

**Affidavit of Plaintiff-Intervenor James Hubert Hallford,
M.D., in Support of Motion for Summary Judgment
in *Roe v. Wade*, and *Doe v. Wade*, Filed
April 20, 1970**

IN THE
UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

Civil Action No. CA-3-3690-B

JANE ROE,

Plaintiff,

VS.

HENRY WADE, District Attorney of Dallas County,

Defendant.

STATE OF TEXAS)

COUNTY OF DALLAS)

BEFORE ME, the undersigned authority, on this day personally appeared JAMES HUBERT HALLFORD, M.D., to me well known, who, after being by me first duly sworn, did depose and say as follows:

My name is James Hubert Hallford. I was born in 1927 in Wichita Falls, Texas. I graduated from high school in Enid, Oklahoma, and went to Oklahoma Baptist University where I graduated in 1949. I later attended Southern Methodist University in Dallas, Texas, and I attended

medical school at University of Texas Southwestern Medical School in Dallas, Texas. I graduated from medical school in 1958 and served an internship at University of Oklahoma Hospital in Oklahoma City, Oklahoma. I am now and I have been licensed to practice medicine in Texas since 1958 and have been engaged in the practice of medicine in Dallas County since 1960.

I have been arrested several times for the felony offense of abortion and I now stand charged by indictment for the offense of abortion under the laws of the State of Texas in what I am informed by my attorneys are Cause Numbers C-69-5307-IH, styled State of Texas v. James Hubert Hallford, and Number C-69-2524-H, styled State of Texas v. James Hubert Hallford. I have appeared in Judge Chamberlain's Court in the Dallas County Courthouse in regard to these charges and I have been informed that my case is now currently set for trial for Monday, April 20, 1970.

Before I was arrested or indicted in regard to any of the different arrests for abortion, I was never contacted by any police officer, Assistant District Attorney, or any other representative of the State of Texas and questioned or told that I might be arrested for the offense of abortion. Furthermore, no one ever asked me if I ever performed an abortion to "save the life of the mother or woman involved," before I was arrested. In fact, so far as I know, at no time has any representative of the State of Texas or any police officer ever inquired concerning whether or not any alleged abortion was performed legally or whether or not I wish to submit any written report or report of any other physician that any alleged abortion was lawfully performed to "save the life of the mother".

Based upon my experience as a practicing physician in the general practice of medicine and on my previous medi-

cal studies and continuing studies since graduation from medical school, it is my opinion and there is little if any disagreement among other physicians that a therapeutic abortion performed under hospital or clinical conditions by a licensed physician is a safe and simple procedure which presents less danger to the life of the pregnant woman, particularly in the first trimester of pregnancy, than ordinary childbirth. Furthermore, in my opinion, a substantial percentage of physicians would agree that even in the second trimester of pregnancy, if there are no unusual complications, a therapeutic abortion performed under hospital or clinical conditions is as safe or safer than ordinary childbirth.

An abortion performed outside of clinical settings by an unqualified person is extremely dangerous to a woman, and may result in death, maiming, sterility, serious infection and emotional disorders.

In my opinion (and all or nearly all licensed physicians would agree) pregnant women seeking abortion outside the hospital and clinical setting risk their lives and health and hospitals in Dallas County treat numerous cases each year of women who have had septic, incomplete, and badly bungled abortions at the hands of themselves or of unqualified or non-medical abortionists. I would estimate that Parkland Hospital in Dallas County, Texas receives on the average at least three or four women a night with incomplete abortion medical problems usually secondary to treatment by non-medical personnel. When I was in medical school at Parkland Hospital in 1958, I know of my own personal knowledge that there was an average of approximately four or five such emergency patients a night and it is my understanding based on conversations

with other physicians that the number has increased significantly since that time or date.

In my practice as a physician I receive on a frequent and recurring basis appeals from pregnant women who desire a therapeutic abortion in safe hospital or clinical surroundings. Consequently, I must in each case decide whether or not and how I can advise and treat these patients in light of their overall physiological, psychological and other personal needs. My patients and/or prospective patients come within a wide variety of conditions which have included in the past and in all probability will include in the future the following:

- A. Those who are in serious danger of immediate death unless an abortion is performed within a short period of time.
- B. Serious danger of suicide.
- C. Possible danger of suicide.
- D. Uncertain or slight danger of suicide.
- E. Pregnancy reportedly caused either by rape or incest.
- F. Patients ill with cancer.
- G. Patients who have been infected with German measles in early pregnancy and/or other infections which cause fatal deformity and consequential damage to the emotional health of the mother and who would not like to risk the danger that continued pregnancy would lead to a serious malformed and sick infant and/or the dangers involved in an emotional disorder.
- H. Patients who would prefer to postpone pregnancy to a later date for a wide variety of reasons, includ-

ing contraceptive failure, extreme youth, emotional problems and problems connected with pending divorces, other family problems and those with other financial and marital stress type problems.

- I. Patients with a possible danger of death to the woman unless an abortion is performed and/or will have serious complications at the time of delivery unless an abortion is performed.
- J. Uncertain or slight danger of death to the woman unless an abortion is performed.

I am not able to ascertain (as a doctor or from other sources) in a vast majority of my cases whether or not the Texas Abortion laws prohibit advice and/or medical treatment and/or an abortion because the Texas Laws and the language of the Texas Laws do not in any way correlate with the regular and recurring medical indications present in my patients.

There is no medical committee, group of physicians, administrative agency or any other medical or legal group that I can apply to for approval to perform a therapeutic abortion so that I can decide whether or not my patient comes within the medical exception to the Texas Abortion Law. Furthermore, it has been my experience as a practicing physician that even in hospital settings where there is an obvious significant danger of loss of life to the mother if an abortion is not performed, it is impossible or extremely difficult to get a hospital committee to commit themselves as to the legality of an abortion and furthermore it is extremely difficult to get another physician to render an opinion whether or not an abortion is necessary to save the mother's life. It has been my experience that while other

physicians are willing to informally talk about the abortion laws and under what circumstances an abortion is legal and/or medically should be performed, it is extremely difficult to get another practicing physician to commit himself in writing as to whether or not an abortion is necessary to "save the mother's life". In my opinion, under such circumstances, physicians are generally concerned about criminal prosecution and more important they are concerned about censure by their colleagues and/or disciplined by the State Board of Medical Examiners.

The different hospitals in Dallas County, Texas that allow abortions within the hospital setting at all, generally have an "abortion committee" composed of physicians which must grant approval before an abortion can be performed within the hospital. At some of the hospitals, abortions are not allowed to be performed at all. Unless the pregnant woman is removed to a different setting where an abortion can be performed, regardless of her condition and whether or not she is obviously going to die if an abortion is not performed, the mother is simply allowed to die.

From my own personal experience I recall having a patient in one hospital within Dallas County that does allow abortions upon approval of the Abortion Committee and my patient was suffering from pernicious vomiting as a result of pregnancy and after the patient who originally weighed 110 pounds lost 30 pounds, I informed the patient as well as the family that she was going to die if an abortion was not performed. I applied for approval from the Abortion Committee and requested a specialist, being a gynecologist, to perform the abortion. After I requested the approval several times and a number of days had gone by and the patient's condition was steadily deteriorating, I informed the committee that we could wait no longer than 48 hours

on an opinion. The Abortion Committee still refused to render an opinion one way or the other and the family removed the patient from the hospital setting to secure an abortion elsewhere.

In my opinion as a practicing physician, it is extremely difficult in Dallas County to obtain a therapeutic abortion in a hospital setting because the physicians involved are in fear of criminal prosecution under the Texas Abortion Laws and consequential reprimands or disciplinary action by the Texas and County Medical Associations. If it were not for the Texas Abortion Laws I and other physicians would better be able to serve the serious health needs of large numbers of women who are directly affected by the Texas laws.

Although I am not an attorney and do not have any special knowledge of the criminal law, I, as well as other physicians, are generally aware that there are laws concerning accomplices and accessories and I have heard such legal terms as have other doctors, like "accessories before the fact" and "accessories after the fact" and such phrases as "aiding and abetting" and have heard of laws concerning acting together to perform a criminal act. Because of the Texas Abortion Laws and other such laws concerning criminal conduct, myself and other physicians are deterred, hindered, chilled, hampered and otherwise thwarted in advising and treating patients as a direct consequence of the Texas Abortion Laws. In this regard I have received numerous patients who have told me that they had tried to discuss abortion with other physicians but without success and I know that many of the doctors here in Dallas County absolutely refuse to even discuss the question of abortion with their patients. It is my opinion, as a physician, that a significant number of physicians in Dallas

County are quite frankly simply afraid to even discuss the subject matter with their patients because of the Texas Abortion Laws.

It is my opinion, as a practicing physician, that I and other doctors are not able to treat patients according to the highest standards of medical practice because of the uncertainty and broad potential sweep and application of the Texas Abortion Laws. Furthermore, a substantial number of physicians or experts in the field of gynecology and obstetrics also agree that the abortion laws in Texas (or similar abortion laws) should either be liberalized or abolished. A study or a poll conducted by the Texas Medical Association reported that approximately 90 percent of the physicians polled were in favor of abolishing or liberalizing the Texas Abortion Laws in different degrees.

It is my understanding, as a physician, and in my opinion other physicians understand that the Texas Abortion Laws prohibit an abortion unless the same is "performed on the basis of medical advice for the purpose of saving the life of the mother". I do not know of any publications by the Texas or Dallas County Medical Associations defining such language, if it is possible to medically define such language. To my knowledge (and I have been so informed by attorneys) there is no legal definition of such terminology within the case laws of the State of Texas. To my knowledge there are not any medical publications nor any legal publications that have defined "medical advice" as used in the abortion laws. I do not know whether or not this includes the medical advice of chiropractors, registered nurses, medical technicians, osteopaths, other M.D.'s or the opinions of any group that holds themselves out to practice medicine. I do not know whether or not the term medical advice includes the body of knowledge or medical opinion

of those licensed to practice medicine outside of the State of Texas or licensed to practice medicine in some other country other than the United States of America. I do not know whether or not under the Texas law I can rely on the opinion or advice of another practicing M.D. or even the advice of a specialist. Furthermore, I do not know of any publications medical or legal which state whether or not an abortion in Texas is legal if it is performed in good faith by a physician to "save the mother's life" or whether or not to defend myself in an abortion offense case, I would have to present objective medical evidence so that some, most, or all doctors of medicine would agree that the abortion in question was "for the purpose of saving the life of the mother".

I do not know of any medical or legal publications which have defined the term "life" particularly as used in abortion statutes. I do not know whether or not it simply means a continuation of neurological, respiratory and cardiac functions. Also, I do not know whether or not the term includes psychological or emotional stability. Furthermore, the term "life" is also susceptible to widely differing interpretation among doctors in that it is not clear whether or not it means immediate survival, probable survival for a period of days, weeks, months, years or whether or not "life" is equivalent to longevity. It is not clear whether or not a patient's "life" encompasses physical and mental "health" or her overall well being.

I do not know of any medical or legal publications which have defined the term "saving" as used in the Texas Abortion Laws. Physicians do not know whether or not the term simply means to keep alive and if so, for how long it means to keep alive. I and other physicians do not know whether or not the term means to keep free from harm or injury

or whether or not the term means to keep free from serious harm or serious injury and if it does mean serious injury, I do not know how serious the injury must be before the abortion would be legal for the purpose of "saving" the mother's life. Furthermore, in my opinion as a physician, it is difficult to define the term "saving" in the sense that it is not unusual for licensed, competent physicians to disagree as to the diagnosis and prognosis in particular patients including pregnant women.

Also, it is my opinion as a practicing physician that if the Texas Abortion Laws mean that an abortion must be performed in good faith and also be based upon a reasonable medical basis concerning the danger of death for the mother, it would be extremely difficult to define "reasonable" or "reasonable belief" since I do not know whether or not it means a belief shared by all, most, or more than half of the practicing physicians in Dallas County.

Based upon my past experience and training, it is also my opinion as a practicing physician that the other physicians and/or M.D.'s in Dallas County do not and could not agree upon the legal and/or medical meaning of the phrase "for the purpose of saving the life of the mother". From my personal experience I know that there are good honest differences of opinions among physicians as to the meaning of the Texas Abortion Laws. Furthermore, I know of my own personal knowledge that hospital abortion committees vary in their interpretations, decisions and opinions concerning the meaning of the phrase.

It is my opinion as a practicing physician that the Texas Abortion Laws as a matter of fact create a conflict of interest between physicians and their patients. Based on my own personal experience it is my belief that a significant number of physicians are extremely concerned about their

liability under criminal abortion laws and resulting professional standing to the detriment of their patients, in making decisions concerning whether or not an abortion should be performed and/or even advising the patient concerning abortion.

It has been my experience, as a practicing physician, that the pregnant women who come to me and raise the subject of an abortion have already made up their minds that they desire and are in fact going to obtain an abortion and they are primarily only concerned whether or not they can legally obtain an abortion and/or whether or not they can obtain full and adequate medical care.

From my experience and observations as a practicing physician, I know that patients who are wealthy or can afford to travel outside the State of Texas, can obtain an abortion under safe clinical conditions. However, the less fortunate or lower economic class of patients, as a general rule cannot obtain a legal abortion and consequently either must bear the child or seek an abortion outside of safe clinical settings. It was my experience while I was at Parkland Hospital that most of the emergency incomplete abortion patients were from a lower social economic class. To my knowledge there is no social agency or any group of physicians or hospitals in Dallas County which make any special effort to serve the needs of indigent pregnant women concerning abortions and/or to help counsel with or otherwise advise such class of people. Other than the possible exception of a private agency in Houston, I do not know of any such organization within the State of Texas or any other group that an indigent pregnant woman can turn to for advice, help and medical treatment concerning an abortion.

Attached to this affidavit are true and correct copies of the indictments pending against me at the present time in the Criminal District Court of Dallas County, Texas. Because I have been arrested several different times on different occasions for the felony offense of abortion and have been indicted and at the present time stand charged by indictment with the offense of abortion, I presently fear prosecution under the Texas Abortion Law and am in fear of future arrest for violating the Texas Abortion Laws for the reason that it is my understanding that in all of the cases previously filed against me and now pending against me, the State is alleging that I performed an abortion upon a woman who was at the time of the abortion a patient of mine.

It is my medical opinion, as a physician, that the Texas Abortion Laws prohibit me from practicing medicine according to the highest of medical standards and it is my medical opinion that the decision as to whether or not a woman should have an abortion, particularly in the first trimester of pregnancy, should strictly be a matter to be decided by the patient and her physician.

/s/ JAMES HUBERT HALLFORD, M.D.
James Hubert Hallford, M.D.

[Jurat omitted in printing.]