



The surprising history of abortion in the United States

Jessica Ravitz, CNN

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From Legal to Illegal

There was a time when abortion was simply part of life in the United States. People didn't scream about it in protest, and services were marketed openly.

Drugs to induce abortions were a booming business. They were advertised in newspapers and could be bought from pharmacists, from physicians and even through the mail. If drugs didn't work, women could visit practitioners for instrumental procedures.

Abortion was legal in America for nearly a century up until the late 19th century. Until about 1880, abortions were allowed in the U.S. under common law and widely practiced. They were illegal only after "quickening," the highly subjective term used to describe when pregnant women could feel the fetus moving (approximately the fourth month of pregnancy).

"At conception and the earliest stage of pregnancy, before quickening, no one believed that a human life existed; not even the Catholic Church took this view," Leslie Reagan, author of *When Abortion Was a Crime*, wrote.

But laws specifically against abortion became widespread in America starting in 1880. There were various factors at play that led to this decision, including pressure from doctors and religious officials. The push for this was the American Medical Association (AMA), which had begun a crusade in 1857 to make abortion illegal. Their stance was driven by regular physicians' desire to win professional power, control medical practice, and restrict their competitors," namely midwives and homeopaths.

The AMA pushed for state laws to restrict abortions, and most did by 1880. The Comstock Law, passed by Congress in 1873, also played an important role as it banned abortion drugs.

By 1900 abortion was illegal everywhere in the US, except in order to save the life of the mother.

Another major impetus for this change was the Catholic Church. In 1854, the Catholic Church formally accepted the principle of the Immaculate Conception, which held that Mary, the mother of Jesus, was without original sin at the moment she was conceived. The theory's inference that human life started at conception rather than at birth provided the basis for later arguments about human life's beginning.

In 1861, the British Parliament enacted legislation along these same lines, passing the Offences Against The Person Act which outlawed abortion. The Catholic Church backed this decision.

In 1869, Pope Pius IX declared that abortion under any circumstance was gravely immoral, and that anyone who participated in an abortion in any material way had by virtue of that act excommunicated

themselves from the Church. With this abortion ban, the Catholic Church deemed abortion not just a sin, but homicide.

But just because abortions were illegal did not mean that they did not occur. Women continued to have them; they just weren't advertised the same way. Practitioners did their work behind closed doors or in private homes.

In the 1930s, the number of abortions in the U.S. increased significantly during the Great Depression. In that era, abortion wasn't seen as a women's issue, it was an economic issue. "The Depression years make vivid the relationship between economics and reproduction," Reagan writes. "Married women with children found it impossible to bear the expense of another, and unmarried women could not afford to marry."

The dangerous practice of unregulated abortions led to a high US maternal mortality rate, Reagan says. In her book, she cites a study done in 1931 showing illegal procedures were responsible for 14% of maternal deaths.

Research shows that during the 1940s more than 1,000 women were known to have died each year from complications caused by an illegal abortion, according to David A. Grimes, author of *Every Third Woman in America: How Legal Abortion Transformed Our Nation*. Every large hospital maintained a "septic abortion ward" for infected women with incomplete terminations.

In the 1950s, hospitals started to form "therapeutic abortion boards" to decide whether doctors should perform an abortion on a case-by-case basis, according to Reagan. Therapeutic abortions were allowed by law if the mother's life was in danger.

In 1955, Planned Parenthood organized a conference, "Abortion in the United States," that included testimony from sex researcher Alfred Kinsey, abortionist G. Lotrell Timanus and Planned Parenthood's then-medical director Mary Calderone. A record of the conference was published in 1958, launching a national discussion on reformed abortion laws.

Pat Maginnis and Sherri Finkbine

This led to the birth of the radical US movement for abortion in 1959, led by Pat Maginnis. That year, Maginnis got pregnant for the 3rd time but she had not wanted children. With her first pregnancy, her contraception failed, and she went to Mexico, where abortions were illegal but readily available. When she came back, she swore she would never again leave the country for medical care she considered to be her rights. With her 2nd pregnancy a year later, again from failed contraception, Pat used a catheter to end the pregnancy, causing her to miscarry. Pat went through this same ordeal the next year when she got pregnant for a third time.

By this point Pat was outraged at what needing an abortion meant for women. Pat decided the best way to change the laws in the country were to get people talking about this taboo subject. In the early 1960s, she began a one-woman campaign, laying the foundation of a grassroots abortion rights movement. Pat eventually founded the Society for Humane Abortion, helping to educate the public about the issue, becoming one of the first people to publicly campaign for legalizing abortion.

In 1962, Sherri Finkbine, an Arizona mother of four, traveled to Sweden after a local hospital denied her request for a legal abortion. Finkbine, a TV presenter from Phoenix, was denied an abortion in her home state following intense negative publicity surrounding her case.

The 30-year-old mother decided to terminate her fifth pregnancy after discovering that tranquilizers she had taken in the first few weeks of her pregnancy contained the drug Thalidomide. There has been increasing evidence suggesting Thalidomide caused severe fetal deformities including missing limbs, deafness and blindness.

Finkbine, host of children's television program "Romper Room", told her story to the local newspaper, believing it would alert other mothers in the same situation to the dangers of the drug. But she became the focus of an intense anti-abortion campaign and worldwide public condemnation.

The negative publicity led her local hospital in Phoenix to withdraw a tentative offer of a legal abortion for fear they may be held criminally liable - the current law in Arizona stated that abortion could only be carried out to save the mother's life.

Finkbine and her husband, Robert, a school teacher, took the case to the Arizona State Supreme Court but were unsuccessful. They then made the decision to fly to Sweden for the abortion. After the operation it was confirmed that the fetus had no legs and only one arm.

The Abortion Counseling Service of the Chicago Women's Liberation Union, better known by the code name Jane, helped provide safe, supportive and affordable illegal abortions -- at first just through referrals. But then trained members began performing procedures themselves. Between 1969 and 1973, the members of the group provided more than 11,000 safe abortions, according to Laura Kaplan, author of "The Story of Jane."

Access to abortion at this time was directly connected to economics, though. Well-connected white women with private health insurance were sometimes able to obtain "therapeutic" abortions, a never-defined category that remained legal throughout the epoch of illegal abortion. But these were rare, and almost never available to nonwhite or poor women. Wealthy women also could afford to travel to states or countries where abortion was legal, such as Sherri Finkbine in Sweden.

But the vast majority of women who were having abortions were having them performed in unsafe and unsanitary and dangerous conditions, hence the term "back-alley abortions." Due to the procedure being illegal in most cases, women had to try to abort themselves by drinking chemicals, douching with lye, inserting knitting needles or coat hangers, or pay a doctor to illegally perform the operation, sometimes in hotel rooms and other times in back alleys. In the two decades before abortion was legalized in the U.S. (1953-1973), it's estimated that nearly one million women per year sought out illegal abortions and thousands died.

In 1965, abortion was so unsafe that 17% of all deaths due to pregnancy and childbirth were the result of illegal abortion.

Two significant court cases -- *People v. Belous* and *Doe v. Scott*, which reached the Supreme Court in 1971 -- declared specific abortion laws unconstitutional. "That prompted people all over the place to start putting together cases... challenging state abortion laws," Reagan says.

Between 1967 and 1973, seventeen states rewrote their abortion laws. Four states -- Alaska, Hawaii, New York and Washington -- repealed their bans entirely, legalizing abortion within their borders.

The final major change that led to the *Roe* ruling was the legal challenge to birth control. In 1965, in *Griswold v. Connecticut*, the Supreme Court overturned a Connecticut law prohibiting use of contraceptives by married couples. Seven years later, in 1972, the Supreme Court ruled in *Eisenstadt v. Baird* that birth control pills were legal for all women, regardless of marital status. It struck down a law that had banned the distribution of birth control to unmarried adults.

Roe

The *Roe* ruling came after Norma McCorvey, using the pseudonym “Jane Roe” she assumed to remain anonymous, challenged the criminal abortion laws in Texas that forbade abortion as unconstitutional except in cases where the mother's life was in danger. At the time of the *Roe* decision, 30 states had laws similar to the Texas law.

Henry Wade was the Dallas County District Attorney who defended the anti-abortion law.

McCorvey started down the path to one of America's most controversial Supreme Court decisions in 1969 when the 21-year-old divorced woman found herself with an unwanted pregnancy, which she claimed was as a result of being raped. McCorvey, who already had two children, had recently lost her job as a ticket seller for a carnival, and because of her lack of reliable income had granted custody of her five-year-old daughter to her mother and stepfather. McCorvey wanted to terminate the pregnancy but abortion was illegal in her state of Texas except when a woman's life was endangered by the pregnancy.

McCorvey, a ninth-grade dropout, describes a tough life, explaining that she suffered physical and emotional abuse as a child, and was raped as a teenager. A husband whom she married at age 16 later beat her. She also tells of her alcohol and drug abuse, and experiences with lovers of both sexes. She drifted through a series of dead-end jobs, including work as a bartender and a carnival barker.

She already had two children. Norma granted her mother the legal custody of her first child, Melissa. McCorvey's mother said it was primarily due to Norma's drinking and drug use that rendered her unfit to raise a child. In 1967, at age 19, Norma became pregnant for a second time. At birth, this baby was given up to a waiting adoptive couple that has kept its identity private.

In September 1969, McCorvey became pregnant for a third time. Norma told her doctor, Richard Lane, that she did not want to bring this pregnancy to term. And she could not afford to travel to any of the six states where abortion was legal: Alaska, California, Hawaii, New York, Oregon, and Washington. Dr. Lane suggested that McCorvey consult an adoption lawyer, but McCorvey was interested in an abortion, not an adoption.

McCorvey's search for an illegal abortionist for what was her third pregnancy was unsuccessful, but it did lead her to two attorneys, Linda Coffee and Sarah Weddington, who were interested in challenging the anti-abortion laws. Weddington, for her part, had had firsthand experience with abortion laws in Texas, having felt compelled to go to Mexico for an abortion during law school. The two lawyers, both in their 20s, were not much older than McCorvey.

Coffee and Weddington were looking for a perfect case to challenge Texas' law. As Coffee told a reporter in 1983, "It had to be a pregnant woman wanting to get an abortion. She couldn't have the funds to travel to California or New York for a legal abortion." Also, the pregnancy could not be too far along or the issue might be moot before the case was filed. Five months pregnant at the time, McCorvey seemed a perfect plaintiff.

Coffee filed *Roe v. Wade* at the Dallas federal district courthouse on March 3, 1970. Though by now six months pregnant, McCorvey held on to the hope, she later wrote, that she might "be the first girl in Texas to get a legal abortion." Meanwhile, Coffee and Weddington amended *Roe* to make it a class-action suit, ensuring that any ruling would apply to all women in Texas.

They would be going up against Texas district attorney Henry Wade.

It would become one of the most divisive legal actions in American history. Coffee and Weddington denounced the Texas abortion law on the grounds that it violated the 14th and 9th Amendments to the US Constitution. They specifically claimed that the 9th Amendment, which includes the right to privacy, should include a woman's right to decide whether or not to become a mother.

In June 1970, a three-judge panel struck down the Texas abortion statutes. But the state appealed the decision immediately, so for the time being the statutes remained law. McCorvey had delivered her third child even before the three-judge panel handed down its ruling. This baby was adopted immediately by a family that has kept its identity private. McCorvey thus became, ironically, a symbol of the right to a procedure that she herself never underwent.

Roe continued on to the Supreme Court in December 1971, with McCorvey still being represented by Coffee and Weddington.

They argued that the abortion laws in Texas ran counter to the US Constitution by infringing women's right to privacy in the 9th Amendment and her liberty under the due process clause of the 14th Amendment.

By a vote of 7-2 on January 22, 1973, the court justices ruled that governments lacked the power to prohibit abortions. The court's judgment was based on the decision that a woman's right to terminate her pregnancy came under the freedom of personal choice in family matters as protected by the 14th Amendment of the US Constitution.

http://www.oyez.org/cases/1970-1979/1971/1971_70_18 (audio of the *Roe* case before the Supreme Court)

<http://nation.time.com/2013/01/22/winning-roe-v-wade-qa-with-sarah-weddington/> (audio of the *Roe* case before the Supreme Court)

In *Roe v Wade* the Supreme Court held that a pregnant woman has a constitutional right to choose to terminate her pregnancy before viability as part of her freedom of personal choice in family matters.

They won their case, thus decriminalizing the abortion position in over 20 states.

The Supreme Court had ruled that women had the right to an abortion "free of interference by the State," as Justice Harry A. Blackmun wrote in the Court's majority opinion. The decision greatly expanded the legal boundaries for abortion in the United States, allowing women to terminate a pregnancy at any point during the first 24 weeks—that is, through the first and second trimesters. (*Roe* did, however, permit

states to impose regulations in the second trimester, including who could perform abortions and where. It also gave states the right to ban most abortions in the third trimester.)

The case created the "trimester" system, which broke pregnancy into three trimesters, each being three months long. The system...

- 1) gives American women an absolute right to an abortion in the first three months of pregnancy since it is considered most safe to have an abortion this early
 - the woman and her doctor can make this decision alone
 - states must wholly respect a woman's decision to abort
- 2) allows some government regulation in the second trimester of pregnancy as it could affect the woman's health
 - the states may choose to regulate the procedure, but only in ways that are "reasonably related to maternal health"
- 3) declares that states may — but are not required to — prohibit abortion after viability, except when it is necessary to protect a woman's life or health
 - only applies in the last trimester as the fetus nears the point where it could live outside the womb, thus protecting a viable fetus
 - states have a "compelling" interest in the unborn and may ban abortion outright
 - women can obtain an abortion only if doctors certify that it is necessary to save her life or health

All the individual state bans on abortion during the first and second trimesters were ruled unconstitutional. The Court also legalized abortion in the third trimester when a woman's doctor believes the abortion is necessary for her physical or mental health.

The case also said that the "when life begins" question should not be answered by a judge because no one can decide that, even though they basically ruled life begins in the 3rd trimester because the fetus was considered viable.

Roe has come to be known as the case that legalized abortion nationwide. At the time the decision was handed down, nearly all states outlawed abortion except to save a woman's life or for limited reasons such as preserving the woman's health, or instances of rape, incest, or fetal anomaly. *Roe* rendered these laws unconstitutional, making abortion services safer and more accessible to women throughout the country.

Today, abortion is one of the most commonly performed clinical procedures, and the legal induced abortion-related death rate is 0.00073%.

According to mortality reports from the Centers for Disease Control and Prevention, there have been between four and 12 deaths from legal or illegal abortion every year for the past 10 years. These rare deaths are usually the result of such things as adverse reactions to anesthesia.

The risk of death associated with abortion increases with the length of pregnancy, from 1 death for every 1 million abortions performed before the 9th week of pregnancy, to 1 per 29,000 at 16-20 weeks and 1 per 11,000 at 21 or more weeks.

In comparison, a woman's risk of death during pregnancy and childbirth is ten times greater than during a legal surgical abortion. Also in comparison, the mortality rate for colonoscopies, also commonly performed in outpatient clinics like abortion clinics, is about 20 out of 100,000 procedures.

Short of death, possible serious physical side effects of abortion include: blood clots accumulating in the uterus, inflammation, infection, hemorrhaging, tear of the wall of the uterus, and future infertility.

The psychological after-effects of abortion are hotly contested. Pro-life groups regularly report negative psychological effects after abortion, including depression and a form of severe emotional distress they term "Post-Abortion Syndrome (PAS)," which includes symptoms of sexual inhibition, flashbacks and alcohol abuse. The American Psychiatric Association does not recognize PAS. According to Planned Parenthood, temporary, mild depression is reported in about 20% of women who have had abortions.

Today, 88% of all legal abortions are performed within the first 12 weeks of pregnancy. Only 1.4% occur after 20 weeks.

But in the following decades anti-abortion campaigners regained some lost ground. More than 30 states have adopted laws limiting abortion rights.

In 1980 the US Supreme Court upheld a law that banned the use of federal funds for abortion except when necessary to save a woman's life.

Then in 1989 it approved more restrictions, including allowing states to prohibit abortions at state clinics or by state employees.

In 2003, Congress introduced the first major limits on abortion in the US for 30 years when it passed a law banning a particular form of late-term abortion labeled "partial birth" by its opponents.

It was the first legislative restriction on a woman's right to choose since *Roe v Wade*.

What happened to *Roe*?

In the decades since the *Roe* decision divided the country, the issue of abortion divided McCorvey too. She started out staunchly pro-choice. She is now just as staunchly pro-life.

A decade after *Roe*, McCorvey identified herself as *Roe* and began volunteering at the Aaron Women's Health Center, in Dallas. She also began speaking to the media about once a year, usually around the anniversary of *Roe*. She had originally said that the pregnancy that led to the infamous case was the product of a rape, but in 1987 she publicly stated that her rape testimony in 1969 had been false. This did not play a part in the legal argument, however, as McCorvey's lawyers had never mentioned an alleged rape in court, and it formed no part of their legal argument.

McCorvey also now claims that she had been the "pawn" of two young and ambitious lawyers (Sarah Weddington and Linda Coffee) who were looking for a plaintiff with whom they could challenge the Texas state law prohibiting abortion.

In 1995, McCorvey was working at a Dallas women's clinic called A Choice for Women when Operation Rescue, a Christian group devoted to making abortion illegal, moved in next door. The move seemed a

deliberate provocation, although Flip Benham, then the national director of Operation Rescue and an evangelical minister, attributed it to the work of God.

Within a year, McCorvey converted to Christianity. She was baptized on August 8, 1995, by Benham in a Dallas backyard swimming pool, which was filmed for national television. Two days later she announced that she had become an advocate of the pro-life movement Operation Rescue, campaigning as a “missionary” for them to make abortion illegal and even working as a computer operator for them.

Now a born-again Christian, she is fully committed to the pro-life lobby.

She wrote in her 1998 book, *Won by Love*,

"I was sitting in O.R.'s offices when I noticed a fetal development poster. The progression was so obvious, the eyes were so sweet. It hurt my heart, just looking at them. I ran outside and finally, it dawned on me. "Norma," I said to myself, "They're right." I had worked with pregnant women for years. I had been through three pregnancies and deliveries myself. I should have known. Yet something in that poster made me lose my breath. I kept seeing the picture of that tiny, 10-week-old embryo, and I said to myself, that's a baby! It's as if blinders just fell off my eyes and I suddenly understood the truth--that's a baby!"

I felt crushed under the truth of this realization. I had to face up to the awful reality. Abortion wasn't about "products of conception." It wasn't about "missed periods." It was about children being killed in their mother's wombs. All those years I was wrong. Working in an abortion clinic, I was wrong. No more of this first trimester, second trimester, third trimester stuff. Abortion—at any point—was wrong. It was so clear. Painfully clear."

When asked about the violence against abortion doctors and clinics, she blames the violence on the abortion rights camp. "I personally think it's the pro-abortion people who are doing this to collect on their insurance, so they can go out and build bigger and better killing centers," she said.

In 2005, in *McCorvey v. Hill*, she petitioned the Supreme Court to overturn the 1973 decision, arguing that the case should be heard again in light of evidence that the procedure harms women, but that petition was denied.

McCorvey helped to create a new Texas nonprofit, Roe No More Ministry, devoted to undoing all she had previously stood for.

“I’m a servant of Christ now,” she has said. “There’s never a day that goes by that we don’t think about a way of overturning Roe v. Wade.”

Controversy Continues

This singular court case continues to symbolize the entire abortion debate in the U.S., even forty years after its decision was handed down by the Court.

In January 2013, on the 40th anniversary of the decision, Virginia state senator Dick Black, on the Virginia Senate floor, blasted the landmark *Roe v. Wade* ruling, comparing the decision to the Holocaust.

“When I hear discussions about this, I hear very mild comments about choice and reproductive rights and things of this sort. But I recall back to the days of Nazi Germany, there was a place called Auschwitz. And over the gates of Auschwitz was a sign, and the sign said “arbeit macht frei,” which means roughly “your labors will make you free.” People who went behind those doors never returned. Their labors didn’t make them free. And I’m reminded that we refer to our clinics as “women’s health clinics” and we talk about women’s reproductive rights and so forth. And somehow in all of our discussion, we forget the fact that in each of these decisions lies the life of a little boy or a little girl. You know it’s quite easy –and from where we look back on history, we say “Why didn’t the Germans do something? Why didn’t they rise up? Why didn’t they take action?” But they were helpless before their government just as we are helpless before our government.”

Sen. Black has been a staunch advocate to repeal *Roe* for years. As a member of the Virginia House of Delegates he passed out plastic fetuses to colleagues before an abortion vote, and has been among the state’s strongest opponents of a woman’s right to choose. Over the years, he has sought to ban abortion in all cases, called emergency contraception “baby pesticides,” and opposed making contraception accessible.