

Looking for John Doe
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In a recent Ontario case reported 23 February 2005 by *Globe and Mail* columnist Christie Blatchford, the identity of each of the three parties concerned was hidden under the same fictional last name, Doe. Jane Doe needed anonymity because she was once a victim of sexual abuse by her now-deceased husband. Her daughter Little Jane required protection as she was only nine years old. John, Jane's former lover, remained disguised when the court ruled that naming him could be embarrassing.

This proliferation of Does caused Jane's lawyer to say that next time he would ask the court to distinguish between his client and her daughter by renaming them "Ray Me. You know, Doe, Ray, Me," a homophonic reference to a popular song.

But why did the court pick the name Doe to hide true identity? Would any other name do just as well? The answer lies buried in legal history.

By the end of the mediaeval period in England, a court action to settle the ownership of land had become so slow and complicated that lawyers sought a new remedy known as ejectment. It involved an elaborate fiction in which the plaintiff claimed title against a person who was actually occupying the land. To substantiate his claim, the plaintiff granted a fictional lease to a fictional person named John Doe. Doe then claimed that he had been evicted by Richard Roe, another fictional person. Roe decided not to contest the matter, so Doe brought the action against the occupant who had to defend it or lose the case by default. This convoluted, absurd procedure, ostensibly for the recovery of the leasehold interest, allowed the question of title to be determined indirectly. John Doe and Richard Roe made their entrance in the late 1600s, but other fictional names appeared in actual court cases from time to time, for example *Fairclaim v. Shamtitle* in 1762. The need for such fiction in land litigation disappeared in 1852 when an Act of Parliament replaced ejectment by an action for the recovery of land.

John Doe lives on. For many years police have used John Doe (or Jane Doe) to designate a person whose name has not yet been ascertained. Once the person has been identified, his or her real name replaces Doe. Although Richard Roe is less commonly encountered, his alter ego appeared when Jane Roe (alias Norma McCorvey) brought a class action appeal in the abortion case of *Roe v. Wade*, heard by the United States Supreme Court in 1973.