

# IN THE SUPREME COURT OF TEXAS

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No. 00-0224  
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IN RE JANE DOE

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APPEAL UNDER SECTION 33.004(F), FAMILY CODE  
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JUSTICE ENOCH, joined by JUSTICE BAKER, concurring.

I agree with the Court's opinion and JUSTICE GONZALES' additional concurrence. Therefore, I join both.

But I, also, must write separately to make another point. Long ago, I learned that the more my emotions influenced my decisions, the less I acted like a judge. A few years ago, JUSTICE HECHT was so passionate about an issue that he branded his colleagues as dishonest.<sup>1</sup> And it is obvious from his strident dissents in all four *Jane Doe* cases that JUSTICE HECHT has, once again, succumbed to passion. For he now brands his colleagues as "activists" and pro-abortionists.<sup>2</sup> He does this, not because there is truth to his charge, but simply because his passion overcomes reasoned discussion.

JUSTICE HECHT's attacks, although heated, are shallow. For example, he assails the Court's decisions as "predetermined."<sup>3</sup> Yet it is he who has taken only one position — always deny. Further, he complains about the Court's workload and rushed decisions, implying that this activity

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<sup>1</sup> *Maritime Overseas Corp. v. Ellis*, 977 S.W.3d 536, 537 (Tex. 1996) (HECHT, J., dissenting from denial of application for writ of error)(colleagues' votes "would have been different had they been public.").

<sup>2</sup> *In re Jane Doe 4 (Doe 4(I))*, \_\_ S.W.3d \_\_ (Tex. 2000)(HECHT, J. dissenting).

<sup>3</sup> *Id.* at \_\_ (HECHT, J., dissenting).

was otherwise unanticipated.<sup>4</sup> Yet it was he who recommended the Court rules, which follow the legislative enactment, that require the lower courts to decide *Jane Doe* cases within two business days.<sup>5</sup> As well, he knew this Court would similarly expedite these cases, even in the absence of that time stricture. Finally, JUSTICE HECHT also excoriates the Court for its “judicial activism.”<sup>6</sup> Apparently, because he mocks his colleagues’ expression of their personal feelings about the issues in these cases, he believes that a judge is an activist if he or she *refuses* to succumb to those personal feelings.<sup>7</sup> Yet it is he who, through his dissents, exemplifies the dangers present when a judge acts on passion. I can only question how a judge’s commitment to the principle of judicial restraint can mean anything if, whenever he feels strongly about an issue, he also feels free to translate his personal beliefs into a judicial decision. I cannot otherwise explain the foundation on which his opinion rests, for in five dissents, he has failed to cite to any case from any other state interpreting a similar statute, even though several such statutes have been in operation for fifteen years or more.

Because of this Court’s continued concern for preserving confidentiality in these matters,<sup>8</sup> I must also challenge JUSTICE HECHT on his routine practice of revealing to the public “in complete detail” the minors’ testimony in these cases.<sup>9</sup> The hearings in these cases are to be confidential — a requirement this Court’s rules recognize, which JUSTICE HECHT himself voted for in more

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<sup>4</sup> See *In re Jane Doe 2 (Doe 2)*, \_\_ S.W.3d \_\_, \_\_ (Tex. 2000) (HECHT, J., dissenting); *In re Jane Doe 3 (Doe 3)*, \_\_ S.W.3d \_\_, \_\_ (Tex. 2000) (HECHT, J., dissenting); *Doe 4(I)*, \_\_ S.W.3d at \_\_ (HECHT, J., dissenting).

<sup>5</sup>T EXAS PARENTAL NOTIFICATION RULES AND FORMS, Rules 2.5(d) and 3.3(c).

<sup>6</sup> See, e.g., *Doe 4(I)*, \_\_ S.W.3d at \_\_ (HECHT, J., dissenting).

<sup>7</sup> See \_\_ S.W.3d at \_\_.

<sup>8</sup> See, e.g., *Doe 3*, \_\_ S.W.3d at \_\_; *Doe 4(I)*, \_\_ S.W.3d at \_\_.

<sup>9</sup> See, e.g., *In re Jane Doe (Doe 1(I))*, \_\_ S.W.3d \_\_, \_\_ (Tex. 2000)(HECHT, J., dissenting).

dispassionate days.<sup>10</sup> Yet now he violates that rule, for no apparent jurisprudential purpose. What is more, his disclosures leave the Court in an untenable position. The Court cannot respond because to do so would require it to reveal whatever other pieces of the record remain confidential.

As an example, I note his writings in the Jane Doe 4 cases. In Jane Doe 4's first appeal, JUSTICE HECHT disclosed that the minor in *In re Jane Doe 3*<sup>11</sup> spoke to her mother about her situation instead of pursuing her case on remand.<sup>12</sup> But to what issue in *In re Jane Doe 4* was the information about Jane Doe 3 relevant? None. Furthermore, the issue in Jane Doe 3's case was never whether she would tell her mother. The question was what would happen when her mother told her father and her father became intoxicated.<sup>13</sup> As to *that* part of the story, the Court doesn't yet know the ending and, because the proceedings are confidential, the Court wouldn't reveal it in any event. Markedly, JUSTICE HECHT agreed with the Court's decision on Jane Doe 4's second appeal. But he, once again, wrote separately to publish chapter and verse the minor's confidential testimony.<sup>14</sup> It would appear that JUSTICE HECHT intends nothing more than to punish, as best he personally can, minors for seeking a judicial bypass. Although the law promises them confidentiality, he promises them notoriety.

Finally, I end by recalling that JUSTICE HECHT began his attack on his colleagues in the very first *Jane Doe* case. Without any factual basis, he launched two rhetorical broadsides, broadsides

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<sup>10</sup> Compare TEXAS PARENTAL NOTIFICATION RULES AND FORMS, Rules 1.3 and 1.4. with *Doe 1 (I)*, \_\_ S.W.3d at \_\_ (HECHT, J., dissenting), *Doe 2*, \_\_ S.W.3d at \_\_ (HECHT, J., dissenting), *Doe 3*, \_\_ S.W.3d at \_\_ (HECHT, J., dissenting), and *Doe 4(I)*, \_\_ S.W.3d at \_\_ (HECHT, J., dissenting).

<sup>11</sup> \_\_ S.W.3d \_\_ (Tex. 2000).

<sup>12</sup> See *Doe 4(I)*, \_\_ S.W.3d at \_\_ (HECHT, J., dissenting).

<sup>13</sup> See *Doe 3*, \_\_ S.W.3d at \_\_.

<sup>14</sup> See *In re Jane Doe 4 (Doe 4(II))*, \_\_ S.W.3d \_\_ (Tex. 2000)(HECHT, J., concurring).

that he used to establish the themes for his dissents. Those broadsides are that this Court’s standard is so low that it is no standard at all, and that our standard opens the flood gates for judicial bypasses.<sup>15</sup> Today he reiterates his theme that the Court construes the Parental Notification Act “as liberally allowing minors to have abortions without involving their parents . . . .”<sup>16</sup> But while to say a thing loud enough and long enough may convince some people to believe it, that does not make it true. And neither of his broadsides have proven to be true.

Several months have passed since JUSTICE HECHT’s first attack and to date only four Jane Does have come before this Court. In this case, *Jane Doe 1*, the matter was remanded with instructions for trial courts on how to evaluate whether a minor is mature and sufficiently well informed. On return, the Court granted Jane Doe 1 a judicial bypass. Her second hearing, as the Court observes, lasted for hours and required her to testify in great detail.

The Court remanded Jane Doe 2's case with instructions for trial courts on how to evaluate the best interest and abuse prongs of the judicial bypass.<sup>17</sup> Jane Doe 2 has not returned to this Court. I caution that we do not know whether the trial court on remand granted the bypass or whether Jane Doe 2 dropped her application.

But dropping her application is exactly what happened for Jane Doe 3, whose initial hearing occurred before the Court issued its instructions in *Doe 1* and *Doe 2*, and whose case was remanded in light of those instructions.<sup>18</sup> Rather than continue with the effort to meet the standard for a judicial

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<sup>15</sup> See, e.g., *Doe 1 (I)*, \_\_ S.W.3d at \_\_, (HECHT, J., dissenting); *Doe 2*, \_\_ S.W.3d at \_\_ (HECHT, J., dissenting); *Doe 3*, \_\_ S.W.3d at \_\_ (HECHT, J., dissenting); *Doe 4(I)*, \_\_ S.W.3d at \_\_ (HECHT, J., dissenting).

<sup>16</sup> See \_\_ S.W.3d at \_\_.

<sup>17</sup> See *Doe 2*, \_\_ S.W.3d at \_\_.

<sup>18</sup> See *Doe 3*, \_\_ S.W.3d at \_\_.

bypass that this Court actually requires, Jane Doe 3 notified a parent.

As for Jane Doe 4, whose case was also remanded to allow her to have a hearing according to the Court's instructions, she returned to this Court but was denied a judicial bypass.<sup>19</sup> Like Jane Doe 1, her second hearing was lengthy and her testimony was detailed.

From the beginning, JUSTICE HECHT's charges were unsupported by any facts. Here in the middle, the facts are that the *Jane Doe* cases have appeared as the Legislature expected and the Court has disposed of them in the manner the Legislature expected. As for cases coming in a "flood," they appear only to have come in the expected spurt. In the end, JUSTICE HECHT's explosive rhetoric will not have advanced the jurisprudential debate about the proper application of the Parental Notification Act. Instead, his intemperance has pushed political and social hot buttons that have discomfited citizens of this State and their elected officials, needlessly, with no opportunity to assess whether the Parental Notification Act was having its desired effect.<sup>20</sup>

Now based on the facts that only time could reveal, it is plain that the statute, including the Court's interpretation, is having its intended effect. Although the state cannot prohibit minors from obtaining an abortion, it can and has created a rule of law sufficiently impressing upon minors the seriousness of the abortion decision and that the State wants parents to be informed. From what the Court now knows, I venture an educated guess that what happened in the case of Jane Doe 3 is, in

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<sup>19</sup> See *Doe 4(I)*, \_\_ S.W.3d at \_\_; *Doe 4 (II)*, \_\_ S.W.3d at \_\_.

<sup>20</sup> Clay Robison, *Justice Blasts Colleagues on Texas Abortion Law*, HOUSTON CHRONICLE, March 23, 2000 at A1; Bruce Hight, *High Court Bypassing Intent of Abortion Law, Senator Says*, AUSTIN AMERICAN-STATESMAN, March 24, 2000 at B1; Mary Alice Robbins, *Court's Notification Standard Too Low, State Lawmaker Says*, AMARILLO DAILY NEWS, March 24, 2000 at 1A; Christy Hoppe, *Abortion Again Fractures Court*, DALLAS MORNING NEWS, March 23, 2000 at A1; Mary Flood, *Law Creates Confusion on Abortion*, WALL STREET JOURNAL, March 22, 2000 at T1; Bruce Hight, *Abortion Cases Generate Friction on High Court*, AUSTIN AMERICAN-STATESMAN, March 19, 2000 at A1; Connie Mabin, *Family Bypassed as Court Allows Abortion*, FORT WORTH STAR-TELEGRAM, March 11, 2000 at 1A.

all probability, now the rule in Texas. Once a minor becomes aware of what she must go through to obtain a judicial bypass, she will choose for herself to involve her parents.

When influenced by emotions, a judge loses the judicial perspective, often overstating the case, and at times, resorting to writing that is unbecoming. My colleague's writings in these cases have been inappropriate. Deep convictions do not excuse a judge from respecting his colleagues, the litigants, or the law.

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Craig T. Enoch  
Justice

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