Roraback and Catherine G.

of Her Own Destiny:

In Control

Principle

Jonathan T. Weisberg

Anthony M. Kennedy wrote “the most pertinent beginning to this office.” Her desk, table, and cabinets are stacked with people who are sort of family clients. People who always come to see her says to describe her family connections to the area. Her grandfather founded the practice in 1873, and Roraback the term village, perched in the northwest corner of the state. Canaan, Connecticut, a small town that has barely outgrown its fruitless legislative action. Roraback adds some detail: “Estelle got Fowler Harper and Lee Buxton to her house. I was always told this story. She served them martinis—...I invented a procedure and, afterwards, lawyers from all over the state would call me to find out how I had done it.” Decades after the cases were concluded, Roraback remained protective of her clients and refused a curious author access to her files. “He went out and found out the names and published them in his book, which has always gripped me.”

Buxton himself was also a plaintiff, arguing that the law infringed his right as a doctor to give his patients complete and honest medical advice. In 1958 and 1959, Roraback and her team were deciding how to handle it that way….I invented a procedure and, afterwards, lawyers from all over the state would call me to find out how I had done it.”

The Connecticut statute was the only one in the nation to ban both the sale and the use of contraceptive devices or medicines. It had been enacted in 1879, under the sponsorship of P. T. Barnum, the circus promoter, who was then serving in the Connecticut legislature. It had a contentious history through the twentieth century, challenged at almost every biennial meeting of the Connecticut legislature in frequently vituperative debates. Roraback reports that Buxton returned shaken from his experience testifying in front of a legislative hearing on the subject. But the law survived, in part because of the strong support of the Catholic Church. Poe v. Ullman, as the case came to be known, was conceived in the Connecticut legislature and held up the statute, until their appeal was accepted by the U.S. Supreme Court, when Harper took over as lead attorney. Harper did bring up privacy arguments in his brief for Poe v. Ullman, writing that the Connecticut statutes “invas[e] the privacy of the citizen…and the privacy of the home.” But Roraback says their legal team didn’t believe these issues could be deciding. The Court ruled against Roraback, Harper, Griswold, and Buxton, by five votes to four, on the grounds that the statute was not enforced, meaning there was no controversy. (Roraback still argues that this was a mistake.) Two dissents, written by Justices William O. Douglas and John M. Harlan, picked up on Harper’s privacy argument, and would become pivotal parts of the Griswold case.}

Roraback became involved in the lineage of legal action that led to Griswold in 1958, when Yale Law School Professor Fowler Harper called and asked for her help, because he wasn’t a member of the Connecticut bar. Harper had already met with Estelle Griswold, the executive director of the Planned Parenthood League in Connecticut, and Lee Buxton, a Yale obstetrician—also the two people who years later became plaintiffs in the cases subsumed under Griswold—about bringing a challenge to Connecticut’s anti-contraception law.

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Catherine Roraback runs a solo practice in Canaan, Connecticut, a small town that has barely outgrown the term village, perched in the northwest corner of the state. Her grandfather founded the practice in 1873, and Roraback took it over in 1955 after the death of her uncle. “It’s a big root,” she says to describe her family connections to the area. She no longer goes to court—she says she’s used up her life-impetus, like Poe v. Ullman. The most important case of her litigating career was Griswold v. Connecticut, the Supreme Court case that first identified a constitutional right to privacy in 1965. The case became a foundation for later decisions with national impact, like Roe v. Wade and the recent Lawrence v. Texas.

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“Privacy” is an especially meaningful word for Roraback. In reviewing the fleet of precedents that supported the Supreme Court’s recent decision in Lawrence v. Texas, Justice Anthony M. Kennedy wrote “the most pertinent beginning point in our decision in Griswold v. Connecticut.” Catherine Roraback ’48 was one of the lead attorneys on this landmark case was built. The most important case of her litigating career was Griswold v. Connecticut, the Supreme Court case that first identified a constitutional right to privacy in 1965. The case became a foundation for later decisions with national impact, like Roe v. Wade and the recent Lawrence v. Texas.
In Control of Her Own Destiny: Catherine G. Roraback and the Privacy Principle

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She no longer goes to court—she says she’s used up her lifetime’s allotment of adrenaline—but still sees clients, especially “people who are sort of family clients. People who always come to this office.” Her desk, table, and cabinets are stacked with papers—deeds, things, complaints, letters, wills—as she still conducts all her correspondence via letter. “This office is filled with papers, and I don’t want people to see them, because it’s the most intimate details of people’s lives… I have never gone on email just because I got so conditioned on privacy issues.”

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To set up the litigation, Buxton recruited as plaintiffs married women whose lives could be endangered by pregnancy. In addition, Harper brought in a young married couple, one of whom was a student at YLS. At the time, Roraback says, they were only hoping to convince the Connecticut courts to carve out an exception in the law for women who needed contraceptives for medical reasons. Roraback arranged for these cases to be brought under pseudonyms. She filed affidavits stating who each plaintiff was but had the records sealed, and she promised her clients that she would warn them if their identity was going to be revealed. If necessary, says Roraback, “I would then withdraw the case to protect them, because in those days it would have been socially very difficult. I got the court’s permission to handle it that way….I invented a procedure and, afterwards, lawyers from all over the state would call me to find out how I had done it.” Decades after the cases were concluded, Roraback remained protective of her clients and refused a curious author access to her files. “He went out and found out the names and published them in his book, which has always gripped me.”

Buxton himself was also a plaintiff, arguing that the law infringed his right as a doctor to give his patients complete and honest medical advice. In 1958 and 1959, Roraback argued the cases through the Connecticut courts, which upheld the statute, until their appeal was accepted by the U.S. Supreme Court, when Harper took over as lead attorney.

Harper did bring up privacy arguments in his brief for Poe v. Ullman, writing that the Connecticut statutes “inveaded the privacy of the citizen…[and] the privacy of the home,” but Roraback says their legal team didn’t believe these issues could be deciding. The Court ruled against Roraback, Harper, Griswold, and Buxton, by five votes to four, on the grounds that the statute was not enforced, meaning there was no controversy (Roraback still argues that this was a mistake.) Two dissents, written by Justices William O. Douglas and John M. Harlan, picked up on Harper’s privacy argument, and would become pivotal parts of the Griswold case.

Undaunted by this setback, the principal actors in the Poe case decided to carry forward their challenge to the Connecticut ban on contraceptives by opening a Planned Parenthood clinic in New Haven. Roraback says that this maneuver
Roraback has been often misunderstood. “Most people said that opening the clinic was just to get an arrest... That wasn’t really true at the time we did it. It might or might not be an arrest.” Roraback says that public opinion on the issue of birth control had shifted significantly in the years leading up to the 1961 opening of the clinic and the trial that followed. Perhaps most importantly, after the Second Vatican Council began, the Catholic Church withdrew its vociferous official support for the Connecticut law. “When we opened the clinic, there was no organized opposition to it,” says Roraback.

And there might not have been any arrests if not for the protests and agitation of one, James Morris, who believed that the clinic was immoral and illegal. “He was picketing the clinic with signs that looked like some of the modern day anti-Roe v. Wade signs. The police felt compelled to act. Eventually the district attorney and the police felt compelled to act. Roraback met with the chief circuit court prosecutor, Julius Marett (also a YLS graduate), before the arrests. “One thing I didn’t want him to do was go into the clinic and arrest people and seize the records,” she said. “He said, ‘I won’t be able to prove the case unless I have somebody.’ So I said, ‘If I tell you about the cases of the women at the clinic, there was a need to be a married person, in quotes. I can remember people borrowing a ring to go to New York.”

Roraback pauses in her narration of the case to point out the significance of those terms—mere animal existence and a free human from bondage—but a full enjoyment of all one’s faculties, which would certainly include the intimacies of the marital relationship. She preferred this argument to privacy in some ways. “Privacy is a much more negative thing, ‘Don’t do it to me,’ not saying, ‘I’ve got a right to do it.’” But this argument wasn’t raised at the U.S. Supreme Court. “If they bought privacy, they might have bought that too,” she speculates.

Roraback estimates that she devoted nearly half of her time over seven years to this string of cases. All the while, she made a living running her New Haven-Canaan solo practice with divorces, criminal defense, and real estate transactions. “Sometimes I didn’t get much sleep. I had a very busy life.”

She took numerous other pro bono cases throughout her career. She defended peace demonstrators and conscientious objectors, and handled a Connecticut Smith Act trial. She also repre- nated the Black Panther trial in New Haven.

After Griswold, Roraback led a string of cases challenging Connecticut’s anti-abortion law, eventually leading to its invalidation in 1973. She picked up on some of the life and liberty arguments that had been jettisoned in Griswold. “We started developing some of these ideas that a woman has a right to control her own destiny, which was what I thought the right to life and liberty were really about.”

Roraback emphasizes how the abortion cases, as well as the earlier birth control cases, grew out of the women’s movement. “Roe v. Wade didn’t come out of the skies. I think there’s a tendency when you are in law school studying law not to think of the context in which a case arises.” In the Connecticut abortion cases, Roraback represented 1,850 women plaintiffs. All of the lawyers who worked on the case were also women, as were all of their witnesses. And this was in what Roraback calls “a very patriarchal, chauvinistic system,” where nearly all of the judges were men and women litigators were a rarity. In fact, handling the women’s cases caused Roraback to look more closely at her own position in the system. “The women’s movement changed me too….They were younger women but they made me look at myself.”

Roraback’s close participation in so much of this history doesn’t mean she can answer every question about it. “About her most famous case, she admits, “I’ve never been able to do that. ’Cause they got changed to Griswold in the U.S. Supreme Court, but that’s their business.”
has been often misunderstood. “Most people said that opening the clinic was just to get an arrest. ‘That wasn’t really true at the time we did it. It might or might not be an arrest.’ Roraback says that public opinion on the issue of birth control had shifted significantly in the years leading up to the 1961 opening of the clinic and the trial that followed. Perhaps most importantly, after the Second Vatican Council began, the Catholic Church withdrew its vociferous official support for the Connecticut law. ‘When we opened the clinic, there was no organized opposition to it,’” says Roraback.

And there might not have been any arrests if not for the protests and agitation of one man, James Morris, who believed that the clinic was immoral and illegal. “He was picketing the clinic with signs that looked like some of the modern day anti-V.Wade signs. ‘Suddenly you thought your privacy was becoming a matter of public concern and discussion. Roraback recalls, ‘I said, ‘But we haven’t raised it.’” And computers had become a novel threat. Roraback notes that as the Roe v. Wade decision was handed down the same day, he thought ‘Don’t do it to me,’ not saying, ‘I’ve got a right to do it.’”

Roraback was also aware that the final decision, which upheld by the state circuit court of appeals. Roraback reads a decision that the Connecticut Supreme Court also found against the Connecticut statute up in the sky somebody might be photographing you doing something that you wanted to keep to yourself,’” she says. And computers had become a novel threat. Roraback notes that as the Roe v. Wade decision was handed down the same day, she thought ‘Don’t do it to me,’ not saying, ‘I’ve got a right to do it.’”

Roraback recalls reading the Griswold decision, with its emphasis on the right to privacy, for the first time: “It was an expression of the concerns of the time but it was also, I think, greeted with…great interest. The literature that was written from that time on was unbelievable.”

Estelle Griswold and Dr. Lee Buxton were charged with misdemeanor counts of abetting the use of birth control. Again Roraback primarily handled the legal work going up through the Connecticut courts. Even though the charges were minor, there was a trial, since Roraback and the other lawyers in the case wanted a complete record in anticipation of arguments in front of the Supreme Court.

“A very funny thing happened,” Roraback laughs as she remembers. “Lee Buxton was an internationally known expert in his field, and so when he was testifying on the witness stand, I had gone through his CV, and I asked him what his field of specialty was, and it was infertility. So I had put that in the record. When I got the transcript of the trial—and this transcript was sure to go to the U.S. Supreme Court—the court reporter had put down ‘infidelity.’ I had the transcript corrected before I filed it.”

Roraback pauses in her narration of the case to point out that all the way through the trial, the courts and the press assumed that the Connecticut statute on behalf of married people only. “This is something the younger generation doesn’t understand,” she says. “But back then in the ’50s, I can tell you that although doctors were prescribing to women, it was always to married women….Most of the younger women would go to a place like New York City to get their contraceptives, but even in the New York clinic there was a need to be a married person, in quotes, I can remember people borrowing a ring to go to New York.”

After Buxton and Griswold were convicted at trial, Roraback vigorously shepherded the case through the Connecticut courts, urging it past sometimes-lackadaisical prosecutors and often-unresponsive judges, filing brief after brief, appeals, petitions, affidavits. The conviction was upheld by the state circuit court of appeals. Roraback reads a section of the brief decision to further underscore how different some mores were at the time: “It is not alone for the preservation of morality in the religious sense that the legislature may have been impelled to act, but also for the perpetuation of race, and to avert those perils of extinction of the human species which aware of the beginning of recorded history.” She adds, “Getting it was a funny even to me. But now it’s unbelievable.”

The Connecticut Supreme Court also found against Buxton and Griswold, holding the Connecticut statute constitutional. They appealed to the U.S. Supreme Court and the case was accepted for review on December 7, 1964.

Roraback notes that as the Griswold case slowly progressed, privacy was becoming a matter of public concern and discussion. She mentions the invasions of privacy that occurred in the 1950s, with the McCarthy hearings. Then came the prominence of the U.S. spy plane. “Suddenly you thought that in the sky somebody might be photographing you doing something that you wanted to keep to yourself,’” she says. And computers had become a novel threat. Roraback notes that as the Roe v. Wade decision was handed down the same day, she thought ‘Don’t do it to me,’ not saying, ‘I’ve got a right to do it.’”

Roraback was also aware that the final decision, which has now been solidified as precedent and monumentalized in history books, depended on innumerable twists of chance. For instance, the Ninth Amendment argument she had included late in the process became the basis of Justice Arthur J. Goldberg’s concurring opinion. But Roraback knew that, because she added it after the initial trial, “It hadn’t been raised properly—anyway it became the basis of one of the major decisions of that case.”

Roraback says she has one regret at the resolution of her campaign against the anti-contraceptive laws. At the Connecticut Supreme Court level she had argued that the right to life and liberty protected not only the narrowest interpretations of those terms—mere animal existence and a freedom from bondage—but a full enjoyment of all one’s faculties, which would certainly include the intimacies of the marital relationship. She preferred this argument to privacy in some ways. “Privacy is a much more negative thing,” she says. “Don’t do it to me.”

But this argument wasn’t raised at the U.S. Supreme Court. “If they bought privacy, they might have bought that too,” she speculates.

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