction.") (citations omitted).
the state and scrutiny by anti-abortion groups. But this explanation fails to explain why Weddington would cease inquiry into McCorvey's story upon learning that corroboration was lacking. If anything, lack of corroboration would make it more important to hear McCorvey's story in detail to evaluate her as a potential witness. Ironically, McCorvey was never required either to testify or to be cross-examined. In the trial court, Roe was resolved through summary judgment with Weddington simply submitting McCorvey's affidavit.

As with her irrelevance justification, the inadequate proof justification offered by Weddington fails satisfactorily to explain rejection of the rape claim and again masks the lawyer's exercise of power and disregard of client interests by making the lawyer's decision appear as if it had been dictated by the law.

(3) "Our principles"

The third justification offered by Weddington for rejecting the rape allegation is that "we did not want the Texas law changed only to allow abortion in cases of rape. . . . Our principles were not based on how conception occurred." This justification raises several problems. First, to whom is Weddington referring when she uses the words "we" and "our"? She might simply mean the lawyers, herself and Linda Coffee. Or she might be referring to the lawyers' broader constituency, supporters of the abortion rights cause, such as the abortion referral project volunteers who first suggested bringing a test case to challenge the Texas abortion statute. In either case, the assumption underlying this reference to the desires and principles of the lawyers or their constituency as a justification for rejection of the rape allegation is at odds with basic conflict of interest norms governing lawyers. Neither the interests of the lawyer nor the interests of third parties are permitted to influence the judgment of a lawyer in representing a client. Rather, only the interests of the client are to guide the lawyer.

77. Weddington, supra note 7, at 53.
78. Id.
79. Model Code of Professional Responsibility EC 5-1 (1981) ("The professional judgment of a lawyer should be exercised, within the bounds of the law, solely for the benefit of his client and free of compromising influences and loyalties. Neither his personal interests, the interests of other clients, nor the desires of third persons should be permitted to dilute his loyalty to his client.") (footnote omitted).
80. Id.
As noted above, Weddington does not mention McCorvey's interests in describing her decision about the rape claim.\textsuperscript{81}

McCorvey seems oblivious in her book to the strategic implications of the rape allegation and how its use might have affected her interests in the \textit{Roe} case. She also seems to have been ignorant for years of Weddington's decision not to use the rape allegation. Rather, McCorvey appears to have believed until relatively recently that Weddington had used the rape allegation. For instance, McCorvey writes as follows about the day after she learned of the Supreme Court's decision in \textit{Roe}:

\begin{quote}
Over the living room table I told Connie everything. I told her how I became Jane Roe. I told her about my anger and frustration over the case. About my strained relationship with Sarah Weddington and about my biggest fear—that my lie about being raped would somehow be found out and both Jane Roe and I would be exposed as liars.

I told Connie that I was proud of being Jane Roe, even though being found out scared me, now more than ever. \textit{Would I go to jail? Would the whole case then be overturned?} Would abortion then be illegal again, and would millions of women in America go back to suffering and helplessness?\textsuperscript{82}
\end{quote}

Similarly, she writes of the time immediately following her revelation to Carl Rowan that her rape story was a lie:

\begin{quote}
The next day, there was an article on the front page of the \textit{Morning News}. The headline was: "Roe v. Wade Plaintiff Says She Lied About Rape." I braced myself for the worst. \textit{But amazingly, there was very little about the possibility of the decision being overturned}. . . . Sarah issued a statement calling my rape lie "irrelevant."

In the next few days I got lots of calls from reporters about the issue. They all seemed to understand why I lied. Some even understood how and why I'd agonized about it. There were a few more articles published. And then, silence.

The cloud of gray that had been such a big part of my life tore itself into little pieces and went away.\textsuperscript{83}
\end{quote}

As these passages suggest, McCorvey appears not to have been informed by Weddington about her decision not to use the rape allegation and consequently agonized for years over her false claim of rape. It seems, though, that whatever might have been in McCorvey's best interest at the time the case was filed, McCorvey, in retrospect, seems relieved that the rape allegation was never used.

\textsuperscript{81} Weddington, \textit{supra} note 7, at 52-53.
\textsuperscript{82} McCorvey, \textit{supra} note 6, at 155 (emphasis added).
\textsuperscript{83} Id. at 180 (emphasis added).
B. Who was Jane Roe?

Another issue that arose early in the Roe case was the use of the fictitious name “Jane Roe” for McCorvey. As with the decision about use of the rape allegation, how Weddington writes about the name Jane Roe illuminates her attitudes toward both the case and McCorvey.

Taken literally, the question “Who was Jane Roe?” has a simple, uncontroversial answer on which both Weddington and McCorvey agree. The Federal Rules of Civil Procedure do not expressly allow parties to proceed anonymously, but courts generally allow a plaintiff to use a fictitious name when a case raises highly sensitive, personal issues and the plaintiff desires to engage in prohibited conduct. These conditions were clearly met in Roe, so the use of a pseudonym for McCorvey was appropriate and not the source of any conflict between Weddington and McCorvey. On a literal level, Jane Roe was simply a pseudonym for Norma McCorvey.

On a figurative level, though, asking “Who was Jane Roe?” is a way of asking whose interests were actually being served on the plaintiff’s side of the case. Symbolically, to Weddington, Jane Roe was not Norma McCorvey. Rather, the name Jane Roe “represented all women, not just one.” In other words, Jane Roe was a fictional personification of the collective needs and interests of women.

McCorvey refers to Jane Roe throughout her book as if she were a third person—a fictional, politically aware woman committed to pro-choice values. After McCorvey publicly revealed her identity as the plaintiff in Roe, someone fired a shotgun into the front door of her home. She writes as follows about her reaction to that incident.

They never found the person—or people—who shot into our home. But I think it’s safe to assume that the woman they were trying to scare or hurt or kill wasn’t Norma McCorvey, a poor uneducated Texas building manager.

The woman they were aiming at was Jane Roe. She was the person whose name stood for change and women’s rights. The woman who threatened all their old attitudes and prejudices.

But here is the miraculous part about that awful night: Jane Roe stood up for both of us. . . . It was Jane Roe who finally found
me some answers and some peace. I hadn't known that she—we—were capable of that. It was a turning point.86

McCorvey uses this literary device to describe her transformation from political agnostic to committed spokesperson for abortion rights. During the course of her book, McCorvey tells of "becoming Jane Roe" more than a decade after Roe was decided by the Supreme Court.87 In McCorvey's tale, she is transformed well after the Roe case was decided into the person Weddington acted as if she represented all along. On a symbolic level, then, both Weddington and McCorvey seem to agree that while the Roe case was pending, Jane Roe was not McCorvey, but rather a symbolic personification of the values and interests which animated the abortion rights movement.

C. Two Tales of Roe v. Wade

These books both use much of the same material in constructing their stories: the details of the Roe litigation, the women's movement for reproductive freedom, and the personal biographies of Weddington and McCorvey. But, as the passages above suggest, the perspectives each brings to bear on these materials are strikingly different.

For Weddington, the story of Roe v. Wade is first and foremost a story of law reform in the service of the collective interests of women. In this story, the idea of service to an individual client has no particular significance. Weddington at the end of her book, for example, states that "the story of Roe . . . is the story of the women of this country and their continuing efforts to push back the barriers that have limited their decisions and circumscribed their freedoms . . . ."88 Significantly, McCorvey as an individual is not mentioned. Rather, the protagonists of Weddington's story are women as a group, and the story's drama arises from the conflict between two large interest groups—the abortion rights cause and the anti-abortion movement.

One might view Weddington's broad perspective and collective focus as resulting from the fact that she is a lawyer retrospectively assessing, from a distance of twenty years, one of the most controversial cases of this century. Thus she would naturally be drawn to the impact of the case on the larger interests of society. But the way Weddington tells her story suggests that there is more behind her collective focus. Her routine use of collective interests in describing and justifying her decisions throughout the litigation suggests a view of the cli-

86. McCorvey, supra note 6, at 191.
87. Id. at 195.
88. Weddington, supra note 7, at 290.
ent’s role in reform litigation that is at odds with the “fundamental premise of American adjudicative structures ... that clients, not their counsel, define litigation objectives.” Weddington’s book takes as its premise that the lawyer, rather than the client, defines the litigation’s objectives. The client, in turn, is marginalized to a point of almost complete insignificance.

The reader encounters the consequences of Weddington’s view about the insignificance of McCorvey as an individual client throughout both books. McCorvey claims, for example, that Weddington never consulted with or informed her about the decision to file a class action in *Roe*, a decision which made McCorvey a class representative and created the potential for a divergence between McCorvey’s individual interests and the collective interests of the class. Another issue McCorvey’s book raises is Weddington’s candor with McCorvey about the chances of her actually obtaining an abortion. Since she was already several months pregnant and the case was bound to raise hotly contested issues likely to be resolved only after a lengthy appeal process, the chances of McCorvey herself actually obtaining an abortion were slim at best. McCorvey tells of holding on while the case was pending before the trial court to an unrealistically high expectation that she would be able to abort her pregnancy, apparently ignorant of the fact that abortions could not be easily obtained after a certain point in a pregnancy. McCorvey describes elation when she is told about the trial court victory in *Roe*, then being crushed upon learning that her pregnancy was too far advanced for her to obtain an abortion.

Reading Weddington’s book, one looks in vain for a passage in which she describes clearly informing and counseling McCorvey about these issues. When Weddington describes what she told McCorvey at the outset of their relationship, for example, she never mentions informing McCorvey about the class action, the conflict of interest issues raised, or what the chances were for the case to actually help her obtain an abortion. Weddington’s failure to treat these issues in detail is itself telling of her view of the significance of the individual client. Though crucial to the individual client, these issues simply do not seem worthy of treatment by Weddington. Or perhaps Weddi-
ton's failure to meet McCorvey's needs at the time Roe was being litigated prompts her to submerge McCorvey's needs now, to avoid tainting or diminishing the significance of her victory.

In McCorvey's book, the abandonment of the premise that clients define litigation objectives found in Weddington's book is taken a step further. Not only does the lawyer shape the litigation, she shapes the client as well. Rather than one who defines the litigation's goals through her interests and choices, the client appears as an object transformed in accordance with the lawyer's vision of how she ought to be. Weddington's major themes of a collective effort to transform abortion law and the conflict between the abortion rights cause and the anti-abortion movement appear in McCorvey's book.93 But they function more as a backdrop for what is essentially a personal story about how an individual fares in a conflict between powerful collective interests. Her story is essentially one of the abortion rights cause using, ignoring, and then transforming an individual to reflect its values. Its drama arises from the tension between McCorvey and the women's movement and the reconciliation of that tension through her transformation.

Both books describe the Roe litigation as being consistent with the overall pattern of each woman's life. Weddington for much of her life has identified deeply with the abortion rights cause, has acted as a representative of the collective interests of women, and has subordinated her individual self-interest to the collective interests symbolized by the abortion rights cause. These same values and attitudes carried over to her involvement in the Roe case. The interests of the cause are given primary value, she views herself as representing the collective interests of women rather than McCorvey's interests, and the individual interests of McCorvey are subordinated to the collective interests of women.

Similarly, McCorvey's story of Roe is consistent with the pattern of her life. A primary theme in McCorvey's self-portrait is being powerless, voiceless, someone whose life is shaped by others with power and authority to act and speak. McCorvey appears as the victim of many of these people—such as her mother and her husband. Her depiction of her lawyers fits with this pattern in much of her narrative, especially those portions dealing with the time period in which the Roe case was being litigated. Here Weddington and Linda Coffee are

93. See, e.g., McCorvey, supra note 6, chs. 2, 4, 6, 8, 16, 18.
viewed simply as more people in McCorvey's life who use her for their own ends.

What is surprising is that McCorvey in her book ultimately describes the process of being reshaped through the Roe case as an experience of empowerment and liberation, rather than one of disempowerment and subjugation. She states at the end of her book, for example, "without Jane Roe, without a cause to fight for and a purpose for living, the original Norma would never have survived." However, McCorvey's realignment on the abortion issue and her baptism by the national director of Operation Rescue, the militant anti-abortion group, roughly a year after publishing her book, make the transformatory experience she describes in that book look more like another example of her tendency to allow others to dominate her.

III

What is there to learn about public interest lawyers from Weddington's and McCorvey's books? Here we need to be wary of the temptation to generalize from memorable, but possibly idiosyncratic, data. These books describe a single case which in many ways was far from routine and may or may not be representative of public interest practice in general. Though many of the issues addressed in Section II resonate with concerns often raised in the academic literature on public interest lawyers, the intensely emotional and controversial nature of the abortion question as well as the publicity the Roe case received may have generated pressures on the attorney-client relationship that were different in degree if not in kind from those encountered in more routine public interest cases. With this reservation in mind, I want to review some of the things I think we can learn from these books.

94. WEDDINGTON, supra note 7, at 199.
96. See Southworth, supra note 3 (empirical research in civil rights and poverty practice revealed norms on issues of lawyer deference and domination in interaction with clients that were varied, nuanced, and differed by practice setting).
97. Compare David Treadwell, Abortion Plaintiffs Now on Opposite Sides: Similar Pasts, Different Viewpoints for Roe, Doe, L.A. Times, June 15, 1989, at 1 (describing relationship between Sandra Cano, the individual plaintiff in Roe's companion case, Doe v. Bolton, 410 U.S. 179 (1973), and her attorneys. Cano came from a troubled background similar in many ways to McCorvey's. She now claims to have never wanted an abortion. Her attorneys contest this assertion. Like McCorvey, Cano has been involved with Operation Rescue.)
A. Mimicking the Opposition

A recurring issue in public interest litigation is the tension between representing individual interests and collective interests. An argument in favor of individual client focus is that when public interest lawyers place collective interests over the interests of an individual client, they mimic the very failings of governmental institutions that public interest litigation typically seeks to remedy.98

Driven by a political process intended to be responsive to the aggregate demands of groups, legislatures and administrative agencies by nature tend to focus on collective interests. Courts, by contrast, are designed to focus on the interests of individuals, and lawyers are the key to gaining access to this institution. When public interest litigators put collective interests before the interests of individual clients, their clients get lost in the collective shuffle, just as they do before legislatures and administrative agencies. Public interest lawyers operating without a focus on individual client interests are “indistinguishable from a good governmental bureaucracy.”99

Weddington’s and McCorvey’s accounts of Roe support this criticism. The treatment of McCorvey described in these books resembles the way government bureaucracy treats an individual. Bureaucracy is anonymous, depersonalized, and distant.100 Weddington uses the pseudonym “Jane Roe” to refer to McCorvey throughout her book, rather than using McCorvey’s real name, despite the fact that McCorvey had decided years before to reveal her identity to journalists and voluntarily become a public figure in the abortion rights debate. McCorvey spends pages in her book describing the immediate personal impact on her life of the Roe case’s failure to obtain an abortion for her. She was “furious” with Weddington and Coffee.101 She experienced the emotional upheaval of having, and then giving up for adoption, an unwanted child. Then she attempted suicide.102 In Weddington’s book, the Roe case’s failure to satisfy McCorvey’s need for an abortion is reduced to one concise, detached sentence: “it was too late for Jane Roe; she gave birth early in the summer and placed the baby up for adoption . . . .”103 In a chapter titled “Victory,” Wed-

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99. Id. ("Without clients, what are we doing? Without clients, we are setting up a law office that is indistinguishable from a good governmental bureaucracy.").
101. McCorvey, supra note 6, at 127.
102. Id. at 127-35.
103. Weddington, supra note 7, at 69.
dington recounts the Supreme Court's announcement of the *Roe* decision and how she personally shared the dramatic news with fellow supporters of the cause. McCorvey, though, learned of the landmark decision rendered in her name "just like everyone else," by reading about it in a newspaper.\textsuperscript{104}

Bureaucracies have been described as obscuring the human agency in the exercise of power by various means, insulating it from scrutiny and challenge.\textsuperscript{105} Justifications based on efficiency, for example, may be used "as a guise to conceal the control function" of bureaucratic hierarchy.\textsuperscript{106} Parts of Weddington's justification for rejecting McCorvey's rape claim serve such a masking function. Irrelevance and lack of proof, for example, are suggested by Weddington as justifications as if they dictated rejection of the rape claim, leaving the lawyers no power or choice. Upon examination, though, these justifications fail to explain rejection of the rape claim. Rather, they obscure the exercise of strategic power by the lawyers behind a mask of apparent legal inevitability.

Weddington's treatment of McCorvey also ironically mimics in several respects the precise failings she attributes to her opposition in her often articulate and effective critique of restrictive abortion laws. Her dominant point, as the title of her book suggests, is that women should have *choice*—the power to decide questions that seriously affect their lives. Restrictive abortion laws fail to accept women as individuals capable of choice and render them powerless over such questions. Weddington, though, in her book allows McCorvey virtually no choice or power concerning the *Roe* case, a matter that seriously and immediately affected McCorvey's life and reproductive choices. Weddington also criticizes restrictive abortion laws as treating a woman as merely a means to an end, a reproductive vehicle or "carrying case for a fetus."\textsuperscript{107} Yet Weddington treated McCorvey almost exclusively as a means to serve the end of changing the law of abortion. Weddington describes McCorvey as "ancillary" to the pri-
mary focus on all women. The word ancillary, derived from the Latin word “ancilla” for a maid-servant, conveys the idea of a subordinate, instrumental role. Weddington also describes McCorvey and the other individual plaintiffs in the case as “vehicles for presenting larger issues.” Weddington, from her vantage, writes of the lawyers as “[u]sing me as their plaintiff.” The picture she paints is clearly one of being simply the lawyers’ “ticket” to the courtroom.

Weddington urges government institutions such as the Supreme Court and state legislatures to listen to women’s voices, yet Weddington in her account of the case rarely pays heed to McCorvey’s voice. In Weddington’s portrayal of their initial encounter, the details of McCorvey’s rape story, for example, are not worth listening to. Weddington faults restrictive abortion laws and their supporters for treating the woman as “invisible.” She writes that “they seldom mention the woman. They seem to look through her, to ignore her.” In Weddington’s own tale of Roe, though, McCorvey is seldom mentioned and is largely invisible. In reference to the television movie about the case, Weddington tells us that “Jane Roe’s” involvement in Roe “was so minimal that it was hard [for the screenwriters] to tie together Jane Roe’s situation and the work on the case.” Elsewhere Weddington states that though “often the plaintiff is a vital part of the case . . . that was not the situation with Roe.” McCorvey picks up her lawyers’ attitude, writing that she was “nothing to Sarah and Linda, nothing more than just a name on a piece of paper.”

108. Id. at 61. (“From the beginning we considered the individuals who would be involved in the cases as ancillary to the primary focus on all women who, if pregnant, would want to have access to all options, including legal abortion.”) (first emphasis added).
110. WEDDINGTON, supra note 7, at 61 (“Ours were not cases about only Jane Roe or John and Mary Doe, although they were the vehicles for presenting the larger issues.”) (emphasis added).
111. McCorvey, supra note 6, at 137.
112. See Hegland, supra note 3, at 811-12 (“A more accurate view of public interest clients is that they are “tickets”—without which the firm could not play the law game.”).
113. WEDDINGTON, supra note 7, at 249.
114. Id. at 253.
115. Id. at 259.
116. Id. at 260.
117. McCorvey, supra note 6, at 127.
B. The Danger of Idealism: Protecting the Case from the Client

A recurring problem in the regulation of lawyers is how to deal with incentives that tempt a lawyer to behave improperly.\textsuperscript{118} Concern with this problem is common in any agency relationship.\textsuperscript{119} Legal and ethical rules governing lawyers often focus on risks to a client from economic incentives that may affect her lawyer, while ignoring risks from noneconomic incentives such as the lawyer's ideals. The United States Supreme Court, for example, in holding that lawyer solicitation on behalf of a legal advocacy group is constitutionally immune from state solicitation rules, made the following assessment of nonmonetary incentives:

There has been no showing of a serious danger here of professionally reprehensible conflicts of interest which rules against solicitation frequently seek to prevent. This is so partly because no monetary stakes are involved, and so there is no danger that the attorney will desert or subvert the paramount interests of his client to enrich himself or an outside sponsor.\textsuperscript{120}

According to this view, a lawyer's financial self-interest is dangerous to clients, but a lawyer's ideals are not.

Similarly, the Model Rules, reflecting the pecuniary–nonpecuniary distinction found in the Supreme Court's solicitation cases, prohibit a lawyer from soliciting a potential client in person "when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain."\textsuperscript{121} Here, again, financial motives are viewed as dangerous, rendering such solicitation "fraught with the possibility of undue influence, intimidation, and overreaching."\textsuperscript{122} Nonpecuniary motives such as idealism, by contrast, are seen as benign. Accordingly, public interest lawyers driven by ideals rather than dollars are exempted by the Model Rules from the personal solicitation prohibition on the ground that "[t]here is far less likelihood that a lawyer would engage in abusive practices against an individual . . . where the

\textsuperscript{118} See Kevin McMunigal, Rethinking Attorney Conflict of Interest Doctrine, 5 GEO. J. LEGAL ETHICS 823, 829-33 (1992).

\textsuperscript{119} Economists use the term "agency cost" in dealing with the concern that incentives may lead an agent not to act in the best interests of the principal. See, e.g., Michael C. Jensen & William H. Meckling, Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure, 3 J. Fin. Econ. 305, 308 (1976).

\textsuperscript{120} NAACP v. Button, 371 U.S. 415, 442-43 (1963) (emphasis added). This same view is implicit in the Supreme Court's more recent constitutional cases in the area of solicitation. The Court continues to employ the pecuniary–nonpecuniary distinction as the dividing line between constitutionally protected and unprotected solicitation. See In re Primus, 436 U.S. 412 (1978); Ohralik v. Ohio State Bar Ass'n, 436 U.S. 447 (1978).

\textsuperscript{121} MODEL RULES OF PROFESSIONAL CONDUCT Rule 7.3(a) (1983).

\textsuperscript{122} Id. Rule 7.3 cmt. 1.
lawyer is motivated by considerations other than the lawyer's pecuniary gain."\(^\text{123}\)

Weddington's and McCorvey's stories prompt us to examine closely the assumptions that underlie this view. They provide a powerful illustration of how a lawyer's ideals may be a potent threat to a client's interests and support Derrick Bell's observation that "[i]dealism, though perhaps rarer than greed, is harder to control."\(^\text{124}\) Weddington, throughout both books, is portrayed as admirably immune from the sort of "pecuniary gain" motives normally viewed as threatening to client interests. Ironically, though, the attitude that appears to make Weddington herself immune to greed—that the good of the cause trumps individual self-interest—seems to be the very thing that leads her to ignore McCorvey's interests.

The attitude Weddington adopts throughout her book is that the collective interests of women and the principles of the abortion rights movement are of paramount importance and prevail over individual self-interest. When Weddington applies this attitude to herself, the resulting self-sacrifice seems admirable. Her view is also aligned with one of the ideals of the legal profession, the lawyer as legal reformer committed to advancement of collective public interest. Because of superior knowledge and expertise, lawyers are thought to have a special responsibility to advance the community's welfare by giving of their own time and effort to fuel the process of legal reform.\(^\text{125}\) With Weddington, the community is more narrowly defined, but the preference for collective interest over self-interest is similar.

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123. *Id.* Rule 7.3 cmt. 4 (emphasis added).
125. See, *e.g.*, *Model Code of Professional Responsibility* EC 8-1 (1981) ("Changes in human affairs and imperfections in human institutions make necessary constant efforts to maintain and improve our legal system. ... By reason of education and experience, lawyers are especially qualified to recognize deficiencies in the legal system and to initiate corrective measures therein. Thus they should participate in proposing and supporting legislation and programs to improve the system, without regard to the general interests or desires of clients or former clients.") (footnotes omitted); Lon L. Fuller & John D. Randall, *Professional Responsibility: Report of the Joint Conference*, 44 A.B.A. J. 1159, 1217 (1958) ("There are few great figures in the history of the Bar who have not concerned themselves with the reform and improvement of the law. The special obligation of the profession with respect to legal reform rests on considerations too obvious to require enumeration. Certainly, it is the lawyer who has both the best chance to know when the law is working badly and the special competence to put it in order. ... The lawyer concerned for the standing of his profession will, therefore, interest himself actively in the improvement of the law. In doing so he will not only help to maintain confidence in the Bar, but will have the satisfaction of meeting a responsibility inhering in the nature of his calling.").
Weddington seems unable or unwilling to distinguish between applying this attitude to her own self-interest and applying it to the self-interest of her client, McCorvey. A lawyer preferring collective interests over the interests of her client is contrary to the notion of client autonomy upon which current legal ethics rules are grounded. Under these rules, McCorvey, not Weddington, should be the one who decides whether to sacrifice McCorvey’s interests in favor of the abortion rights cause. A person’s lawyer, after all, is the one a client relies upon to protect her interests.

Weddington’s disregard for McCorvey, then, seems more than just an oversight. It seems naturally to flow from Weddington’s stance that the good of the cause trumps individual self-interest. This stance results not just in ignoring McCorvey’s interests, but also in viewing her interests as a potential threat to the case. Rather than shaping the case to reflect client interests, Weddington seems guided by an imperative to protect it from the client’s interests.

This attitude of protecting the case from the client is reflected in Weddington’s approach to McCorvey. At times it is implicit, such as in the passage early in the book in which Weddington describes her justification for rejecting McCorvey’s rape allegation. In other passages it is explicit. For example, toward the end of her book, when Weddington writes about her ultimate discovery that McCorvey’s rape allegation was, in fact, a lie, Weddington states: “I thanked my lucky stars that Linda and I had excluded any mention of how she got pregnant. Neither her lie nor her admission could hurt the case from a legal point of view.”\(^\text{126}\) At another point, Weddington states that McCorvey’s conduct and her “inconsistencies may hurt the public perception of the case, but they cannot hurt the case as a legal document, or the principles it represents.”\(^\text{127}\)

C. Should Lawyer Ethics Rules Be Modified in Reform Litigation?

The client autonomy and conflict of interest norms of the lawyer professional codes, as mentioned previously, are client-centered. The client has the right, after being fully informed by the lawyer, to set the goals of the representation\(^\text{128}\) and to have her lawyer carry out those

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126. \textit{Weddington}, supra note 7, at 257 (emphasis added).
127. \textit{Id.} at 260 (emphasis added).
goals unaffected by the interests of anyone other than the client.\textsuperscript{129} Weddington's representation of McCorvey, as portrayed in both Weddington's and McCorvey's books, clearly deviates from these norms. Weddington fails to fully inform McCorvey, allows her virtually no role in setting the goals pursued in \textit{Roe v. Wade}, and disregards McCorvey's interests in favor of the collective interests of the abortion rights cause.

Weddington also deviates from the vision of appropriate lawyer behavior advanced by the new poverty law scholars.\textsuperscript{130} These scholars criticize lawyers, even well-intentioned ones, for failure to listen to and respect client voices. Weddington repeatedly fails to heed McCorvey's voice and marginalizes her to a point of almost complete insignificance. Indeed, Weddington appears at points in both her book and McCorvey's book as almost a caricature of the sort of lawyer domination the new poverty law scholars see as menacing legal representation of the poor.

Weddington was knowledgeable about legal ethics norms, referring to them at several points in her book. Her first job after law school was assisting a professor in his work with the American Bar Association's Special Committee on the Reevaluation of Ethical Standards, which was drafting the 1969 Model Code of Professional Responsibility.\textsuperscript{131} Weddington tells us in her book that she patterns her professional relationships with others on the example set by the chair of that ABA committee, who once offered her a job as his special assistant at the ABA.\textsuperscript{132} What then explains her marked departure from legal ethics norms as fundamental as those concerning client autonomy and conflict of interest?

Both Weddington's and McCorvey's books provide insights that help answer this question. One factor that appears influential in shaping Weddington's attitude and conduct toward McCorvey is the degree of Weddington's identification with and commitment to the collective interests of women and, in particular, the abortion rights cause. The depth of this identification and commitment, rooted in her own experience of an illegal abortion and reflected in her life-long commitment to the abortion rights cause, is evidenced throughout her

\textsuperscript{129} See \textsc{Model Rules of Professional Conduct} Rule 1.7 (1983); \textsc{Model Code of Professional Responsibility} EC 5-1 (1981).


\textsuperscript{131} \textsc{Weddington, supra} note 7, at 23.

\textsuperscript{132} \textit{Id.} at 262.
book and is captured in her description of her victory on behalf of the abortion rights cause in *Roe* as "an integral part of my values and my self-concept."133

Another influence that may have contributed to Weddington's disregard of conventional client-centered norms is the sort of client McCorvey was. McCorvey describes herself as a "street person"134 at the time she met Weddington. Plagued by alcohol and drugs, she was often unable to hold a job, to feed, clothe, or house herself. McCorvey's lack of sophistication and information are suggested by her claim to have first learned what an abortion was just shortly before her first meeting with Weddington.135 When she met Weddington, she was, at age twenty-one, experiencing her third unplanned pregnancy. She admittedly lied and tried to manipulate Weddington with her false rape story.

In short, McCorvey appeared a far cry from the sort of dignified, insightful, and able client the new poverty law scholars assume lawyers encounter in poverty practice.136 By her own description, McCorvey must have seemed to Weddington barely able to make choices about her own life, much less competent to make decisions that might affect the future reproductive choices of millions of other women. Nor did McCorvey have the ability to effectively question or challenge Weddington's representation of her interests.

Together these factors seem to have rendered Weddington oblivious to her ethical obligations to McCorvey. One area of insensitivity has already been examined: Weddington's attitude that the collective good of the abortion rights cause trumps individual self-interest and her failure to distinguish between applying that preference for collective good to herself and applying it to her client. A similar blind spot is found in Weddington's failure to distinguish between her work on the *Roe* case and other sorts of law reform activity she undertook—such as lobbying, leading reform organizations, working on campaigns, and running for political office—that entail commitment to collective constituencies but not to one particular client. As previously mentioned, professional ethics codes encourage lawyers to en-

134. *McCorvey*, supra note 6, at 117.
135. *McCorvey*, supra note 6, at 104-06.
136. Simon, supra note 130, at 1101 ("The new poverty law scholarship proceeds from two central premises, one about clients and one about representation. The client premise insists on the dignity, insight, and abilities of poor people.").
gage in the process of law reform. When engaged in such nonlitigation law reform work, lawyers are not constrained by the interests of particular clients.

Weddington is an admirable example of a lawyer pursuing this law reform paradigm with its collective commitment and rejection of individual client interest. The problem arises when Weddington extends the law reform paradigm to reform litigation in which she represents an individual client. For Weddington, law reform in all its facets, including reform litigation, is driven by commitment to collective interest. She recognizes no separation between law reform on behalf of collective constituencies and the representation of an individual client in litigation. This submerging of private representation into the collective enterprise of law reform may be at least partially a product of the fact that Weddington’s legal career, at least as described in her book, was almost entirely devoted to work driven by collective concerns, either law reform work or government service. Weddington describes in her career virtually no significant legal work other than Roe v. Wade representing individual clients.

Weddington seems to have adopted, without acknowledgment or perhaps even awareness, a model of the attorney-client relationship similar to one espoused by Stephen Wexler in his 1971 law review article, Practicing Law for Poor People. In that article, Wexler "flaunted a tough-minded disdain, not only for individual claim assertion, but also for the purely individual concerns of particular clients. Instead, he advocated efforts to assist the poor to collective power." Weddington shows a similar "tough-minded disdain" for McCorvey’s individual claims and concerns in order to assist women to collective power. But unlike Wexler, her adoption of this model is implicit rather than explicit.

What, if anything, do these books suggest about how lawyer ethics rules should deal with law reform litigators such as Weddington? Keeping in mind the caution not to overgeneralize from one vivid but

137. See, e.g., Model Code of Professional Responsibility EC 8-9 ("The advancement of our legal system is of vital importance in maintaining the rule of law and in facilitating orderly changes; therefore, lawyers should encourage, and should aid in making, needed changes and improvements.").

138. Model Code of Professional Responsibility EC 8-2 ("[Lawyers] should participate in proposing and supporting legislation and programs to improve the system, without regard to the general interests or desires of clients or former clients.") (emphasis added).

139. Wexler, supra note 3.

140. Simon, supra note 130, at 1099.
perhaps unrepresentative case, I want to briefly discuss two possible views on this question in light of Weddington's and McCorvey's tales.

The first is the conventional view that the norms regarding client autonomy and conflict of interest do not and should not make any exception for lawyers, such as Weddington, pursuing law reform litigation. According to this view, law reform litigators are and should be held to the same client-centered autonomy and conflict of interest standards applied to all lawyers representing clients. This view dictates that a lawyer who wants to change the law through reform litigation has to search to find a client whose goals and interests are aligned with those of the cause the lawyer wishes to advance. Under this view, once Weddington accepted McCorvey as her client, her primary commitment should have been to serving and protecting McCorvey's interests. If Weddington wanted to reform the law, she should have looked longer and harder for a client whose primary goal was to reform the law of abortion and whose interests did not conflict with that goal.

Weddington did in fact search for such a client. Although it was not difficult to find women who wanted to change the law of abortion, Weddington needed to find one who was pregnant and wanted to abort her pregnancy for her to have standing to challenge the Texas abortion statute. Weddington relates that this search "turned out to be a bigger problem than we anticipated."141 Because of the time constraints on abortions, any woman with standing to challenge the abortion statute would have been subject to the same tension as McCorvey between the goal of aborting her own pregnancy and the goal of reforming the law to benefit women in the future. Weddington describes considering and rejecting as potential plaintiffs for this very reason several women who came to the abortion referral project prior to her meeting McCorvey.142

A second view on the legal ethics of law reform litigation would be to allow the lawyer and the potential client at the outset of the representation openly to negotiate the allocation of power between them to permit the lawyer to exercise power in setting the goals of the representation. Under this view, the lawyer and client would be free to deviate from the conventional norm prescribed in the lawyer ethics codes, which grants the client exclusive power to set those goals, provided the client was fully informed and consented.

141. Weddington, supra note 7, at 51.
142. Id.
How law reform litigators should interact with clients has been the subject of debate. I do not intend here to address all the issues raised in that debate about the appropriate division of power between attorney and client in law reform litigation. Rather, in keeping with the focus of this essay, I want to discuss what Weddington's and McCorvey’s stories suggest as some of the advantages and disadvantages of this second view compared with the conventional view.

First, their stories suggest that the conventional norms will be ignored when the lawyer’s allegiance to the cause of reform is strong enough, the reform potential of the case is great enough, and the client does not or cannot effectively monitor the lawyer’s behavior. These books show that the forces driving lawyers to use their own values in controlling reform litigation may at times simply be too great and the checks restraining them too weak for even bright, well-informed and well-intentioned lawyers to adhere to the conventional norms. Their stories make these norms, in the context of a case such as Roe v. Wade, seem naive in their insistence that McCorvey’s goals and interests alone should govern the handling of a case the lawyers view as implicating the reproductive rights of women throughout the country. These norms view lawyers’ nonmonetary incentives, such as their ideals and values, as posing no threat to clients. They also assume that lawyers can and will simply ignore their own values, the very values that may have motivated them to invest their time and effort in the case, if they diverge from the client’s goals. Weddington’s and McCorvey’s tales make these attitudes seem quite unrealistic about the risks posed by nonmonetary incentives and the willingness and ability of reform lawyers to resist the pressures these incentives may generate in reform litigation.

The conventional client-centered norms applied to reform litigation also create pressures for law reform litigators not to be candid with clients and, consciously or unconsciously, to adopt stratagems to hide their exercise of power, such as Weddington’s masking her rejection of McCorvey’s rape allegation with rationales of irrelevance and lack of proof. Allowing the lawyer openly to negotiate with the client over the allocation of power in their relationship encourages the lawyer to be candid and directly address the issue of power and goals in the representation. If this issue is openly addressed, the client may in fact end up better informed and protected since she may be less likely

143. See, e.g., Luban, supra note 3; Tushnet, supra note 3; Bell, supra note 3; Ellman, supra note 3.
to be misled into relying on the lawyer for protection of her individual interests, protection which the lawyer may not provide.

Some of the most disturbing passages in McCorvey’s book are those in which she describes her reliance on Weddington to obtain an abortion for her and her bitterness and anger upon realizing her own needs would not be met by the *Roe* case. If Weddington had been more candid with McCorvey at the outset, McCorvey might still have agreed to be the plaintiff in the case. But her expectations would hopefully have been more realistic and her reliance on Weddington lessened. She might have continued, for example, her own efforts to gain an abortion through means other than Weddington and the *Roe* case, such as seeking out the guidance of an abortion referral service like the one Weddington worked with in Austin. She also might have been better prepared psychologically for the disappointment of not obtaining an abortion and felt less angry with and used by her lawyer.

In sum, this second view might provide clearer notice to clients about how much power they will exercise and how their interests will be treated in reform litigation. Clearer notice in turn might reduce some of the problems resulting from reliance by the client on the lawyer to look out for her interests since the lawyer would explicitly tell the client that her interests will not be the primary goal of the litigation.

The preceding argument is based on recognition of the human limitations of reform litigators. It takes the position that our ethics rules should acknowledge that reform litigators in certain cases will be unable or unwilling to resist, consciously or unconsciously, using their own values to override client values in reform litigation. The following argument, by contrast, views permitting reallocation of power to reform litigators as not just a necessary recognition of human weakness, but as a positive good on the basis of the social benefits it would produce.

Litigation has both private and public dimensions. The private dimensions include resolving a particular dispute, remedying a past wrong to a particular individual, or exonerating a particular person of wrongdoing. The public dimensions include the generation of precedent, development of the law, and the application of public values in resolving disputes.\(^{144}\) The balance between the private and public dimensions in any particular case varies, with the private aspects dom-

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inating in many, perhaps most cases. But in some cases, such as the landmark case of *Roe v. Wade*, the public dimensions loom large.

The client-centered norms found in current legal ethics doctrine, like the notion of party control in civil procedure, fail to account for the public dimensions of litigation, particularly in cases implicating important public concerns. Allowing the allocation of more power to lawyers with commitments to collective constituencies with interests broader than those of the individual client may help remedy this problem.

A person choosing whether or not to become the plaintiff in reform litigation might be analogized to a person choosing to become the subject of biomedical research. Both reform litigation and biomedical research may produce benefits to the larger society but may fail to help the individual client or patient. Routine medical practice is “designed solely to enhance the well-being of an individual.”  

Medical research, by contrast, is aimed at producing broader social benefit, “to develop or contribute to generalizable knowledge.” 

Ethical norms in medicine allow patients to participate in medical research, the goals of which are determined by doctors not patients, if the patient has knowingly and freely consented. 

Routine litigation may be viewed as analogous to routine medical practice, in which advancing the interests of the client is the primary objective. Perhaps reform litigation, because of its potential to produce social benefits such as development and reform of the law, should be treated in a fashion analogous to medical research. A client such as McCorvey would be informed about the lawyers’ goals for the litigation and that the litigation would not be aimed primarily at advancing her own personal goals. She could then choose whether or not to let herself be used primarily as a vehicle for helping women as a group, with the possibility of some secondary benefit to herself. Under this approach, Weddington’s collective preference in pursuing the *Roe* case would be defensible if she had made adequate disclosure to McCorvey and allowed her to choose whether or not to be involved on those terms.

Although Weddington’s and McCorvey’s books suggest some advantages to allowing lawyers and clients to negotiate an allocation of

146. *Id.*
147. *Id.*
power different from that presently found in the lawyer ethics codes, they also suggest several problems. One is unequal bargaining power. How capable, for example, would a potential client such as McCorvey have been to negotiate with a lawyer such as Weddington? Uneducated, unsophisticated, beset with financial, drug, and alcohol problems, McCorvey's desperation to abort her pregnancy put her in a particularly vulnerable position. The choice facing such a potential client may well be between representation by the law reform litigator on whatever terms she may offer or no representation at all, giving the lawyer great leverage. These books also raise questions about the quality and completeness of the disclosure one can expect from a lawyer who needs the client as her ticket to the courtroom. The conventional view reflected in our current ethics rules seeks to preempt such bargaining power and disclosure problems by giving exclusive goal-setting authority to the client.

Which of these two views one deems preferable may ultimately depend on one's assumptions about lawyer compliance with legal ethics norms and how one frames the choice. If one assumes compliance with the conventional view and frames the choice as one between a lawyer who defers to client goals and interests or a lawyer who puts the client second to the lawyer's commitment to changing the law, one may well prefer the conventional view reflected in our current ethics rules. McCorvey's and Weddington's tales suggest that a different compliance assumption and a different way of framing the relevant choice are more realistic, at least in certain cases. If one assumes that lawyers under certain circumstances will not be able or willing to adhere to a client-centered approach and frames the choice as between a lawyer who clandestinely deviates from client-centered norms or a lawyer who openly acknowledges her exercise of power in setting litigation goals and candidly reveals her priorities, the second view may well be preferable since clients such as McCorvey would at least know what sort of representation they are getting and adjust their expectations and conduct accordingly.

Conclusion

There is much to admire in Sarah Weddington's work on *Roe v. Wade* as portrayed in the two books which are the focus of this essay. She appears as a bright, hardworking, self-sacrificing lawyer, dedicated to using her considerable energy and skill to advance her vision of the collective interests of women. A twenty-seven-year-old lawyer taking her first contested case to the United States Supreme Court
and winning a landmark decision undoing a century’s worth of legislation is, in and of itself, a remarkable professional feat. Given the high visibility of *Roe* and the significance of Weddington’s role, many lawyers and law students will naturally and appropriately view Weddington as both heroine and role model. Consequently, careful examination of her assumptions and attitudes about public interest lawyering and reform litigation is appropriate.

McCorvey’s and Weddington’s stories provide the opportunity for such an examination. In both, an able and well-intentioned lawyer with ambitious law reform goals deviates from conventional professional norms of client autonomy and conflict of interest without explicit acknowledgment and perhaps without awareness of that deviation. These books provide a concrete sense of the impact lawyer domination may have on the client who provides the opportunity to advance the lawyer’s law reform goals. On one level, Weddington might have moderated this impact by simply treating McCorvey with greater respect and understanding. On another level, though, these books help us appreciate the seemingly inevitable tension between collective and individual interest in reform litigation, and the strength of the forces impelling Weddington to prefer the collective interests of women over those of McCorvey. Finally, these two tales of *Roe v. Wade* suggest that conventional norms of legal ethics doctrine currently underestimate and inadequately respond to these forces in reform litigation.