



Henry Wade, the Dallas D.A. who prosecuted Jane Roe, even better know now for prosecuting no one for the murder in Dallas of President Kennedy



Norma McCorvey
'Jane Roe' of *Roe v. Wade*

YOUR RIGHT TO PRIVACY

By **PHILIP BOESCH**

The LA Times reminded us this week that the fate of *Roe v. Wade* likely depends on this Presidential election. The next President, they say, will appoint the swing votes on the Supreme Court for or against the right to abortion. Democrats and "liberal" groups frame the debate in favor of a woman's right to choose... pro-choice. "Conservatives" and the Republican platform promote the right to life... pro-life. Justice Scalia himself has taken to the airwaves to remind voters that the Founding Fathers did not write into the Constitution a right to abortion.

But the news soundbites and the one-liner debates miss the real point of what is at stake here. Who after all doesn't like life? Or for that matter the idea of choice? By casting the issue in such limited terms, the debaters on both sides neglect what *Roe v. Wade* really was all about. What Justice Scalia doesn't emphasize, what the simple debate ignores, is that *Roe v. Wade* affirms a Constitutional right to privacy. Admitting that "the Constitution does not explicitly mention any right to privacy," the Supreme Court nonetheless found by a plurality, barely, that "personal, marital, familial and sexual privacy [are] said to be protected by the Bill of Rights or its penumbras." They wrote "said to be protected," because they knew of course that the right to privacy does not appear anywhere in the Bill of Rights. Finding something in a penumbra is like touching a spirit. What mortal men get to do that? And who knows what a 'penumbra' is anyway?

When anti-abortion advocates demand strict construction of the Constitution and rant against judges who create law, the trouble is that this now fundamental right to privacy was created precisely in the manner they oppose. Our privacy rights came into the Constitutional world in judicial opinions striking down laws against contraception and interracial marriage, by judges who stretched to rule against police invasion of the bedroom. Fragile and vulnerable from its beginning, the right to privacy grew stronger with fits and starts and building precedents, until its coming out, its bar mitzvah, in *Roe v. Wade*. Judges who found this right in the "penumbras" were finding and making a rule of law that Congress and the Founding Fathers did not make.

What a good thing they did. Who now doesn't believe in privacy? Conservatives want their freedom from government intrusion same as liberals and libertarians. Motherhood, apple pie and privacy are nonpartisan all-American. Cutting back on privacy – or taking away its legitimacy as a Constitutional right because it was "created" by judges and not by our Founding Fathers – is truly a slippery slope. Does anybody really want less privacy protection?

Children are taught early about the importance of their privacy and respecting the personal space of others. We accept as a given now, through decades of change seeping into our consciousness and our Constitutional interpretations, that privacy is an honored Constitutional right... maybe our most important right, up there high on the list with free speech and freedom of religion.

Until *Roe v. Wade* is overturned.

*Philip Boesch is the founder of the Boesch Law Group (www.boeschlawgroup.com), which handles commercial and personal litigation matters throughout Southern California. Mr. Boesch represented the Los Angeles Times in the landmark privacy case of *Sipple v. LA Times*.*