

IN THE UNITED STATES SUPREME COURT

Norma McCorvey, formerly known as Jane Roe, Plaintiff-Appellant

v.

Bill Hill, Dallas County District Attorney, Defendant-Appellee

***AMICUS CURIAE* BRIEF IN SUPPORT OF
NORMA MCCORVEY, FORMERLY KNOWN AS
JANE ROE, PLAINTIFF-APPELLANT**

**Donna Smith Cude
Attorney at Law
20333 State Hwy. 249, Suite 200
Houston, Texas 77070
281/370-0064 (Telephone)**

**Counsel of Record for
Oil of Joy for Mourning, Inc.,
a Texas non-profit corporation
*Amicus Curiae***

TABLE OF CONTENTS

Page

TABLE OF CITED AUTHORITIES

TABLE OF APPENDICES

INTEREST OF AMICUS CURIAE

SUMMARY OF ARGUMENT

ARGUMENT

- I. This Court Should Consider the Effects of Abortion On Women and Society
 - A. Introduction
 - B. Oil of Joy Study Reveals Adverse Effects of Abortion on Women in Prison
 - 1. Abortion was a Precursor to Suicide Attempts and Suicidal Ideation
 - 2. Abortion was a Major Stressor Leading to Drug and Alcohol Abuse
 - 3. A Substantial Percentage of Post-Abortive Women Have Parenting Problems with Children Born Subsequently
 - 4. Having an Abortion was Associated with Sexual Dysfunction and Chronic Marriage And Intimate Relationship Problems
 - 5. Many Women Associate their Abortion with Subsequent Crime and Incarceration
- II. The Factual and Moral Assumptions underlying *Roe* are Not Valid
 - A. Invalidity of Factual Assumptions
 - B. Invalidity of Moral Assumptions

CONCLUSION

TABLE OF CITED AUTHORITIES

Cases:

Roe v. Wade, 410 U.S. 113 (1973)

Planned Parenthood of Southeastern Pa. v. Casey,
515 U.S. 833, 846 (1992)

Statutes:

29 U.S.C. § 2601, *et seq.*

42 U.S.C. § 2000e, *et seq.*

42 U.S.C. § 2000e(k)

Miscellaneous:

Gissler, M., Hemminke, E., and Lonnqvist, J.,
*Suicides after Pregnancy in Finland, 1987-94:
Register Linkage Study*, 313 BRIT. MED. J.
1431-34 (1996)

Hubin, Donald C., “Intimate Partner Violence,”
Dept. of Philosophy, Ohio State Univ. (1998)

Huxley, Aldous, *Brave New World* (HarperPerennial ed.
1998)

Morgan, C.M., Evans, M., Peter, J., and Currie, C.,
*Mental Health may Deteriorate as a Direct Effect
of Induced Abortion*, 314 BRIT. MED. J. 902 (1997)

Morrissey, E.R. and Schuckit, M.A, *Stressful Life
Events and Alcohol Problems among Women
Seen at a Detoxification Center*, J. STUDIES ON
ALCOHOL VOL. 39, NO. 9, at 1559 (1978).

Ney, Philip G., M.D., *Deeply Damaged*
(3d ed., Pioneer Publishing: Victoria, Canada 1997)

Ney, Philip G., M.D., *Relationship between Abortion and*

Child Abuse, 24 CANADIAN J. OF PSYCHIATRY 610-620
(1979)

Ney, Philip G., M.D., The Effects of Abortion on Health and Demography in North America (2002) at <http://www.messengers2.com>

Reardon, David C., M.D., A List of Major Psychological Sequelae of Abortion (1997) at <http://www.afterabortion.org>

Reardon, David C., M.D., *A Path to Hope*, THE POST-ABORTION REVIEW VOL. 7. NO. 2, at 4
(April – June 1999)

Reardon, David C., M.D., *New Study Confirms Link between Abortion and Substance Abuse*, THE POST-ABORTION REVIEW VOL. 1. NO. 3, at 1 (Fall 1993)

Reardon, David C., M.D., The Aftereffects of Abortion (Elliot Inst. 1990)

Strahan, Thomas W., Detrimental Effects of Abortion, An Annotated Bibliography (3d ed. 2001& Supp. I 2002 & Supp. II 2003)

Strahan, Thomas W., *The Incidence and Effects of Alcohol and Drug Abuse in Women Following Induced Abortion*, LIFEISSUES.NET: CLEAR THINKING ABOUT CRUCIAL ISSUES VOL. 3, NO. 2 (A.I.R.V.S.C. 1990)

U.S. Department of Justice, Bureau of Justice Statistics, Prisoners in 2002 4 (July 2003 & Rev. March 2004)

U.S. Department of Justice, Bureau of Justice Statistics, Table 6.22 at <http://www.albany.edu/sourcebook/pdf/1622/pdf>

TABLE OF APPENDICES

	<i>Page</i>
Appendix 1 -- Affidavit of Rhonda Arias in Support of Amicus Curiae Brief of Oil of Joy for Mourning	App. 1-5

INTEREST OF AMICUS CURIAE¹

Oil of Joy for Mourning, Inc., a Texas non-profit corporation (hereinafter “Oil of Joy”) is a faith-based abortion recovery group. As part of its ministry, Oil of Joy offers a rehabilitation program for post-abortive women to random segments of the prison population in Texas who have been harmed by abortion. In connection with this recovery program, Oil of Joy sought and obtained data from women in prison who had completed that rehabilitation program. The responses obtained in this study, showing a connection between abortion and dysfunctional behavior, including subsequent crime and incarceration, are important for this Court to consider in making its ruling on the issues raised by Petitioner, McCorvey in the above-entitled case before the Court.

SUMMARY OF ARGUMENT

*“Instead of a Right to Choose, abortion
has become a woman’s Right to Lose.”²*

The United States Supreme Court ruling in *Roe v. Wade*, 410 U.S. 113 (1973), authorizing abortion on demand has had devastating effects on many women who have had such abortions, not to mention catastrophic consequences to society at large.³ These

¹ Letters of consent to the filing of this brief are submitted to the Court with this brief. No counsel for either party to this matter authored this brief in whole or in part. Furthermore, no persons or entities, other than the amicus itself, made a monetary contribution to the preparation or submission of this brief.

² Reardon, David C., M.D., *A Path to Hope*, THE POST-ABORTION REVIEW VOL. 7. NO. 2, at 4 (April – June 1999) (quote of Carol Crossed).

³ Besides the loss of progeny, which dwarfs the recent tsunami deaths by comparison, abortion on demand has contributed to the social problems of suicide, crime and incarceration.

untoward consequences of *Roe* are confirmed and demonstrated in the findings of Oil of Joy's survey of women in prison, in which a significant percentage of those responding reported the following problems as a result of their having one or more abortions: depression, suicidal ideation and suicide attempts, alcohol and drug abuse, child abuse and neglect, sexual dysfunction, chronic marriage and intimate relationship problems, and an increased likelihood of turning to crime and subsequent incarceration.⁴ The Court should consider these effects, and Oil of Joy requests that the Court take into consideration the social science data it has identified, and grant Plaintiff-Appellant Norma McCorvey's petition for a writ of certiorari.

ARGUMENT

I. THIS COURT SHOULD CONSIDER THE ADVERSE EFFECTS OF ABORTION ON THE HEALTH OF WOMEN AND ON SOCIETY

A. INTRODUCTION

Since the landmark decision in *Roe v. Wade*, the psychological health of a woman throughout her pregnancy has been a consideration of paramount importance to this Court.⁵ However, in all its jurisprudence on this subject, the Court has wholly failed to

See infra at ¶ I.A.5. In addition, some assert that without the commonality of abortion during the past three decades, there would be no Social Security crisis as there would be millions more living between the ages of 18 and 31 who would be contributing to the fund.

⁴ Those findings are consistent with the results of numerous studies done by researchers reflected in voluminous published works, including David C. Reardon, M.D., [A List of Major Psychological Sequelae of Abortion](#) (1997) at <http://www.afterabortion.org> [hereinafter *Psychological Sequelae*]; Strahan, Thomas W., [Detrimental Effects of Abortion, An Annotated Bibliography](#) (3d ed. 2001 & Supp. I 2002 & Supp. II 2003); Philip G. Ney, M.D., [The Effects of Abortion on Health and Demography in North America](#) (2002) at <http://www.messengers2.com> [hereinafter *Effects of Abortion*].

⁵ *See, e.g., Roe v. Wade*, 410 U.S. 113, 153, 163 (1973) (citing potential adverse psychological consequences of maternity); and *Planned Parenthood of Southeastern Pa. v.*

consider the adverse effects to a pregnant woman of permitting unfettered access to abortion. Over the 32-year period since abortion was legalized by this Court, there have been dramatic and devastating effects to women, as well as damaging effects to society. Much evidence has been presented to the Court by Petitioner. In addition, the many harmful effects of abortion on demand have been shown through a recent study of women in prison which Amicus Curiae, Oil of Joy, requests the Court consider.⁶

B. OIL OF JOY STUDY REVEALS ADVERSE EFFECTS OF ABORTION ON WOMEN IN PRISON

In 2004, Oil of Joy offered a rehabilitation program to a group from the general offender population in three prisons in Texas, the Lane Murray Unit and the Mt. View Unit, both located in Gatesville Texas, and the Plane State Jail, in Dayton. (App. 1, ¶¶ 2,3). Oil of Joy conducted intake and exit surveys in conjunction with this program. The results of this study are based on surveys of 104 female offenders in Texas prisons who voluntarily completed a 10-week support group for women hurt by abortion (App.1, ¶ 4). All of the participants reported a range of psychological sequelae from regret to actual suicide attempts. Despite their present state of incarceration, approximately 59 percent stated that they view their lives as before and after their abortion. (App. 1, ¶ 7). In short, abortion was the defining moment of their lives.

1. Abortion was a Precursor to Suicidal Attempts and Ideation.

Casey, 505 U.S. 833, 846 (1992) (wherein the Court stated that the state has legitimate interests throughout the pregnancy in protecting the health of the woman).

⁶ The description and results of the surveys are described in the Affidavit of Rhonda Arias, Director of Oil of Joy, which is appended hereto within the Appendix. Hereinafter, references to the Affidavit will be to “App. __, ¶__.”

Due to unresolved grief over the abortion, 69 out of 104, or approximately 66 percent, of the women reported depression following their abortions. (App. 1, ¶ 7). The reasons given for their depression included lowered self-esteem post-abortion, repressed grief due to returning to environments where abortion was considered normal, or having been forced or coerced strongly by a spouse or family member. (App. 1, ¶ 7). In addition, suicidal ideation and actual suicide attempts were relatively common among these post-abortive women. Approximately 32 percent of the women in the study, 33 out of 104, reported having attempted suicide following their abortions, with 38 out of 104, or 37 percent, experiencing repeated thoughts of suicide.

These results are consistent with other studies done regarding the relationship between suicide and abortion. Researchers in Finland found the suicide rate among post-abortive women to be approximately six times higher than women who delivered, and three times higher than that of women in the general population.⁷ Likewise, scientists in Britain found a significantly higher suicide attempt rate after induced abortion as compared to the suicide attempt rate before abortion. The researchers stated that their data suggested “a deterioration in mental health may be a consequential side effect of induced abortion.”⁸

2. Abortion Was a Major Stressor Leading to Drug and Alcohol Abuse.

⁷ *Effects of Abortion*, *supra* note 4, at ¶ B.1.b. (citing M. Gissler, E. Hemminke and J. Lonnqvist, *Suicides after Pregnancy in Finland, 1987-94: Register Linkage Study*, 313 BRIT. MED. J. 1431-34 (1996)).

⁸ C.M. Morgan, M. Evans, J. Peter and C. Currie, *Mental Health may Deteriorate as a Direct Effect of Induced Abortion*, 314 BRIT. MED. J. 902 (1997).

Abortion is significantly linked to offenders' subsequent drug abuse. Female offenders in the Oil of Joy study specifically attributed their drug or alcohol abuse to stress related to the abortion. Most reported that their abortion was either a starting point, or a landmark of increased usage.⁹ Specifically, 81 out of 104 reported post-abortion drug abuse, and 74 out of 104 reported post-abortion alcohol abuse. Only 14 percent said they had no substance abuse post-abortion. Lowered self-esteem, the pain of a loss that no one seems to understand, nowhere in society to grieve, feelings of guilt and shame, and anger toward themselves and others, are some of the reasons women gave for "medicating" their pain through drug or alcohol abuse. (App. 1, ¶ 8). These findings are similar to those results reached in a separate study done by the Elliot Institute researchers, who found that of the women surveyed, those who aborted their first pregnancy were 3.9 times more likely to engage in subsequent drug or alcohol abuse than those who have never had an abortion.¹⁰

In the 1980's, there were three separate studies done by different researchers on post-abortive women. In each of these three studies, virtually all of the participants expressed feelings of deep anger, resentment and hostility toward themselves, their partner and the medical professionals involved. The hostility was identified as being the result of feeling coerced by boyfriends, parents or physicians and feeling that they did not

⁹ This is consistent with another study in which it was found that post-abortion stress aggravated substance abuse problems among women with a prior history of substance abuse. *See* Reardon, David C., *New Study Confirms Link between Abortion and Substance Abuse*, THE POST-ABORTION REVIEW VOL. 1. NO. 3, at 2 (Fall 1993).

¹⁰ *Id.* at p. 1.

have a choice.¹¹ It is well-known that the presence of hostility, combined with alcohol or drug abuse, reduces inhibitions or self-control and increases the tendency toward violence and other antisocial behavior, which may ultimately lead to incarceration.¹² Thus, induced abortion may be implicated in the steady increase of the female prison population in the United States.¹³

It is also likely that the risk of post-abortion substance abuse among women who undergo multiple abortions is even higher than the risk for women who experience only a single abortion. Indeed, 45 percent of the incarcerated women surveyed by Oil of Joy experienced multiple abortions. (App. 1, ¶ 8).

3. A Substantial Percentage of Women Who Have Had an Abortion Have Parenting Problems with Children Born Subsequently

The Oil of Joy studies showed that 45.2% of the women saw a connection between their abortion and their inability to bond with their subsequent children. (App. 1, ¶ 9). Abortion is linked with increased depression, violent behavior, alcohol and drug abuse, replacement pregnancies, and reduced maternal bonding with children born subsequently.¹⁴

¹¹ Strahan, Thomas W., *The Incidence and Effects of Alcohol and Drug Abuse in Women Following Induced Abortion*, LIFEISSUES.NET: CLEAR THINKING ABOUT CRUCIAL ISSUES VOL. 3, NO. 2 (A.I.R.V.S.C. 1990).

¹² In another study, induced abortion followed by alcohol abuse was linked to being charged with driving while intoxicated, automobile accidents, divorce or separation, and job loss. Morrissey, E.R. and Schuckit, M.A, *Stressful Life Events and Alcohol Problems among Women Seen at a Detoxification Center*, J. STUDIES ON ALCOHOL VOL. 39, NO. 9, at 1559 (1978).

¹³ *Ibid*; See also U.S. Department of Justice, Bureau of Justice Statistics, Table 6.22 at <http://www.albany.edu/sourcebook/pdf/1622/pdf> (showing steady increase in female offender population in U.S. prisons).

¹⁴ Reardon, David C., M.D., *The Aftereffects of Abortion* (Elliot Inst. 1990).

These factors are closely associated with child abuse and would appear to confirm individual clinical assessments linking post-abortion trauma with subsequent child abuse.¹⁵

Of the 104 participants in the Oil of Joy study, 61 percent expressed anxiety in their parenting due to fears that something bad would happen to their present children. They felt that they had to overprotect their children, and be careful to do everything right. They were motivated by their past decision to “wait to become a mother”, and felt a need to prove that they had become a perfect mother. If they felt this was not reflected in their children’s behavior, the children were punished severely. (App. 1, ¶ 9).

Canadian psychiatrist Philip Ney reports the same findings. He writes,

When I investigated the relationship between child abuse and abortion and reported a direct correlation, people were angry and astonished. It appeared that the rate of child abuse did not decrease with freely available abortions. In fact, the opposite was true. In parts of Canada where there were low rates of abortion there were low rates of child abuse. As the rates of abortion increased, so did child abuse...Indeed, it is a vicious cycle. That is, parents who have been involved in abortion are more likely to abuse and neglect their children. Mothers and fathers who were abused as children are more likely to abort their child.

Ney, Philip G., M.D., Deeply Damaged 91 (3d ed., Pioneer Publishing: Victoria, Canada 1997).

4. Having An Abortion Was Associated With Sexual Dysfunctions and Chronic Marriage and Intimate Relationship Problems.

Approximately 53 percent of the incarcerated post-abortive women, 66 out of 104, reported post-abortion disruptions in their personal relationships. (App. 1, ¶ 11).

¹⁵ Philip G. Ney, M.D., *Relationship between Abortion and Child Abuse*, 24 CANADIAN J. OF PSYCHIATRY 610-620 (1979).

These problems included an aversion to sex and/or males in general, and/or the development of a promiscuous life-style. Issues of distrust and fear of pregnancy contributed to frigidity and homosexuality, while lowered self-esteem and a desire to replace the aborted baby contributed to promiscuous lifestyles. (App. 1, ¶ 10).

As demonstrated by past studies, for most couples, an abortion causes unforeseen problems in their relationship.¹⁶ Post-abortion couples are more likely to divorce or separate. Many post-abortion women develop a greater difficulty forming lasting bonds with a male partner.¹⁷ This difficulty may be due to abortion-related reactions such as lowered self-esteem, greater distrust of males, sexual dysfunction, substance abuse, and increased levels of depression, anxiety, and volatile anger. In 1998 the Justice Department reported that women were the perpetrators of almost one third of domestic violent crimes.¹⁸ Freely available abortion and its injurious effects on male/female relationships may be responsible for some of these crimes.

5. Recent Study Shows that Women who Have had Abortions Associate their Abortion with Subsequent Crime and Incarceration.

The number of women under the jurisdiction of State or Federal prison authorities is increasing more rapidly than that of men.¹⁹ The rate of female incarceration has

¹⁶ *Psychological Sequelae*, *supra* note 4, at 4 n.21 (citing studies).

¹⁷ *Id.*

¹⁸ Hubin, Donald C., "Intimate Partner Violence," Dept. of Philosophy, Ohio State Univ. (1998) (Report to United States Department of Justice).

¹⁹ U.S. Department of Justice, Bureau of Justice Statistics reveal that the number of women under the jurisdiction of State or Federal prison authorities increased 4.9 percent during 2002, while the number of men rose just 2.4 percent. Bureau of Justice Statistics, U.S. Dept. of Justice, Prisoners in 2002 4 (July 2003 & March 2004).

steadily inclined since legalized abortion in 1973.²⁰ In a separate survey done by Oil of Joy of 27 post-abortive female offenders, approximately 63 percent said that they felt that abortion had either a lot to do with their incarceration or had an indirect effect on their crime and subsequent incarceration.²¹ In addition, Oil of Joy consistently finds that whenever support after abortion to segments of the prison population is offered, over half of the women respond, expressing their need for recovery after abortion. (App. 1, ¶¶ 12, 13). It is clear that abortion has had a significant adverse effect upon these women, causing dysfunctional and destructive behavior and ultimately, in many cases, leading to crime and incarceration, which this Court should consider in ruling on Norma McCorvey's petition for a writ of certiorari.

II. The Factual and Moral Assumptions underlying *Roe* are Not Valid

A. Invalidity of Factual Assumptions

As shown by the Oil of Joy surveys and prior documented studies, induced abortion has been more harmful to women than had they made the decision not to have an abortion. The assumptions that constituted the justification for *Roe* included: 1) a “distressful life and future” by reason of maternity; 2) the alleged “distress...associated with the unwanted child”; and 3) being purportedly “unable, psychologically and otherwise, to care for [the child].” 410 U.S. at 153. The *Roe* Court essentially promoted abortion as therapeutic to cure or prevent those purported ills.²²

²⁰ U.S. Department of Justice, Bureau of Justice Statistics, Table 6.22 at <http://www.albany.edu/sourcebook/pdf/1622/pdf>.

²¹ Oil of Joy program exit survey, Lane Murray Unit, November 2004, 27 mothers surveyed, representing 90 abortions.

In later decisions, the Court, in reaffirming *Roe*, expanded the notion of the choice to abort as being justified not only for therapeutic reasons, but as a right that belongs to the woman for reasons of convenience. As Justice Blackmun laid out in his concurring opinion in *Casey*, the right of abortion must continue undisturbed because “motherhood has a dramatic impact on a woman’s educational prospects, employment opportunities and self determination....” 505 U.S. at 928.

These justifications are not sound, particularly in present-day society. The Pregnancy Discrimination Act of 1978,²³ 42 U.S.C. § 2000e, *et seq.*, and the Family and Medical Leave Act of 1993, 29 U.S.C. § 2601, *et seq.*, have eliminated many of the concerns related to pregnancy and childbirth and the associated impact on economic and employment opportunities. Unwed motherhood is no longer a stigma, and in most instances, it does not prevent a woman from being physically active or from attending school. The pain associated with labor and delivery has been significantly lessened by the widespread use of the Lamaze method, anesthetic epidurals and other pain-relieving methods and medicines. Open adoption, Baby Moses laws, the prevalence of pregnancy crisis centers, continued extended family support, together with church, school and community child-bearing and parenting support groups, not to mention the plethora of resources available in bookstores, libraries and on the internet, have eased the anxieties that may have previously existed for pregnant mothers.

B. Invalidity of Moral Assumptions

An insidious effect of *Roe*, from which many post-abortive women in prison and other post-abortive women are now suffering, was that the ruling, for the first time,

²³ Discrimination is prohibited on the basis of sex, including “pregnancy, childbirth or related medical conditions.” 42 U.S.C. § 2000e(k).

placed abortion and maternity on a co-equal moral plane. The same value was ascribed to aborting the child as the choice to deliver a child. This philosophy, manufactured by the Court, infiltrated the culture. As a result, many unsuspecting women bought into the concept that they must end their pregnancies for the sake of their boyfriend, their parents, their husband or their career, and it is these same women who have had to bear the enormous and crippling guilt of having murdered their own children. For some, it has been manifested through anti-social and criminal behavior, destructive not only to the women themselves, but to society as a whole.

Given the fact that pregnancy is a natural and normal experience which is increasingly supported by our culture, and due to the mounting evidence of the destructiveness to women, and ultimately to society, of abortion on demand, this Court should reconsider the social policy it engineered in *Roe*.

CONCLUSION

For all of the reasons set forth above, amicus request that the Court grant the petition for a writ of certiorari.