Illinois Supreme Court History: John Doe and Richard Roe

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In today's world, the monikers John Doe, Richard Roe, Jane Doe, and Jane Roe typically denote an unidentified body at a crime scene. Fifty years ago, it was one of the names in the landmark U.S. Supreme Court case, *Roe v. Wade*—Jane Roe being the plaintiff and later identified as Norma McCorvey.

In the early Illinois period, John Doe and Richard Roe were fictitious names used in ejectment cases. Illinois and most of the early states in the country adopted the legal traditions of Great Britain. The earliest usage of the names can be traced back to 13th or 14th century England. However, in ancient Rome, fictitious names were used in simple debt cases when Aulus Agerius (I set in motion) sued Numerius Negidius (he who refuses to pay).

Originally, the action of ejectment was used to protect tenants from landlords. In old England, this was important in a feudal land-based society. Eventually, the action of ejectment was used to determine rightful title between two parties claiming to own the same parcel of land. The use of the fictitious names John Doe and Richard Roe eliminated the lawsuit from being contested between two individuals and instead the title of the land was the principal issue. To quote an old legal treatise, *Adams on Ejectment*, "the action of ejectment is a fictitious mode of legal proceeding, by which possessory titles to corporeal hereditaments and tithes may be tried and possession obtained without the process of a real action." In other words, Person A was not suing Person B to determine proper title to a parcel of land—the title itself was on trial.

It is unknown why the names John Doe and Richard Roe were coined in England. A "doe" is a female deer, and a "roe" is a small deer that was common in England and colder climates. John and Richard were probably the most common names in Britain at the time, and Jane was a name similar to John (instead of using Mary or Elizabeth, which were probably the most common names). To maintain the fiction, the British would not use names that were common, like John Smith or Robert Jones because that would be confusing to the many Brits who likely had those names.

As the law evolved over time, the use of John Doe and Richard Roe fell out of favor. By the 1830s, Pennsylvania, New York, and a few other states abolished fictional names in ejectment cases. Courts in the United States understood that the case was between two individuals and not two competing titles. In Illinois, Abraham Lincoln's law practice is a good indicator of this change. Lincoln had 139 ejectment cases over the course of his 25-year legal career—only two of them were styled in the name of John Doe. A database of nearly 3,000 Illinois Supreme Court cases from 1818 to 1865 shows only 25 cases with John Doe as a litigant, with the latest one in 1847. In 1852, Great Britain's parliament abolished the use of Doe and Roe, "who have lived so

long, as to be considered immortal, and who were apparently the largest owners of real estate in Great Britain."

Today, we use several names to denote an unknown or average person: Joe Schmo, Joe Sixpack, and John Q. Public, but John Doe and Richard Roe are now at least 800 years old and show no signs of dying in the near future. The name has stuck because the courts still need to protect the identities of certain litigants, in addition to naming unidentified bodies. The Does and Roes have achieved immortality indeed.