Grounded in the Reality of Their Lives: Listening to Teens Who Make the Abortion Decision without Involving Their Parents

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Grounded in the Reality of Their Lives:

*Listening to Teens Who Make the Abortion Decision without Involving Their Parents*†

J. Shoshanna Ehrlich‡

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INTRODUCTION

Historical Background

In the 1973 landmark case of Roe v. Wade, the Supreme Court held that, until viability, decisional authority over the outcome of a pregnancy resides in the pregnant woman.\(^1\) Relying on a long line of cases recognizing that “zones of privacy . . . exist under the Constitution,” the Court characterized the abortion decision as one that is fundamental and private in nature, and it located the right of choice in the “Fourteenth Amendment’s concept of personal liberty.”\(^2\) The Court made clear that, although fundamental, the right to terminate a pregnancy

\(^{2}\) Id. at 153.
is not absolute, and states have a compelling interest in protecting the health of the pregnant woman and the potentiality of life.\(^3\) In order to mediate this tension between a woman’s right of choice and the interests of the state, the Court constructed its now-famous trimester formula.\(^4\) This trimester approach was subsequently discarded by the Court in *Planned Parenthood v. Casey* in favor of a more restrictive “undue burden” standard.\(^5\)

In securing the right of choice, the *Roe* Court spoke in terms of all women—it drew no distinctions based on age or capacity.\(^6\) However, shortly after the *Roe* decision, a number of states sought to limit the rights of young women\(^7\) by enacting laws requiring minors either to obtain the consent of or give notice to their parents before having an abortion.\(^8\) Embodying a view of teenage decisional incapacity and dependence, the underlying premise of these laws is that young women cannot reliably decide for themselves that they are not yet ready to embrace motherhood.

Soon faced with challenges to these laws, the Court, in considering the reproductive rights of young women, sought to reconcile a historically-rooted vision of minors as dependent persons in need of protection with a more contemporary understanding of minors as autonomous individuals with adult-like claims to constitutional recognition.\(^9\) Building upon these twin themes of dependence and autonomy, in the landmark *Bellotti v. Baird*\(^10\) decision the Court both recognized and limited the reproductive rights of young women. On the one hand, the Court acknowledged that, like adult women, minors have a constitutionally-secured right of choice. On the other hand, based on concerns about “the peculiar vulnerability of children; their inability to make critical decision in an informed, mature manner; and the importance of the parental role in child rearing,”\(^11\) the Court held that, unlike adult women, the decisional autonomy of

\(^3\) *Id.* at 162-63.

\(^4\) *Id.* at 162-64 (holding that during the first trimester, no state interest is of sufficient weight to justify limitations on a woman’s right of choice; during the second trimester, the state’s interest in maternal health becomes compelling and justifies bona fide health-related regulations; and in the third trimester, the state’s interest in the potentiality of life becomes compelling and justifies prohibiting abortion, unless it is necessary to save the life or health of the pregnant woman).


\(^6\) *Roe*, 410 U.S. 113.

\(^7\) As used in this article, the term “young women” refers to teens under the age of 18.

\(^8\) See, e.g., *IDAHO CODE* § 18-609 (Mitchie 1973); *OHIO REV. CODE ANN.* § 2919.12 (B)(1)-(3) (Anderson 1999); *MO. ANN. STAT.* § 188.028 (West 1986); *UTAH CODE ANN.* § 76-4-304 (1974); *S.C. CODE ANN.* § 49-41-30 (Law Co-op. 1990).


\(^10\) 443 U.S. 622 (1979) [hereinafter *Bellotti II*].

\(^11\) *Id.* at 634.
minors can be limited by requiring them to involve either a parent or a judge in the decision-making process.\footnote{12}

Since 1979, the Court has not wavered from its belief in these interconnected assumptions about teen decisional incapacity and the ameliorative effect of parental engagement using this belief to justify limiting the reproductive rights of young women.\footnote{13} Wedded to this constricted vision of adolescent reality, the Court has failed to reexamine these animating assumptions in light of the growing body of research focusing on adolescent decision-making.\footnote{14} Reinforcing the narrowness of this vision, the Court has also consistently failed to take into account the fact that minors possess significant medical self-consent rights, particularly when it comes to pregnancy and other sensitive medical decisions.\footnote{15} This failure is particularly baffling given the \textit{Roe} Court's characterization of the abortion decision as one that is medical in nature.\footnote{16}

\textbf{Purpose and Overview of Empirical Study}

After having for many years provided legal representation to young women who chose not to disclose their pregnancy and abortion plans to a parent, and who were thus required to seek judicial authorization for an abortion under Massachusetts law, I found the Court's unexamined and partial construction of adolescent reality troubling. In consultation with colleagues, we decided it was important to look at how young women themselves confronted the reality of an unplanned pregnancy in a state with a parental involvement law. Seeking an understanding that was rooted in the actual life circumstances of young women, rather than those superimposed on them by the Court, we designed a study to learn more about their experiences. More specifically, we were interested in looking at how young women made the abortion decision, what their reasons were for not involving their parents, whom they involved, and, lastly, what it was like for them to seek court authorization.

\footnote{Id. at 633-38.}


For a discussion about how these concerns serve to mask the pronatalist impulse of the Court, see J. Shoshanna Ehrlich, \textit{Minors as Medical Decision Makers: The Pretextual Reasoning of the Court in the Abortion Cases}, 7 MICH. J. GENDER & L. 65, 99-105 (2000).


\footnote{See \textit{Bellotti II}, 443 U.S. at 640; see generally discussion \textit{infra} Section II.D.1-2 for an analysis of minors' self-consent rights.

\footnote{\textit{Roe}, 410 U.S. at 166.}
With Massachusetts as the research site, comprehensive data about minors who did not disclose their pregnancy and abortion plans to a parent was gathered and analyzed. The results of this research reveal the complex and multi-dimensional reasoning abilities of young women faced with an unplanned pregnancy and directly challenge the Court's continued insistence that young women are incapable of reproductive self-determination. As presented here, this study adds the largely-missing voices of young women to the ongoing debate over parental involvement laws and allows them to be heard within the context of their own life circumstances.

This interdisciplinary article seeks to explore the dynamic relationship between the findings of this study and the legal framework within which young women make the abortion decision. Section I of the article looks at how the *Roe* Court characterized abortion as a medical decision. Section II then looks generally at the medical decision-making rights of minors. Grounded in this medical paradigm, Section III examines the Court's view of self-consent rights for young women in the abortion context. An empirical study is presented in Section IV, and the significance of the findings, especially as they bear upon the Court's construction of adolescent reality in the abortion context, is discussed in Section V. Drawing upon these earlier sections, the article concludes with an exploration of legal alternatives to the dominant parental/judicial involvement paradigm.

Before proceeding, it should be noted that nothing in this article is intended to disparage the importance of parents in the lives of their children. In an ideal world, all young women faced with an unplanned pregnancy would be able to turn to their parents for support and guidance. However, many families fall short of the ideal, and minors have important and well-grounded reasons for not involving their parents. The concern here is with disclosure that results from legal compulsion rather than flowing from family relationships that can sustain such communication.

I. *ROE v. WADE AND THE “REASONABLE”? PHYSICIAN*

Emphasizing the physical and psychological detriments of forcing a woman to carry to term, the *Roe* Court characterized abortion as "inherently, and primarily, a medical decision . . . ."17 Flowing from this characterization, the Court, although locating ultimate decisional authority in the pregnant woman, assumed that a woman's physician would play a central role in the decision-

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17. *Id.* It should be made clear at the outset that my intent is not to endorse the *Roe* Court's medicalized approach to abortion, but simply to challenge the integrity of the Court’s reasoning in the cases involving minors. *Roe’s* focus on abortion as a medical procedure has been subject to criticism on many grounds, including that it ignores the dynamic relationship between reproductive control and gender equity. *See, e.g.,* Riva Siegal, *Reasoning From the Body: A Historical Perspective on Abortion Regulation and the Question of Equal Protection*, 44 STAN. L. REV. 261 (1992).
making process. Both strands of the Court's medicalized thinking are evident in the following passage, which is central to the decision, because it is here that the Court explains why abortion is deserving of constitutional protection:

The detriment that the State would impose upon the pregnant woman by denying this choice altogether is apparent. Specific and direct harm medically diagnosable even in early pregnancy may be involved. Maternity, or additional offspring, may force upon the woman a distressful life and future. Psychological harm may be imminent. Physical and mental health may be taxed by child care. There is also the distress . . . associated with the unwanted child, and there is the problem of bringing a child into a family already unable, psychologically and otherwise, to care for it. In other cases, as in this one, the additional difficulties and continuing stigma of unwed motherhood may be involved. All these are factors the woman and her responsible physician necessarily will consider in consultation.

Roe's emphasis on the role and rights of physicians is disturbing as it both diminishes the agency of women and the significance of the non-medical aspects of the abortion decision. There is, however, a positive aspect to this medical paradigm. Given that abortions are routinely performed in medical settings, the Court was demonstrating its trust in practitioners to perform abortions as they would any other medical procedure. Stating that abuses of discretion should be subject to the "usual remedies" for physician malfeasance, rather than the historical criminal sanctions, the Court implicitly "normalized" the performance of abortions, making them one aspect of what a physician might be asked to do in the ordinary course of caring for her patients.

Had the Court, when considering the rights of minors, continued to regard abortion as a medical decision, it might have been forced to engage in a very different analysis than it did, in light of the considerable medical self-consent rights that minors have, particularly around sexual matters. As we shall see, however, the Court moved away from this medical paradigm. To understand the significance of this shift, we first consider the medical decision-making rights of mi-

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18. See Roe, 410 U.S. at 166. Some commentators have suggested that the opinion's emphasis on the role of the doctor may reflect the fact that its author, Justice Harry Blackmun, had served as general counsel to the Mayo Clinic prior to his appointment to the Supreme Court. See, e.g., LAWRENCE H. TRIBE, ABORTION: THE CLASH OF ABSOLUTES 13 (W.W. Norton 1992) (1991).
20. See Siegal, supra note 17, for a critical assessment of Roe's medicalization of abortion.
II. MINORS AND THE MAKING OF MEDICAL DECISIONS

A. Informed Consent

Grounded in the common law right of bodily integrity, a physician is required to obtain the consent of his/her patient before providing medical treatment, except in exigent circumstances. To be effective, this consent must be informed. For consent to qualify as informed, the individual must be provided with information sufficient to ensure that s/he can understand the diagnosis, the risk and benefits of a proposed procedure or treatment, alternative procedures and treatments and their associated risks, and the consequences of not undergoing the proposed procedure and treatment. The individual must also be able to decide voluntarily whether to proceed with the physicians' recommendation.

Where the patient is a minor, the long-standing rule is that consent is to be provided by the parents. This rule is predicated on a set of mutually-reinforcing presumptions about the decisional incapacity of young people and the integrity of the autonomous family. Minors, regardless of age or maturity, are presumed to lack the capacity to make informed decisions about their own lives. Counterbalancing this assumption, parents are presumed to possess the

25. See Wadlington, Minors and Healthcare, supra note 23, at 115-16.
26. This presumption has been challenged by a growing body of research documenting the ability...
wisdom and maturity their children lack and, significant for our purposes, are presumed to "have an identity of interest with their minor children" such that they will be guided by their child's best interest when exercising their decisional authority. Rooted in the dominant vision of the family as an integrated and harmonious whole, this consent rule assumes that children do not exist apart from their parents.

These interlocking presumptions are, however, challenged by the multiple exceptions that exist to the basic rule of parental consent that seriously undercut its primacy. When examined as a whole, these exceptions unsettle the dominant vision of parents as hegemonic decision-makers for their children. Before considering these exceptions, however, a brief discussion about confidentiality is in order, as the concepts of consent and confidentiality are tightly interwoven.

B. Confidentiality—The Flip Side of Consent

Understood generally, "[c]onfidentiality refers to the privileged and private nature of the information provided during the health care transaction. It is generally acknowledged to be a cornerstone of the physician-patient relationship and 'essential to a patient's trust in a health care provider and a patient's willingness to supply information candidly for his or her benefit.'" The duty to maintain patient confidentiality stems from multiple sources, including the various ethical codes of the health care professions, state statutes governing the disclosure of medical information and records, state and federal funding statutes, such as Title X of the Public Health Service Act, and the constitutional right of privacy.

The general rule is that confidentiality follows consent—thus, the provider's duty to maintain confidentiality flows to the party who consents to the medical care. Accordingly, the consenting party holds the key to the disclosure of information. Absent his or her express consent (subject to limited exceptions, such as when a patient threatens harm to him or herself or to an identified individual), medical information may not be disclosed to third parties. As explained by health law expert Abigail English, "[p]reventing disclosure of confidential information is one aspect of the confidentiality obligation, but an equally significant aspect of the legal and ethical principles of confidentiality is that they estab-
lish a framework within which disclosure can occur."

What about when the patient is a minor? If a parent is the consenting party, then following the general rule that confidentiality follows consent, the confidential relationship is typically between the doctor and the parent. Thus, the doctor may disclose information about the medical care received by the minor directly to the parent, and the parent can authorize disclosure to third parties. Where the minor is the consenting party, the doctor should be bound by the usual rules of confidentiality, according to health law expert Angela Holder. As she explains, "[i]t would seem that if the physician does not feel the need to obtain consent of the parents to treat the child, he is by that decision assuring the child that the normal physician-patient relationship that would obtain if he were an adult has begun to apply . . ." and that "[b]y accepting the child as a responsible patient who has the right to consent to treatment, the physician has implicitly accorded that child the normal rights of a patient within the patient-physician relationship."

The articulation of the principle that the duty of confidentiality to the minor where s/he is the consenting party accords with the statements on adolescent reproductive health care issued by major professional health care associations, such as the American Medical Association, the American Public Health Association, the Society for Adolescent Medicine, and the American College of Obstetricians and Gynecologists. Although they agree that parental involvement should be encouraged, these prominent organizations all recognize that

31. Id. at 1104.
32. Id.
33. Id. The pattern may be different when mental health care is involved, as the provider may determine that therapeutic considerations militate against disclosure to the parent even if s/he is the party who has authorized the care. Thus, treatment considerations may take precedence over general rules regarding patterns of confidentiality. The author wishes to acknowledge the contribution of Jim Hilliard, Counsel to the Massachusetts Psychiatric Association, who willingly gave of his time and expertise to discuss this issue with her.
34. See ANGELA RODDEY HOLDER, LEGAL ISSUES IN PEDIATRICS AND ADOLESCENT MEDICINE 143 (2d ed., Yale Univ. Press 1985) [hereinafter HOLDER, LEGAL ISSUES]. It is important to note that there is a significant exception to confidentiality where minors are concerned: the requirement of reporting suspected child abuse or neglect. In all states, this reporting duty trumps the obligation to maintain confidentiality. See Council on Scientific Affairs, Am. Med. Ass'n, supra note 24, at 1420.
35. HOLDER, LEGAL ISSUES, supra note 34.
36. See Council on Scientific Affairs, Am. Med. Ass'n, supra note 24, at 1423 (recommending that physicians discuss confidentiality policies with their adolescent patients and inform them when confidentiality might be abrogated).
37. See Am. Pub. Health Ass'n, Adolescent Access to Comprehensive, Confidential Reproductive Care, 81 AM. J. PUB. HEALTH 241 (1991) (urging that a national reproductive health care policy for adolescents includes confidential health services).
38. See Soc'y for Adolescent Med., Position Statements on Reproductive Health Care for Adolescents, 12 J. ADOLESCENT HEALTH 657 (1991) (supporting "contraceptive education, counseling, and services . . . available to all male and female adolescents desiring such care on the adolescents' own consent without legal or financial barriers").
confidentiality is essential to ensure that adolescents have meaningful access to reproductive health care services. Without it, they submit that minors may postpone or altogether forgo seeking needed reproductive health care. Additionally, without assurances of confidentiality, minors may fail to fully disclose all relevant information for fear that it will be divulged to a parent. Thus, confidentiality helps ensure that a doctor has all necessary information to fully address a minor’s health needs. A further benefit of a confidential physician-patient relationship is that it allows physicians to help adolescents “incrementally assume greater responsibility for their health and decisions by providing a context in which the adolescent may candidly discuss concerns, worries, and health-risk behaviors.”

However, as is often the case where minors are concerned, the law regarding confidentiality is a bit murkier than it is for adults. Although the rule that the duty of confidentiality runs to the consenting party is still generally applicable, the laws “regarding confidentiality of medical information and medical records vary considerably among states,” and “[t]he legal provisions that authorize minors to consent to their own care do not automatically protect the confidentiality of that care . . . .” Some statutes permit disclosure under limited circumstances, such as when the minor’s medical condition poses a serious risk to his/her health or life. In Massachusetts, for example, the law that vests minors with medical consent rights states, all information and records kept in connection with the medical . . . care of a minor who consents thereto in accordance with this section shall be confidential between the minor and the physician . . . and shall not be released except upon the written consent of the minor . . . . When the physician . . . reasonably believes the condition of said minor to be so serious that his life or limb is endangered, the physician . . . shall notify the parents . . . and shall inform the minor of said notification.

Complicating the picture further, rules governing confidentiality may vary

40. See supra notes 36-39.
41. Id.
44. See generally English, supra note 30, at 1097, 1103-05.
45. Although a detailed discussion of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-19 (HIPAA), is beyond the scope of this article, it should be noted that the discussed approach generally tracks the privacy provisions of the Act, as applied to minors. Accordingly, a parent is not entitled to access the medical records of his/her child when, under state or federal law, the minor is authorized to self-consent to care. See 45 C.F.R. § 164.502 (g). For a detailed analysis of the requirements of HIPAA, see THE HIPAA ADVISORY, available at http://www.hipaadvisory.com (last visited Jan. 19, 2003).
46. English, supra note 30, at 1104.
47. Id. at 1103.
48. MASS. GEN. LAWS ANN. ch. 112, § 12F (West 2002).
depending upon the identity of the health care provider. For example, a minor in a state without a law that links the right of self-consent with the requirement of confidentiality may run the risk of parental disclosure if she seeks reproductive health care from her family doctor. She could, however, obtain confidential care in a clinic that receives federal family planning monies pursuant to Title X of the Public Health Services Act, a federal program devoted to the provision of "acceptable and effective family planning methods and services" and to making "a wide range of effective and acceptable family planning methods... available on a voluntary and confidential basis."

C. Exceptions that Limit Parental Decision-Making Authority Without Shifting Decisional Authority to Minors

This section considers two situations in which parental decisional authority is limited in favor of third parties: the provision of emergency care and cases of medical neglect. Although neither situation involves a shift of decisional authority to minors, they are both worth considering in this analysis, as they challenge the notion that parents have unbounded authority over the medical care of their children.

1. Medical Emergencies

It is well-established that a physician may treat a minor without parental consent in the case of a medical emergency, and most states now have statutes that specifically authorize such care. Although sometimes explained by reference to the doctrine of implied consent, which assumes that under the circumstances parents would consent if contacted, the essential policy rationale behind this rule is that doctors must be permitted to provide necessary medical care to minors without fear of liability.

52. See JAMES M. MORRISSEY ET AL., CONSENT AND CONFIDENTIALITY IN THE HEALTH CARE OF CHILDREN AND ADOLESCENTS: A LEGAL GUIDE 50-51 (1989) (noting that because of the frequency of emergency situations, most states have enacted statutes that address the care of minors under such circumstances). Most of these statutes define "emergency" in relatively broad terms to include not only life-threatening conditions, but also "those situations where a delay in treatment would increase risk to the patient's health, or treatment is necessary to alleviate physical pain or discomfort." Id. at 53.
53. See id. at 50; Wadlington, Minors and Healthcare, supra note 23, at 116.
54. See MORRISSEY ET AL., supra note 52, at 50.
Although clearly not giving minors independent decisional authority, this rule is not without significance as we consider the status of teens as medical decision-makers. By privileging the health needs of minors over the decision-making authority of parents, it implicitly recognizes that parental authority is not absolute, but must yield to other more immediate interests. By its very presence, this exception quietly recognizes that children exist as separate beings in the world, and that parents may not always be present to either prevent injury or tend to urgent needs. Without implying neglect, it embodies awareness that in the ordinary course of life, parents and children are not joined at the hip.

2. Medical Neglect

As a more direct limit on authority than the emergency exception, parents may be deprived of control over their children’s medical treatment in cases of medical neglect. Here, intervention is based on a parent’s failure to respond to a child’s need for medical care by, for example, refusing to consent to care deemed necessary by a physician. Intervention in these situations is usually based on a child abuse and neglect reporting statute, and most such statutes now specifically include medical neglect as a category of parental harm that supports state intervention into the family. Where it is not specifically included, the statutory definition of neglect is generally broad enough that it can be construed to include the failure to provide medical care.

Historically, courts were likely to intervene only if the parents’ refusal to consent to medical care posed a direct threat to the life of the child. The standard is now somewhat more relaxed due at least in part to the expansion of child-protection reporting laws and the broadening of actionable harms. In deciding if intervention is warranted, courts generally balance a number of competing considerations such as the risk of harm to the child if treatment is withheld, the benefits of treatment, the certainty of results, the express wishes of the child, the religious beliefs of the parent, rights of parental privacy, and the best interests of the child. If a finding of medical neglect is made, the court usually appoints a guardian to act as a substitute decision-maker regarding the treatment in

56. It is possible, however, that the minor could provide independent consent based upon his or her status as a mature or emancipated minor. See Morrissey et al., supra note 52, at 33-35.
58. See id. (explaining that the parental inaction is sometimes rooted in religious beliefs).
59. See Wadlington, Medical Decision Making, supra note 57, at 323.
60. Gittler et al., supra note 27, at 4.
61. See Wadlington, Medical Decision Making, supra note 57, at 314-15.
62. See id. at 319-23.
63. For a discussion of how courts weigh these various factors differently according to the circumstances, see Lisa Anne Hawkins, Living-Will Statutes: A Minor Oversight, 78 Va. L. Rev. 1581, 1605-06 (1992).
question without otherwise limiting the rights of the parents.\textsuperscript{64}

As in cases of medical emergencies, this limitation on the rights of parents does not shift authority to minors, nor does it challenge the presumption about the decisional incapacity of minors. However, by recognizing the possibility of parental neglect, it directly challenges the presumption that parents always make good medical decisions for their children.\textsuperscript{65} This exception, by capturing the very real possibility of divergent interests and allowing for parental displacement, forces us to recognize that all families do not function as integrated and harmonious units in which all of a child's basic needs are met by his or her parents.\textsuperscript{66}

\section*{D. Exceptions that Simultaneously Limit Parental Decision-Making Authority and Shift Decisional Authority to Minors}

This section examines rules that limit parental authority in favor of vesting minors with decisional authority over certain aspects of their own medical care. First, it considers consent rules that recognize the decisional ability of minors based upon their status. This section then considers treatment-based consent rules. Significantly, some statutes, in granting rights based upon status or the kind of treatment being sought, specifically state that minors giving consent shall be deemed to have the legal capacity to act as an adult.\textsuperscript{67}

\subsection*{1. Status-Based Consent Rights}

\textbf{a. The Emancipated Minor}

As a general principle, a teen who is legally emancipated can consent to his or her own medical care.\textsuperscript{68} Under the common law of emancipation, a minor who is "not living at home and is self-supporting, is responsible for himself economically and otherwise, and whose parents (voluntarily or involuntarily) have surrendered their parental duties and rights,"\textsuperscript{69} may be adjudicated an emanci-
panied minor. This determination operates to extinguish the reciprocal rights and responsibilities of the parent-child relationship and serves to vest the child with adult-like rights, including the right to consent to medical treatment. 70 Common law emancipation also may be situationally determined. Minors who are married or in the armed forces are generally considered emancipated without proof of actual independence, based on the incompatibility of their life circumstances with parental control. 71

Developed primarily as a vehicle by which parents could relinquish control over their child, 72 the common law of emancipation, although clearly recognizing that minors may be fully independent of their parents, was not motivated by a vision of minors as persons with claims to self-determination. In part responding to the need for a more teen-centered concept of emancipation, and in part seeking to bring coherence to the common law approach, a number of states have enacted emancipation statutes. 73 These statutes can be either general or limited in their scope.

Under a general emancipation statute, a minor "petitions the court to be relieved of the disabilities of minority," 74 In deciding whether to grant the petition, most states consider the "best interest" of the child, often in combination with other factors such as whether the minor is capable of conducting his or her own affairs 75 and/or is living separate and apart from his or her parents. 76 If the petition is granted, the minor is afforded the rights and responsibilities of adulthood, 77 including the right of medical self-consent. 78

In contrast, a limited emancipation statute operates to grant an identified class of minors relief from specified categorical limitations associated with minors, such as runaways, who meet some but not all of the prongs of this definition. Id. at 129.

70. Sandford N. Katz et al., Emancipating Our Children—Coming of Legal Age in America, 7 FAM. L.Q. 211, 215-19, 238-39 (1973). Depending on the circumstances, a minor may be deemed to be only partially emancipated, and thus may not be able to assert all of the rights associated with complete emancipation. Sandford’s article discusses the difference between complete and partial emancipation and provides a comprehensive analysis of the law of emancipation. Id.
71. Id. at 217.
73. See MORRISSEY ET AL., supra note 52, at 33; Gottesfeld, supra note 72, at 477-79 (discussing the “first generation” of emancipation statutes, which, according to the author, were enacted primarily to reconcile the age of emancipation with the legal age of marriage); Wadlington, Medical Decision Making, supra note 57, at 323.
74. Katz et al., supra note 70, at 232.
75. Id. at 236; Gottesfeld, supra note 72, at 487-88.
76. Gottesfeld, supra note 72, at 487-88.
77. However, some statutes give the court the authority to attach conditions to the grant of emancipation, thus resulting in partial rather than complete emancipation. Katz et al., supra note 70, at 237-38.
78. There is no uniform emancipation law; therefore, whether or not statutory emancipation includes the right to medical consent depends on the state in which the case is at issue. Generally, a full emancipation statute includes the right of medical self-consent.
nority without the necessity of a court proceeding.\textsuperscript{79} Utilizing this approach, many states have enacted what are commonly referred to as "medical emancipation" laws giving certain categories of minors medical self-consent rights.\textsuperscript{80} Thus, most states allow a minor who is married or in the armed forces to consent to his or her own medical care.\textsuperscript{81} Minor parents in most states are able to consent to their own as well as to their child's health care.\textsuperscript{82} A number of states also allow minors above a certain age to consent to their own care.\textsuperscript{83}

The law of emancipation recognizes that minors may be sufficiently independent of their parents, based either on age or the objective conditions of their life, to warrant a transfer of decision-making authority.\textsuperscript{84} Here, the presumed identity of interests between parent and child disappears; it is no longer assumed that parental decision-making will promote the best interests of the minor. Although doctrinally grounded in notions of independence rather than competence,\textsuperscript{85} emancipation, by freeing minors from the usual age-based constraints, honors the ability of minors to make appropriate life choices. By shifting decisional authority from parents to minors, the law of emancipation directly challenges the assumptions that parents are always the preferred decision-makers, and that minors are incapable of meaningful self-definition.

\textbf{b. The Mature Minor Rule}

The mature minor rule is the other important status-based exception to the parental consent requirement.\textsuperscript{86} Developed mainly through judicial decisions, this doctrine allows minors who are mature enough to understand the risks and benefits of proposed medical treatment to give consent.\textsuperscript{87} Unlike the law of

\begin{itemize}
\item \textsuperscript{79} See Katz et al., \textit{supra} note 70, at 215 (distinguishing between legislative emancipation statutes and judicial emancipation).
\item \textsuperscript{80} See generally Gottesfeld, \textit{supra} note 72, at 477.
\item \textsuperscript{81} Katz et al., \textit{supra} note 70, at 217.
\item \textsuperscript{82} Angela R. Holder, \textit{Disclosure and Consent Problems in Pediatrics, 16 LAW, MED. & HEALTH CARE} 219, 220 (1988) [hereinafter Holder, \textit{Disclosure}]. Consent rules, however, may be different for unmarried fathers. See Morrissey et al., \textit{supra} note 52, at 42-43. Even if a state does not have a statute that expressly gives minor parents the right to consent to the medical treatment of their children, they would have this authority by virtue of their status as parents. \textit{Id.} at 41.
\item \textsuperscript{83} See Holder, \textit{LEGAL ISSUES, supra} note 34, at 128. As with most efforts at categorization, the lines between approaches often blur, and it should be noted that age-based consent laws are sometimes characterized as "minor treatment" rather than limited emancipation statutes. \textit{Id.} at 131-33. This is more likely to be the case where the statute also refers to the capacity of the minor. \textit{Id.} at 134.
\item \textsuperscript{84} \textit{Id.} at 129-35. Of course, it is important to recognize that independence may be a response to parental neglect rather than a self-determined life course. See Carol Sanger & Eleanor Willemsen, \textit{Minor Changes: Emancipating Minors in Modern Times}, 25 U. MICH. J.L. REFORM 239 (1992).
\item \textsuperscript{85} Hawkins, \textit{supra} note 63, at 1604-05; Rosato, \textit{supra} note 55, at 28.
\item \textsuperscript{86} See Holder, \textit{LEGAL ISSUES, supra} at note 34, at 133-35.
\item \textsuperscript{87} Developed in the early part of the last century, the mature minor rule pre-dates the development of an extensive body of literature on the decision-making capacity of teens. Emerging over the last thirty or so years, this literature recognizes that many teens possess the cogni-
emancipation, which is premised on objective manifestations of independence, the mature minor rule directly recognizes that teens may have the cognitive maturity to make informed decisions about their own medical care. Accordingly, if a minor (generally age 14 or older) “understands the nature of proposed treatment and its risks, if the physician believes that the patient can give the same degree of informed consent as an adult patient, and if the treatment does not involve very serious risks, the young person may validly consent to receiving it.”

A few states have codified the mature minor rule. Thus, for example, in Arkansas, “[a]ny unemancipated minor of sufficient intelligence to understand and appreciate the consequences of the proposed surgical or medical treatment or procedures” may consent to his/her own medical care.

As with emancipation, the mature minor rule, by transferring decisional authority from parents to minors, directly challenges historic understandings of capacity and decisional authority. Embodying a dynamic vision of youth, this rule recognizes that minority is not an indistinguishable phase stretching from infancy to young adulthood, and that the allocation of authority between parents and children must be calibrated to account for the increasing capacities of children as they move through adolescence.

2. Treatment-Based Exceptions

Over the past few decades, most states, in response to increasingly visible manifestations of teen sexual activity and drug and alcohol use, have enacted a variety of “minor treatment” statutes that give minors the authority to consent to specific kinds of medical care. These statutes embody the recognition that, if required to involve their parents to obtain care related to sexual activity or other sensitive matters, minors might delay or avoid seeking needed services. Thus, as a policy matter, these laws privilege the health needs of minors over parental claims of decisional authority. Accordingly, in most states a minor can consent
to: pregnancy-related health care, excepting abortion\(^93\) and sterilization; family planning services, including contraception; the detection and treatment of sexually transmitted diseases,\(^94\) and treatment of drug and alcohol dependency. Many states also allow minors to self-consent to mental health services.\(^95\)

Minor treatment statutes are similar to the status-based exceptions in that they transfer decisional authority to minors. However, unlike the status-based exceptions, these statutes appear to be grounded in public health considerations rather than recognition of teenage maturity or independence. Framed neutrally as treatment or public health measures, these laws seem to have attracted little controversy. However, by recognizing the necessity of giving minors control over sensitive medical decisions, this exception, more than any of the others except possibly medical neglect, directly recognizes that the interests of parents and children may diverge and that parental involvement can interfere with the provision of essential medical care. By their very existence, these laws acknowledge the reality of family conflict and unsettle deeply-held notions of parents as the most appropriate decision-makers for their children.

Interestingly, these laws are generally concerned with activities that are historically associated more with adulthood than childhood. Thus, they seem to implicitly recognize that intergenerational conflicts may be triggered as children reach adolescence and begin to assert their autonomy by engaging in activities that signal their approaching adulthood and separation from their family of birth. By entrusting minors with the authority to manage these sensitive and significant aspects of their lives, these laws, although not directly premised on considerations of maturity or independence, nonetheless acknowledge the ability of minors to respond to the changing realities of their lives at moments in time when their parents may not be able to do so.

### III. Abortion and the Parental Involvement Requirement

This article began by looking at how the *Roe* Court characterized abortion as a medical decision to be made within the context of the patient-physician relationship. From there, it looked generally at medical consent rules for minors with a focus on the fact that parents do not have hegemonic control over the medical treatment of their children. Cutting deeply into the presumptions that underlie the parental consent rule, the law acknowledges the decision-making capacity of minors and the reality that parents do not always act in the best interests of their children.

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93. This exception is, of course, the primary concern of this article.
94. Most of these laws were enacted before the AIDS epidemic. For a discussion about the different approaches states are taking with respect to whether minors can self-consent to the testing for and treatment of HIV infection, see William Adams, "But Do You Have To Tell My Parents?" *The Dilemma for Minors Seeking HIV-Testing and Treatment*, 27 J. Marshall L. Rev. 493 (1994).
Based on these understandings, the critical question for consideration in this section is how adolescent abortion fits into this framework. Does the Court continue to characterize abortion as a medical decision, or does abortion take on other meanings? Does the Court locate its analysis of parental involvement laws in the context of medical consent rights for minors, or does it draw upon other understandings of teen capacity and parental authority? With these interrelated questions in mind, we now consider critical Supreme Court decisions that, when taken as a whole, reveal how the Court’s partial, and arguably distorted, construction of reality serves to divest young women of true reproductive choice.

A. Reasoning Within and Outside of the Medical Paradigm

Three years after its decision in Roe, the Court faced challenges to parental consent laws from Missouri and Massachusetts. Although the Court did not actually uphold the constitutionality of either statute, the decisions lay the foundation for its subsequent formulation of the parental “bypass” construct.

1. Danforth—Setting the Stage for the Selective Burdening of the Abortion Right

Following Roe, Missouri enacted a law for the “control and regulation of abortion... during all stages of pregnancy.” Among other limitations, this law included both a parental and a spousal consent requirement. Grounded in the reality of family relationships, the Danforth Court was quick to invalidate the spousal consent requirement. Recognizing that marital harmony cannot be achieved by legislative fiat, the Court made clear that in the event of a disagreement, the decision must belong to the pregnant woman, as she is the one who “physically bears the child and who is the more directly and immediately affected by the pregnancy.”


97. Danforth, 428 U.S. at 56.

98. Id. at 58.

99. Id. at 69.

100. Id. at 71. Although our focus is not on spousal involvement requirements, this aspect of the case is worth mentioning as it suggests an approach that the Court could ultimately have taken with respect to parental involvement laws.

The Court revisited the issue of mandated spousal involvement in its 1992 Casey decision. In considering whether women could be required to notify their husbands of their intended abortion, the Court demonstrated remarkable sensitivity to the “millions of women... who are victims of regular physical and psychological abuse at the hands of their husbands” by recognizing that such a requirement would put women at risk of further harm, and was “likely to prevent a significant number of women from obtaining an abortion.” Planned Parenthood v. Casey, 505 U.S. at 833, 893 (1992). Chiding those who are unmindful of the reality of domestic violence, the Court stated, “[w]e must not blind ourselves to the fact that the significant number of women who fear for their safety and the safety of their children are likely to be deterred from procuring an abortion as surely as if the Commonwealth had outlawed abortion in all cases.” Id. at 894. Unfortunately, this sensitivity to the dangers of
Turning next to the parental consent requirement, the Court began from the premise that, like adult women, minors have a constitutionally-protected right of choice, stating that "constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution and possess constitutional rights." Having included minors in the essential Roe right, the Court considered whether Missouri had the "constitutional authority" to make abortion access conditional upon parental permission.

Remaining true to Roe's characterization of abortion as a medical decision, the Court invalidated the consent requirement because it vested a third party, namely a minor's parents, with "an absolute, and possibly arbitrary, veto over the decision of the physician and his patient to terminate the patient's pregnancy." Reinforcing the locus of the decision, the Court emphasized that giving parents "absolute power to overrule a determination, made by the physician and his minor patient, to terminate the patient's pregnancy" would neither strengthen the family unit nor "enhance parental authority or control." Again, the point here is not to endorse the medical model of decision-making, but to highlight the flaws in the Court's reasoning as it fails to adhere to the medical paradigm that it constructed for itself.

By continuing to characterize abortion as a medical decision, and by again recognizing that family relationships are not enhanced by mandated disclosure, the Court appeared poised to extend its thinking about spousal consent requirements to the parent-child arena, and hold that regardless of age, the abortion decision belongs to the pregnant woman. However, this was not to be. Although invalidating Missouri's parental consent law, the Court made clear that it was not suggesting that all minors can give effective consent to an abortion, thus signaling that it might accept a less intrusive law that did not vest final decisional authority in parents.

In leaving the door open to a reformulated consent law, the Court, perhaps knowingly, lost sight of the medical paradigm it had extended to minors. This discontinuity is particularly troubling when one recognizes that at the time of the decision, teens in Missouri were permitted to self-consent to "medical services

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family violence vanished when the Court went on to consider and uphold the parental consent provision of the Pennsylvania law.

For an analysis of the inconsistencies in the Casey Court's approach to spousal and parental involvement requirements, see Leonard Bermen, Planned Parenthood v. Casey: Supreme Neglect for Unemancipated Minors' Abortion Rights, 37 HOW. L.J. 577 (1994).

101. Danforth, 428 U.S. at 74. With this statement, the Danforth Court simply assumes, without explicitly stating it, that minors have a constitutional right to abortion. As a result, the Court did not specifically discuss whether the right of teens is fundamental, although given the equation with adult rights, this would be a logical conclusion.

102. Id.
103. Id.
104. Id. at 75.
105. Id.
106. Id.
for pregnancy (excluding abortion), venereal disease and drug abuse.\textsuperscript{107} Though emphasized by the plaintiffs as the appropriate comparative framework, the Court did not seek to understand how it was that Missouri allowed minors to self-consent to other important medical decisions, including those relating to pregnancy, while denying this right to teens seeking to abort.\textsuperscript{108}

Had the Court faced the inherent lack of logic in the statutory scheme, it would have been forced to confront the question of whether Missouri, in subjecting the abortion decision to a parental consent requirement while granting decisional autonomy to young women carrying to term, was truly concerned with the welfare of teens and family integrity, as it had claimed to the Court.\textsuperscript{109} But the Court did not acknowledge this inconsistency, leaving unaddressed the possibility that Missouri was instead seeking to limit the abortion rights of minors. Ignoring its own characterization of abortion as a medical decision, and disregarding comparable decisional rights, it left the door open for parental involvement requirements even as it invalidated Missouri’s law.

2. The \textit{Bellotti I} Decision—Abortion as Different Because It Is Different

In considering the Massachusetts consent law, which, unlike the Missouri law, gave minors the right to seek judicial permission for an abortion if parental consent were denied, the Court concluded that until the meaning of the statute was clear, it could not determine whether the law unduly burdened the abortion right and/or created an “impermissible distinction between the consent procedures applicable to minors in the area of abortion, and the consent required in regard to other medical procedures.”\textsuperscript{110} Accordingly, it concluded that the district court should have abstained from hearing the matter until the meaning of the statute was clear, and it remanded the case so the statute could be authoritatively construed by the Massachusetts courts.\textsuperscript{111}

In remanding the case, the Court focused on the issue of burden, indicating

\begin{itemize}
  \item \textsuperscript{107} Id. at 73.
  \item \textsuperscript{108} Plaintiffs also pointed out that “no other Missouri statute specifically requires the additional consent of a minor’s parent for medical or surgical treatment . . .” \textit{Id.}
  \item \textsuperscript{109} Id. at 72-73.
  \item \textsuperscript{110} \textit{Bellotti I}, 428 U.S. 132, 148 (1976).
  \item \textsuperscript{111} The Court ordered the district court to certify questions to the Supreme Judicial Court concerning the meaning of the statute and the “procedure it imposes.” \textit{Id.} at 151. Among other considerations, the certified questions addressed the standard that both parents and judges were to use in deciding if an abortion was in a minor’s best interest, whether a judge could override the decision of a mature minor, and whether a minor could avoid her parents through application of the state’s mature minor rule. For the text of these questions, see \textit{Bellotti II}, 443 U.S. at 622, 630-31 n.9 (1979). For the Supreme Judicial Court’s response to the certified questions, see \textit{Baird v. Attorney General}, 360 N.E.2d 288 (Mass. 1977). For the district court’s invalidation of the statute based on this interpretation, see \textit{Baird v. Bellotti}, 450 F. Supp. 997 (D. Mass. 1978). Both of these decisions are discussed in J. Shoshanna Ehrlich, \textit{Journey Through the Courts: Minors, Abortion and the Quest for Reproductive Fairness}, 10 YALE J.L. & FEMINISM 1, 5-8 (1988).
\end{itemize}
that its primary concern was whether the statute vested parents with veto power over their daughter’s decision.\(^{12}\) Consistent with \textit{Danforth}, the Court again indicated that a law that involved parents, but stopped short of locating final decisional authority in them, might not impermissibly burden the abortion right of minors.\(^{13}\) In so doing, the Court ignored the fact that when compared to other sensitive medical decisions, this finding would selectively burden the abortion right, since, as discussed below, a newly-enacted state law granted minors considerable medical self-consent rights. As in \textit{Danforth}, the Court again failed to reason about burden within the medical paradigm it had constructed in \textit{Roe}.

Having discussed the unresolved constitutional issue as one of burden, the Court, almost as an afterthought, turned to the plaintiffs’ contention that the law was invalid because it distinguished between the consent required for abortion and the consent required for other medical procedures.\(^{14}\) The Court acknowledged that this issue had “come to the fore” because Massachusetts had enacted a statute greatly expanding the medical rights of minors while the case was pending.\(^{15}\) Whereas the primary exception to the parental consent requirement had been limited to emergency situations,\(^{16}\) now, under the new law, minors were granted considerable medical self-consent rights based either upon their status or the type of treatment being administered. Accordingly, minors who were married, widowed, divorced, the parent of a child, a member of the armed forces, or living independently were considered emancipated for the purposes of consenting to their own medical care, excepting abortion and sterilization.\(^{17}\) Additionally, and again excluding abortion and sterilization, minors who were or believed themselves to be pregnant, as well as those seeking diagnosis or treatment for diseases deemed dangerous to the public health, could now also consent to their own care.\(^{18}\) In keeping with the general rule that confidentiality runs to the consenting party, this law confirmed that the relationship between the consenting minor and the physician was confidential in nature.\(^{19}\)

\(^{12}\) \textit{Bellotti I}, 428 U.S. at 145.
\(^{13}\) \textit{Id.} at 145-48.
\(^{14}\) \textit{Id.} at 148.
\(^{16}\) Prior to the 1975 changes, section 12F exempted physicians from liability for failing to obtain parental consent “when delay in treatment will endanger the life, limb or mental well-being of the patient.” Other statutes also provided limited exceptions to the parental consent requirements. For example, minors over the age of 12 could consent to the diagnosis and treatment of drug dependency, excluding methadone maintenance therapy. \textit{See} MASS. GEN. LAWS ch. 112, § 12E. Massachusetts also recognizes the common law mature minor rule. \textit{Id.}
\(^{17}\) § 12F.
\(^{18}\) \textit{Id.} Although analytically insignificant, it should be noted that I have chosen to characterize pregnancy as a medical condition rather than as a status, because unlike the other emancipatory statuses, it is often both an unintended and temporary event.
\(^{19}\) \textit{Id.} However, the statute allows parental disclosure when the medical condition is so serious that it poses a threat to the “life or limb” of the minor. \textit{Id.} In such cases, the statute requires
Thus, as in *Danforth*, the Court again faced a statutory scheme that differentiated between abortion and other medical procedures. Most notably, as in Missouri, a Massachusetts minor could make the decision to become a mother on her own, and then, while pregnant and thereafter, self-consent to her own medical care, whereas a minor seeking to avoid motherhood could not effectuate this decision without obtaining parental or judicial approval.\(^{120}\) Despite this starkly-contrasting treatment of minors based on their intended pregnancy outcome, the Court claimed, as with burden, that it could not consider the issue of "impermissible distinction" until the statute had been construed by the state courts.\(^{121}\) However, the Court was not facing subtle distinctions that demanded careful inquiry and exposition—it was beyond question that in allowing motherhood, but not its rejection, to be a fully autonomous choice, Massachusetts was differentiating between minors intending to abort and those intending to carry to term. Thus, even in the absence of illuminating detail, had it wished to, the Court certainly could have invalidated the statute for impermissibly discriminating against a fundamental right.

Implicit in the Court’s decision to remand the case is its acceptance of abortion as a stand-alone procedure that can be singled out for more burdensome requirements than other sensitive medical choices. That this is the silent, but powerful, message of this case is made clear by the Court’s explanation of why it could not act without the insight of the state court: "[A]s we hold today in *Danforth* not all distinction between abortion and other procedures is forbidden. The constitutionality of such distinction will depend on its degree and the justification for it."\(^{122}\) Thus, without discussion, the differential treatment itself is no longer the salient constitutional issue—accepted by the Court as a given, the question has been subtly transformed to one of degree and justification.

Perhaps, however, the Court was silent because there is no explanation that would bear constitutional scrutiny. There is simply no rational way to distinguish between the decisional capacity of teens seeking to abort and those seeking to carry to term or make other permitted medical decisions. Neither is there a rational way to explain how a teen could simultaneously be too immature to choose to terminate a pregnancy but mature enough to choose motherhood with all of its attendant decisional responsibilities,\(^{123}\) thus suggesting that the only sa-

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120. A fuller discussion on of the irrationality of this distinction can be found in Section IV.
122. *Id.* at 148. The Court’s reliance on *Danforth* to justify distinguishing between consent requirements for abortion and other procedures is misplaced. In *Danforth*, the Court, in upholding record-keeping requirements for abortion that were not imposed on other medical procedures, made clear this was acceptable only because these requirements did not have a "legally significant impact or consequence on the abortion decision or on the physician-patient relationship." Planned Parenthood v. *Danforth*, 428 U.S. 52, 81 (1976). Here, however, the distinction in consent requirements goes to the heart of both the abortion decision, as minors are not permitted to make this decision on their own, and the physician-patient relationship, as the doctor cannot act based on the consent of his/her patient.
123. Unlike the United States Supreme Court, the Supreme Court of California, in considering
lient difference is the abortion itself. Although not reaching the merits, in a disarmingly circular manner, the decision conveys a powerful message that paves the way for the Court's subsequent acceptance of parental consent laws: abortion is different because it is different and can therefore be treated differently.

**B. Bellotti II—Constitutionalizing the Differential Treatment of Abortion**

Following remand, the Court again considered the constitutionality of the Massachusetts parental consent law. As construed by the Massachusetts Supreme Judicial Court (SJC), the statute required virtually all minors, regardless of maturity or circumstances, to seek parental consent. Only if such consent was denied could a minor seek court authorization for the abortion. Significantly, the SJC determined that the recently-enacted state statute (discussed above) giving minors the right to consent to their own health care based upon status or the kind of treatment being sought did not apply to abortion, and that the state's common law "mature-minor" rule was no longer applicable to abortion, having been legislatively superseded by Massachusetts General Laws, chapter 112, section 12F. Had it ever been unclear, it was now beyond doubt—Massachusetts minors seeking to terminate a pregnancy did not possess the same medical consent rights as minors seeking to make other sensitive medical decisions, including those relating to pregnancy.

In evaluating the statute, the Court blithely obscured this reality. Maintaining that in enacting this law, Massachusetts was simply seeking "to reconcile the constitutional right of a woman, in consultation with her physician, to choose to terminate her pregnancy... with the special interest of the State in encouraging an unmarried pregnant minor to seek the advice of her parents in making the important decision whether or not to bear a child," the Court failed to acknowl-

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California's parental consent law, grasped the inherent irrationality of such a statutory scheme. Striking down the law, the Court stated,

> [defendants’ contention that the restrictions imposed by that statute upon a minor’s constitutionally protected right of privacy are necessary to protect the physical and emotional health of a pregnant minor is undermined by the circumstance that California law authorizes a minor, without parental consent, to obtain medical care and make other important decisions in analogous contexts that pose at least equal or greater risks to the physical, emotion, and psychological health of a minor and her child as those posed by the decision to terminate [a] pregnancy.

American Acad. Pediatrics v. Lungren, 940 P.2d 797, 826 (1997). This is an extremely thorough and well-reasoned decision that should be read by anyone interested in this subject.

124. *Bellotti II*, 443 U.S. 622, 631 (1979). The basic exception to the consent requirement is for minors who are married, divorced or widowed. *Id.*

125. *Id.*

126. *Id.* at 647.

127. *Id.* at 639 (internal citations omitted). This benign characterization obscures the fact that this law was sponsored by anti-choice legislators as part of an omnibus anti-abortion legislative package to "provide protection for the life of the unborn child." Otile McManus, *May I, Judge?* BOSTON GLOBE MAG., June 15, 1986, at 14.

Most major professional, social service, and medical groups who work directly with teens are opposed to laws that mandate parental involvement. For example, in 1992, the Council
edge that this state interest is actualized through a consent requirement only when the decision is not to bear a child. Focused on the “peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in childrearing,” the Court did not consider whether minors intending to abort, like minors intending to carry to term, should be allowed to make their own reproductive choices.

Although not straying from this dominant vision of minors as decisionally impaired, the Court did recognize that many parents hold “strong views on the subject of abortion,” and rather than providing their daughter with “mature advice and emotional support,” they might seek to prevent her from going to court or obtaining an abortion, effectively exercising ultimate control over her decision. Attuned to the devastating impact of compelled maternity, the Court, relying on Danforth, reiterated that the Constitution does not support giving a third party ultimate control over “the decision of the physician and his patient to terminate the patient’s pregnancy, regardless of the reason for withholding the consent.” It thus invalidated the statute on due process grounds for “imposing an undue burden upon the exercise by minors of the right to seek an abortion.”

Had the Court stopped with striking down the Massachusetts statute, its failure to reason within the broader context of medical decision-making rights would have been understandable, especially since the blatant discrimination between minors intending to abort and those intending to carry to term would have been eliminated. However, the Court did not stop here, but instead went on to formulate what, in its view, would constitute a constitutionally-acceptable parental consent law. As set out in the decision, if a state wishes to require a minor to obtain parental permission before having an abortion, “it also must provide an alternative procedure whereby authorization for the abortion can be obtained.”
Additionally, to avoid the risk of a parental veto, a minor must be able to seek such permission without parental knowledge or involvement. In short, a minor must be allowed to bypass her parents and have direct, unmediated access to court.

At first glance, the Court appears to have struck a reasonable compromise with this “model” consent law. The construction seems to both respect the reproductive rights of teens while simultaneously preserving the ability of states to protect a historically-vulnerable population. Reflecting the transitional nature of the teenage years, young women are regarded both as autonomous, rights-bearing individuals with unmediated claims to legal self-hood and as subordinate members of a parent-centered family unit without claims to a fully-autonomous self. However, despite its surface appeal, the reasonableness of this compromise is immediately called into doubt by the Court’s selective construction of adolescent reality which ignores both the emerging body of social science literature on the decision-making capacity of teens and the existence of their medical decision-making rights.

Committed to its vision of minors as lacking the “ability to make fully-informed choices that take account of both immediate and long-range consequences,” the Court presumed incapacity without considering any of the research suggesting that this assumption is profoundly flawed. Rooted in a historically static vision of minors, the Court felt no obligation to reexamine its views in light of more contemporary understandings. Also dissociating itself from the realm of medical decision-making rights, the Court ignored the fact that in Massachusetts, as in Missouri, not all minors were regarded as similarly impaired. Disturbingly, the Court failed to consider how it was that a state could entrust minors to make some but not other crucial medical decisions, which effectively declared that teens somehow both lack the ability to make an informed decision to avoid motherhood, and yet possess the ability to make an informed decision.
choice to become a mother. As presented below in Section V, Discussion, perhaps the Court avoided these issues, because when read carefully, the decision may say less regarding the Court's concerns about young women, and more about its shifting thinking about abortion.

**IV. RESEARCH FINDINGS**

As discussed above, the present study was prompted by dissatisfaction with the Court's formalistic and narrowly-constructed understanding of adolescent reality in the abortion context. Of particular concern was the Court's rigid adherence to assumptions about adolescent decisional incapacity and the benefits of parental involvement, as well as its failure to consider the rights that minors have with respect to other sensitive medical decisions. Accordingly, the primary goal of the study was to learn more about the actual experience of young women in a state with a parental involvement law who chose not to confide in their parents about their pregnancy and abortion decisions. To accomplish this, the study consisted of two distinct components. First, to learn about the experience of a representative sample of minors, data from counseling and referral interviews conducted by the Planned Parenthood League of Massachusetts (PPLM) over a twelve-month period was coded and analyzed (quantitative data). Second, to deepen the understanding of this experience, in-depth interviews were conducted with twenty-six minors who had received judicial authorization for an abortion (qualitative data). This inquiry focused on the following themes:

- reasons minors have for choosing abortion over childbirth;
- reasons that minors have for not involving their parents in the abortion decision;
- the involvement of adults other than parents; and
- the nature of the court experience.

Before turning to the study itself, it will be helpful to review the history and requirements of the Massachusetts parental consent law as well as the PPLM counseling process. As originally enacted in 1974, the law required a minor to seek the consent of both parents before having an abortion. Only if consent

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138. See supra text accompanying notes 106-36.


140. Because the PPLM Client Data Form is completed before the minors go to court, this topic was only addressed in the in-depth interviews.

141. For a detailed history of this law and the litigation challenging it, see Ehrlich, supra note 111.
was denied could she seek judicial authorization for the procedure. After being invalidated in Bellotti II, the statute was revised to conform to the guidelines set out in the decision. Retaining the two-parent (as distinct from a one-parent) consent requirement, the revised statute allowed minors to go directly to court without having first to seek the consent of their parents. Subsequently, in response to a challenge to the revised statute on state constitutional grounds, the SJC, although upholding the law, found that it was unduly burdensome to require minors to obtain the consent of both parents and, thus, invalidated the two-parent consent requirement in favor of a one-parent rule. Accordingly, as it now stands, all minors in Massachusetts (except for those who are married, widowed, or divorced) must seek the consent of one parent or the court before obtaining an abortion within the Commonwealth.

Virtually all of the minors who seek judicial consent for an abortion in Massachusetts go through PPLM’s counseling and referral process. When a pregnant minor calls PPLM, a trained counselor explores her options with her, including motherhood, adoption, and abortion. If she wishes to terminate the pregnancy, the counselor explains that the law requires her either to obtain the consent of a parent or the court. If, after exploring the possibility of parental involvement, the minor’s decision is to seek court authorization, the counselor conducts a detailed intake interview and records the minor’s responses on a form entitled “Client Data Form for Unmarried Minors.” The counselor then finds an available attorney from a panel of attorneys who have been trained to provide representation in judicial bypass hearings.

142. Id.
143. Id.
144. Id.
146. Most abortion providers in Massachusetts refer minors to PPLM for counseling and a legal referral. However, a few providers maintain their own list of lawyers. PLANNED PARENTHOOD LEAGUE OF MASSACHUSETTS, MEDICAL SERVICES: COUNSELING AND REFERRAL SERVICES, at www.pplm.org/clinic/pplm2.html (last visited May 4, 2003).
147. PLANNED PARENTHOOD LEAGUE OF MASSACHUSETTS, COUNSELING PROTOCOL: MINORS AND ABORTION (updated 2003); PLANNED PARENTHOOD LEAGUE OF MASSACHUSETTS, MINORS AND CONSENT.
148. See PLANNED PARENTHOOD LEAGUE OF MASSACHUSETTS, COUNSELING PROTOCOL, supra note 147.
149. See id. For the purpose of the study, questions were added to the form regarding race/ethnicity and religion. Prompts were also added after the form’s open-ended question about whom the minor had spoken with about her decision in order to obtain complete and accurate information about whom she had involved and whether they were an adult. The cooperation of PPLM in this regard is greatly appreciated.
150. See PLANNED PARENTHOOD LEAGUE OF MASSACHUSETTS, COUNSELING PROTOCOL, supra note 147.
A. Methodology and Design\textsuperscript{151}

1. Quantitative Data: Analysis of PPLM Counseling and Referral Interviews

To obtain a picture of the abortion decision-making process from a representative sample of minors, data from the 490 counseling and referral interviews conducted by PPLM from May 1998 to April 1999 was coded and analyzed. These interviews capture about 90\% of the teens who sought judicial consent for an abortion without parental involvement in Massachusetts during this twelve-month period.\textsuperscript{152}

Multiple measures were set in place to assure protection of the minors’ privacy and anonymity. The research staff had no contact with the minors, and all identifying information (including names) was redacted from the forms prior to data entry. In essence, the researchers only had access to non-identifying information already collected as part of PPLM’s process for counseling and referring minors seeking judicial bypass.

2. Qualitative Data: In-Depth Interviews with Minors

In-depth interviews were conducted with twenty-six minors who had received judicial authorization for an abortion without parental involvement based upon maturity. The interviews took place between June 1998 and November 1999, and most were conducted within one month of the minor’s court hearing and abortion procedure. Attorneys with significant experience representing minors in judicial bypass hearings recruited minors for the study in accordance with selection guidelines and protocol developed by the researchers.

a. The Recruitment of Minors

Selection guidelines instructed the attorneys to only invite those minors to participate who had been found mature by the court in the judicial bypass hear-

\textsuperscript{151} Approval for this study, which required a rigorous review of all measures intended to protect the confidentiality and well-being of the involved minors, was obtained from the Human Subjects Committee of the Institutional Review Board at the University of Massachusetts, Boston.

\textsuperscript{152} The majority of the minors who went to court during this time period, but were not included in this study, were from the western part of the state, as legal referrals in that part of the state were obtained from the court rather than from PPLM. As best as can be determined, the remaining minors would have received a legal referral directly from the abortion provider they were using. \textit{See supra} note 146.

It should be noted that the data does not capture the experience of Massachusetts minors who choose to go out of state for an abortion. These minors constitute another subset of teens who do not involve their parents in their abortion decisions. According to a 1986 study, about one-third of Massachusetts minors seeking to terminate a pregnancy go out of state for their abortion. \textit{See} Virginia G. Cartoof & Lorraine V. Klerman, \textit{Parental Consent For Abortion: Impact of the Massachusetts Law}, 76 AM. J. PUB. HEALTH 397 (1986).
ing and for whom they determined that participation would not be contrary to her best interest. If the attorney sensed that participation, or even the extension of an invitation to participate, might compound any distress the minor was experiencing, she was not invited to participate.

To ensure that a minor would not mistakenly think she had to participate in the study as a condition of representation, the protocol specified that the attorney was not to mention the study until after the judicial bypass hearing was concluded. The attorney was also to explain fully the nature of the study, including the guarantee of confidentiality. If the minor agreed to be interviewed, the attorney was instructed to obtain careful instructions on how she could be contacted without jeopardizing confidentiality. These instructions were then given to the interviewer.

A total of sixty-five minors were referred to the study, and interviews were successfully completed with twenty-six of them. Interviews did not take place with the other referred minors either because communication broke down at some early stage in the process or because the minor failed to appear for the interview at the designated time and place. If communication broke down, no further contact was attempted due to considerations of safety and confidentiality and a concern that minors not feel pressured into being interviewed. Likewise, if a minor did not appear for the interview at the scheduled time and place, she was not contacted, even though she might simply have forgotten about the arrangement or been otherwise detained.

b. The Interview Process

Once a minor agreed to be interviewed, arrangements were made to meet her in a place where she would feel comfortable, such as a public library or a food court in a mall. Interviews were audiotaped, and the minor was told that she could stop the interview and/or turn the tape recorder off at any point if she felt uncomfortable or needed a break. To protect her confidentiality, the minor was asked to select a pseudonym. She was then given a consent form to read and sign using the pseudonym she selected.

The interviews were conducted according to a semi-structured interview guide. While the sequence and phrasing of questions was kept as uniform as possible, questions were adapted to flow naturally from the information provided by the minor being interviewed—including her needs and concerns as they were expressed. In addition to background information, minors were asked about the following, in this order: their interests and plans for the future; with whom they lived; their relationship with their parents; communications with their parents about sexuality and birth control; how they found out they were pregnant; their response to being pregnant; how they made the decision to terminate the preg-

153. Given that virtually all minors in Massachusetts are determined to be mature, this is not a very selective criterion by itself.
nancy and the reasons for termination; whom they involved in the decision and whether they discussed involving their parents; why they chose not to involve their parents; and the nature of their experience in court.

Interviews lasted from about twenty minutes to two hours, with the average interview lasting about an hour. Interview transcripts (after being reviewed for accuracy) were coded and studied based on an analytic schema generated by the major themes of importance to this study. 154

B. Data Limitations

1. Quantitative Data

The PPLM counseling and referral interview data have several potential reliability problems. First, the study did not gather data directly from minors, but rather coded data entered by PPLM counseling staff on their own forms. Because the interviews were not scripted or conducted by the researchers, there may have been some variation in exactly how each question was asked. It is also not always clear whether the recorded responses were spontaneous or the result of follow-up questions from the counselor. Similarly, it is not always clear whether the responses were verbatim or a summary or paraphrase of what the minor actually said.

Second, the Client Data forms were not designed for a research purpose, but rather to obtain the information actually needed to assist minors through the court process. As a result, counselors did not always consistently record the precise number of persons with whom minors spoke and their respective ages. However, this problem is addressed in the analysis through a conservative counting of the number of people with whom the minor spoke, and all doubts were resolved in favor of exclusion. Additionally, if an age was not provided for someone who could be underage (such as a sister or a cousin), they were not included as an adult contact, even though the individual may well have been over 18. 155

A third problem is that the number of adults talked to might be overstated by the fact that an affirmative response to the question “Is a Social Worker or Counselor helping you?” was counted in creating the category “Talked to an adult,” even if subsequently, when asked “Whom did you talk to about your de-

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154. The important themes, as will be discussed further in this article, include: reasons for pregnancy termination, current life circumstances, future plans, family structure, relationship with parents, reasons for non-disclosure of abortion plans to parents, communication with others about the abortion, and the nature of the court experience. Codes were entered into the software program *Ethnograph* v5.0.


155. Subject to the exception for aunts, discussed below.
cision?" the minor did not specifically mention a counselor or social worker. The wording of the former question was slightly different from the latter in that the former asks generally about help with the pregnancy rather than focusing more specifically on the abortion decision. However, the risk that a minor would not tell a professional who was helping her with her pregnancy about her abortion decision was determined to be minimal. A related consideration is that it could not be determined whether the medical personnel whom minors reported talking to about their abortion decision were affiliated with a facility that performs abortions. (The implications of this are discussed in Section VI.B, Policy Recommendations.)

Finally, and perhaps most significantly, because teens are often reluctant to disclose parental abuse, the results may under-represent the number of minors who did not involve their parents because they feared an abusive response. These minors may have simply failed to mention this as a reason, or they may have embedded it in another response—such as that a parent would be upset. The likelihood of underreporting means that the percentage of minors who did not tell a parent because they feared a serious adverse response may in fact be considerably higher than is reported here.

2. Qualitative Data

Two limitations in the “in-depth interview” study component are the relatively small number of cases (26) and the potential bias associated with the way minors were recruited. Twenty-six cases do not provide the explanatory value of a larger set of data. With respect to the recruitment, it was important that the study not compound the difficulties that minors often experience in going through the bypass process. Accordingly, only minors who appeared to have made it through the court process relatively “unscathed” were invited to participate in the study. This means that the sample may be biased toward minors who were the least troubled by the court process, which in turn may mean that minors who are particularly mature and/or self-assured are over-represented.

A related limitation is that interviews were only completed with 26 of the 65 referred minors. As there was no communication with minors who failed to follow through at any point in the process, there is no way to know why they did not participate in the study. Some may simply have changed their minds. Others may have been living in abusive situations and decided it was too risky. Another possibility is that the minors who followed through were less burdened by the experience or were particularly mature, and thus were more willing and able to participate.

These considerations raise the possibility that the pool is biased in favor of minors who are particularly mature. It also raises the serious possibility that mi-

156. See Hodgson v. Minnesota, 497 U.S. 417, 440 nn.25-26 (citing the findings of the district court, 648 F. Supp. 756, 768–69 (D. Minn. 1986)).
nors who went to court because of fear of parental abuse are also underrepresented in the interview sample. It should be noted, however, that these limitations did not translate into a pool of minors with stable and secure lives. As will become evident, the sample is quite diverse, consisting of minors of a wide range of life experiences, including both profound trauma and loss.

C. Research Findings

In this section, the findings from both components of the study are presented. The analysis of the PPLM data gives us a broad, comprehensive picture of minors who seek judicial bypass and of their decision-making process. The in-depth interviews then provide a unique window into the depth and the meaning of the experiences of these young women within the context of their own life circumstances, as distinct from a court-constructed reality.

1. Detailed Findings from the PPLM Counseling Interviews

a. Socio-demographic Profile

The age of the minors ranged from 13 to 17, with a mean age of 16.3. More specifically, slightly more than half (52%) were 17; 33.5% were 16; and 11% were 15. Only 3.5% of the minors were under the age of 15—three-quarters of these minors were age 14, and the rest were 13. In terms of the racial/ethnic breakdown of the sample, 35.8% of the minors were white; 30.3% were black (including African American, Haitian, and Cape Verdean); 30.3% were Hispanic/Latina; and 3.6% were Asian or "other." As for religion, slightly more than half of the minors, 51.9%, were Catholic, 18.2% were Christian/Protestant, 3.5% were Buddhist, 2.5% were Pentecostal, and 1.3% were Jewish. About 20% identified themselves as "atheist," "agnostic," or as having no religion, and about 4% listed a variety of other religions, including

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157. Data regarding race/ethnicity is missing for about 14% of the minors. The reason for this is not clear. It could be that the minors were not asked about this, did not want to respond, or simply that the interviewer failed to record the response. Also, the PPLM form did not permit the distinction between race and ethnicity for Hispanics, blacks, and whites, so these categories are mutually exclusive.

These findings indicate that black and Hispanic/Latina teens go to court at rates that are significantly higher than their percentage in the population as a whole, which for each group is about 6%. Without further study, the potential significance of this data is impossible to determine. It may say something about pregnancy rates; on the other hand, it may say something about a greater disinclination to involve parents. Another possibility is that white teens may cross state borders to obtain abortions at higher rates than teens of color. In short, these findings on race simply give as a picture of who goes to court—their meaning awaits further study.


159. The different Protestant denominations mentioned were collapsed into one category.
lam and Jehovah's Witness. 160

With respect to their living arrangements, about three-quarters of the minors were living with one or both parents. 161 More specifically, 32.9% of the minors lived with both parents, 38.5% lived with their mother, and 4% lived with their father. Another 12.3% of the minors were living with a relative, and 6.5% were living on their own (i.e., with a non-relative adult, such as a boyfriend, partner, fiancé, or friend). Lastly, 6% of the sample was in a living arrangement, such as a foster home, a group home, or a shelter, under the authority of the state's Department of Social Services (DSS).

On the whole, the minors in this study were in school (84.6%) and described themselves as good students. 162 Most of the minors who were in school had plans for the future that included college or a career that required college-level education; about 10% planned to attend vocational school or to pursue a career that required vocational training after high school, a small number planned to work or enter the military, and a few were not sure about their plans. The minors who were not in school at the time of the study had a wide range of reasons for having left school, including family problems, pregnancy or motherhood, and school-related difficulties. Over half of the minors had jobs.

b. Why Minors Did Not Tell Their Parents

i. Reasons for Non-disclosure

As part of the PPLM counseling process, minors are asked if they have told a parent about their pregnancy. If they have not, they are asked about the reasons for non-disclosure. Thirty-four of the minors in the sample had spoken with a parent and had been denied consent for an abortion. The most common reason for denial was parental opposition to abortion.

The minors had a wide range of reasons explaining why they felt they could not tell a parent about the pregnancy. 163 A significant number (27.4%) stated that their parents would be extremely upset or upset, while a somewhat smaller percentage (22.4%) stated that they feared a severe adverse reaction, such as being kicked out of the house, physical harm, or other kinds of abuse.

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160. Data regarding religious affiliation data is missing for about 20% of the sample. As with race, the reason for this is not clear.

161. Data regarding living arrangements is missing for ten minors.

162. School achievement level was indicated by a response to an open-ended question, and answers were collapsed into general categories. A little over 21% responded "As and Bs, very good, honor roll" to this question. Almost 45% responded "Bs" or "Good," and about 20% said "Cs," "Okay," "Fair," or "Average," and about 13% had an "other" response.

163. The nature of the data-gathering did not allow for an exploration of the meaning behind the reasons. The qualitative analysis below of the in-depth interviews offers a greater understanding of the meaning behind the minors' reasoning.

In the coding and analysis of responses, no distinction was made between spontaneous or probed responses; likewise, no distinction was made or differential weight assigned based on whether the response was the first reason given, the second, and so forth.
However, the percentage of minors who did not tell because they feared a severe adverse parental reaction is greater if the minors who were not living with a parent are excluded. Looking only at minors who were living with one or both parents: 30% living with both parents feared a severe adverse reason, 28.7% of those living with their mother gave this as a reason, and 38.9% living with their father gave this as a reason. Also, as mentioned in Section IV.B.2 (Data Limitations), given the reluctance of teens to divulge parental abuse, these figures may underestimate the number of minors who did not tell a parent because they feared an abusive response.

An important thematic consideration for 22.2% of the minors was the ideological stance of a parent(s) with respect to abortion, pregnancy, and/or child-rearing. Some feared they would be pressured to have the baby or to get married. Others specifically connected their parents’ religious beliefs to their views on abortion. They included comments about Catholic beliefs or other strict religious tenets regarding abortion that would prevent parents from consenting. Other minors cited more general cultural or child-rearing beliefs, such as that her parents were very strict or had very traditional family values.

An equally important reason for non-disclosure was that minors did not want to damage the relationship they had with their parents. Minors were concerned that their parents would lose trust in them, be profoundly disappointed because of high expectations, or no longer respect them. For others, a consideration was that the family was already experiencing difficulties. Minors mentioned concerns such as a parent suffering from a serious mental or physical illness, parents in the middle of a divorce, or a parent in prison. A fairly small number of minors (11.2%) said that preexisting problematic family relationships, such as poor communication with their parents, especially about sex, or uninvolved, rigid or very negative parents, played a role in their decision not to disclose.

Almost all of the minors had multiple reasons for not disclosing their pregnancies and abortion plans to their parents. For example, about 10% who said they could not tell because of a concern for their parents due to family problems also anticipated a severe adverse reaction, such as physical harm, or ejection from the home. Fourteen percent of those who could not tell because of problematic family dynamics (such as poor communication or distant or uninvolved parents) similarly anticipated a severe adverse reaction, as did about 12% of those who said they would be pressured to keep the baby or marry, or had parents who were anti-choice. Of those minors who said their “parents would be extremely upset/upset,” 16.5% also gave as a reason that they feared a severe adverse reaction; about 21% also gave a reason related to anticipated harm to the parent-minor relationship; 13% indicated that they anticipated parental pressure

164. Other far less significant reasons included that the minor already had a child, that she feared harm or a negative reaction from her boyfriend, that she wanted to be independent, and that her parents would disclose the pregnancy and/or abortion to others.
to either get married or have the baby; and 15% said there were problematic family dynamics or other family concerns. These interconnected reasons suggest the complexity of the lives of these young women. As developed in the following section, the in-depth interviews give us a direct window into their lives, enabling us to see the reality giving rise to this data.

ii. Reasons Not to Tell: By Religion, Age, Living Arrangement, and Race

Religion and age were not significantly associated with the reasons minors gave for non-disclosure. With whom the minor lived was significant for the following reasons: anticipated severe adverse parental response, anticipated harm to the parent-daughter relationship, and a preexisting problematic family relationship. As discussed above, minors who were living with their parents were much more likely to state that they could not tell their parents because they anticipated a "severe adverse reaction": 30% of those living with both parents, 28.7% living with their mother, and 38.9% living with their father gave this as a reason, compared to only 14.6% of those living with other relatives and 12.5% of those living on their own. On the other hand, those living away from their parents were much more likely to give a reason associated with a preexisting problematic family relationship: 27.3% of those living in a foster home, group home, or DSS facility, 21.9% of those living on their own, and 12.5% of those living with relatives gave this reason, compared to 5.2% of those living either with both their parents or with one of their parents. Additionally, minors living away from their parents were less likely not to tell their parents because they felt it would harm a preexisting good relationship: 4.2% of those living with relatives, 6.3% of those living on their own, and 18.2% living in foster care gave this reason, compared to 27.5% who lived with both parents and 25.1% who lived with their mother. The only exception was the 11.1% who were only living with their father and also less likely to give this reason.

c. The Decision to Have an Abortion

The PPLM Client Data Form includes a series of questions on the abortion decision-making process, including both the reason(s) for the decision and whom the minor had involved in the process. The following sections contain the findings for these two areas of inquiry.

165. All differences noted in the following pages were statistically significant at the 95% confidence level or greater.

166. This section of the form also instructs the counselor to inform the minor that "the judge will often ask how she came to her decision, whether she considered all of her options, and who else has been involved in the decision-making process."
i. Choosing an Abortion: Major Themes

Responses to the question regarding why the minor had decided to terminate her pregnancy clustered along a number of major themes, including issues related to: not being ready for motherhood; future plans; life circumstances; concerns about the children; and issues related to pregnancy, abortion, or adoption. The *not ready* category includes responses such as “not mature enough,” “not emotionally ready,” “irresponsible,” or “too young.” Responses were included in the *future plans* category when the minor said she “wants to finish education,” or “wants to go to college,” or that having a child would “interfere with future plans,” or “interfere with career plans/goals.” The *life circumstances* category includes responses such as “life is too chaotic,” “family problems/stress,” “already has a child/children,” “health problems,” or “wouldn’t have a place to live.” *Child-related reasons* include “couldn’t take care of another child,” “couldn’t give a child a good home,” “child wouldn’t have a father,” or “not financially able to support a child.” Finally, *issues related to pregnancy, abortion, or adoption* includes statements such as “couldn’t raise a child nor give it up for adoption,” “pregnancy a mistake/accident,” “abortion the best solution,” and “couldn’t go through with adoption.”

More than two-thirds of the minors gave more than one reason for choosing to have an abortion; more specifically, about 50% gave two reasons, and 21% gave three reasons for their decision. For example, 38.4% of the minors who gave responses that reflected the theme of not ready also gave responses that included a concern about their future plans; about 18% of these minors also gave reasons related to life circumstances; 21.8% gave responses that showed child-related concerns; and 5% gave a response related to pregnancy, adoption, or abortion. Similarly, slightly more than half of the minors who gave a response showing a concern about her future plans also gave a response indicating that she was not ready for motherhood; 24.4% who gave a future plans response also gave a child-related response; and 22% of those who mentioned future plans also gave a life circumstances response.

**Effect of Race/Ethnicity, Religion, and Age:** In looking at the reasons minors gave for choosing an abortion, there were no significant differences based upon race/ethnicity or religion. Similarly, there were no significant differences in reasons given based upon the age of the minors, with one, not surprising, exception: younger minors were more likely to give a reason associated with the theme of being “not ready” or “too young” for motherhood. Of the minors between the ages of 13- and 14-year-olds, 76.5% of them gave a reason associated with being too young or not being ready, compared with 61.5% of the 15-to

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167. No minor gave as a reason that she was being forced to have the abortion. The Client Data Form, however, has a separate question asking whether the minor is feeling forced by anyone to have an abortion. Less than 1% of the minors responded to this question in the affirmative. If a minor gives an affirmative response, PPLM protocol requires that the interview stop so that this issue can be explored in-depth and addressed appropriately.
16-year-olds, and 52.2% of the 17-year-olds.

ii. Whom Minors Talked to in Making Their Abortion Decisions

Virtually all of the minors in the sample (97.6%) said they talked to someone in the course of making the abortion decision. Of the minors who talked to someone, 82% spoke to two or more people, with a mean of 3.14 consulted. Of those talking to someone, 89.2% talked to an adult (see following section), 80.5% talked to a boyfriend, and 40.8% talked to at least one friend.

Adult Involvement: As indicated above, 89.2% of the minors in the sample talked to at least one adult. This means that 91.4% of the teens who spoke with someone spoke with at least one adult, with a mean of 2.56 adults consulted.

Professionals were a very important category of adult contact, with 58% of the total sample, or 65.44% of those involving an adult, speaking with a professional. Of those who involved a professional, 60.83% spoke with a doctor, a nurse, or a health worker in a clinic; 28.3% of the minors talked to a school professional; 52% said a social worker or counselor was helping them; and an additional 25.87% spoke with another type of professional such as a clergy person or community worker. Adult relatives were also an important category of adult contact, with 25% of those involving an adult speaking with an adult relative. Not surprisingly, minors turned to female relatives with far more frequency than male relatives, and of those, sisters were the most important.

A majority of minors (63.4% of those who spoke with an adult) spoke with a boyfriend who was age 18 or over and 16.2% spoke with a friend. An additional 6.9% of the minors spoke with some other type of adult, such as a boss, foster parent, or the parent(s) of her boyfriend. Of these “other” adults, the parent(s) of a boyfriend was by far the most frequent. Lastly, 0.03% of the minors in the sample who spoke with an adult specifically mentioned speaking with a parent.

An important issue in the study was whether minors who seek judicial authorization have trusted adults to whom they can turn for support. The extent of adult involvement exclusive of parents, adult friends, and boyfriends was also

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168. As part of the PPLM interview process, minors are asked in several ways about whom they talked to about their decision-making. They are specifically asked if a social worker or counselor is helping them with their pregnancy and if their partner is involved. The client data form also includes an open-ended question about the people with whom the minor talked, followed by a series of probes to be sure that all individuals are accurately identified.

169. Keep in mind that 52% of the sample were 17-year-olds; thus, the age difference between a teen and her “adult” boyfriend could have been as little as a few months. Also, 70% of the minors who involved a boyfriend also spoke with an adult relative or a professional.

170. When asked with whom they had spoken, only sixteen minors mentioned their parents. However, in response to a separate question that specifically asked about parental involvement, thirty-four minors responded that they had told their parents about their pregnancy, and that all denied consent for an abortion. It appears that minors differed in their sense about whether, having mentioned their parents in response to the specific question, they should reference them again when asked generally about who was involved in the decision.
determined. Parents were excluded because those who had been informed did not support their daughters' decisions; friends and boyfriends were also excluded because, even where such a person is 18-years-old or over, these are likely to be peer relationships.\textsuperscript{171} With these exclusions, 70\% of the minors in the total sample, or 78\% of the minors who spoke with an adult, spoke either to a professional, a relative, or a "parental figure" (either a foster parent or the parent of a boyfriend). More specifically, of the minors who spoke with an alternative adult, 81.5\% spoke with a professional, 35\% of spoke with an adult relative, and 6.8\% spoke with a "parental figure." Also, note that these categories are not exclusive, and many of the minors spoke with more than one person within or across categories.

**Factors Associated with Talking to an Adult Relative or Professional:**
 Certain factors emerged as being associated with whether a minor talked to an adult who was either a relative or a professional.\textsuperscript{172} The first is age. Not surprisingly, younger minors generally were more likely to talk to an adult in one or both of these categories than were older minors: 88.2\% of 13- to 14-year-olds talked to such an adult, compared to 76.3\% of 15- to 16-year-olds, and 66.5\% of 17-year-olds. This finding was statistically significant. However, there were no statistically-significant differences by age in those who talked to an adult relative, but there were differences by age in those who talked to a professional.

White minors were the least likely to involve an adult relative or professional: 64.7\% of white minors talked to an adult in one or both of these categories, compared to 76.4\% of Hispanic/Latina minors, 80.3\% of black minors, and 86.7\% of Asian and other minors. Again, this finding was statistically significant. Older minors were less likely to talk to a professional than younger minors: 53.1\% of 17-year-olds talked to a professional, compared to 63.5\% of 15- to 16-year-olds, and 70.6\% of 13 to 14-year-olds. Non-white minors were much more likely to talk to an adult relative: 38.6\% of black minors, 25.2\% of Hispanic/Latina minors, and 40\% of "other" minors (including Asian minors) talked to an adult relative, compared to only 18\% of white minors. This finding was statistically significant. Similarly, whereas 50.7\% of white minors talked to a professional about their pregnancy/abortion decisions, higher percentages of non-white minors did so: 66.1\% each of black and Hispanic/Latina minors and 60.0\% of "other" minors, including Asian minors.

Multivariate analysis (logistic regression) indicates that black minors are significantly more likely than white minors to talk to professionals and relatives about their pregnancy/abortion decision. Controlling for other factors, the odds of a black minor talking to an adult relative were 3.44 times greater than that of a white minor. This finding was significant. Not unexpectedly, given the bivari-

\textsuperscript{171} It is possible that a friend could be someone who really is not a peer, such as the mother of a friend or a neighbor. However, given that the mean age of friends was 20.9, with 50\% being just 18, all friends were excluded so as not to accidentally include peer relationships.

\textsuperscript{172} Given the relatively small number of minors involving a "parental figure," associative factors for these contacts were not determined.
ate results discussed in the previous paragraph, black minors were also more likely to talk to a professional: the odds of a black minor talking to a professional were almost twice (1.91 times) as great as those of white minors. Age, religion, living with parents, and the reasons why minors did not tell their parents were not statistically significant.

In a model with “talked to both a relative and a professional” as the dependent variable, both race and age proved significant. The odds of a black minor talking to both a relative and a professional were 4.3 times greater than a white minor doing so, and minors under the age of 15 were 3.5 times more likely to talk to both a relative and a professional than the 17-year-olds. This data thus gives us a comprehensive and representative picture of the young women who sought judicial authorization for an abortion in Massachusetts over a twelve-month period. The “typical” such young woman was in school, a good student with specific plans for the future, and living with one or both of her parents. She was most likely 16- or 17-years old, and either white or black. There was a good chance that she was Catholic. She probably had multiple reasons for both the abortion decision, and the decision not to involve her parents. This did not mean, however, that she acted alone, as she almost certainly would have spoken with at least two people in the course of making her decision, including at least one adult. From here, we now turn to the findings from the in-depth interviews, which enable us to see the complex realities that underlie this data.

2. Detailed Findings from the In-Depth Interviews

Young women who terminate a pregnancy without involving a parent may be seen as rebellious teens who lack an appreciation of the significance of both the abortion decision and their relationship with their parents. The responses from in-depth interviews challenge this simplistic understanding. Rooted in the complexity of their lives, the interviews reveal that these young women did not treat either the decision to abort or the decision to not involve their parents lightly. The stories they tell reflect the richness and intricacy of their lives and the depth of their feelings about becoming pregnant, the decision to abort, and their families. These teens spoke openly about abuse, loss, love, and their often poignant hopes for the future—a future that often included visions of motherhood.

In presenting these findings, the focus is on the depth and meaning of individual experience and the thematic connections between the young women. The presentation includes the voices of individual young women together with details about their lives, thus enabling them to be heard within the context of their own life circumstances. This approach provides a rich counter-narrative to the Court’s pinched representation of adolescent life. It is hoped that the voices of

173. To safeguard privacy, some details have been slightly changed. Care has been taken not to make changes that would alter meaning. Also, all names used are pseudonyms chosen by the minors.
this diverse group of teens will become part of the public conversation and policy debates about parental involvement laws and prompt a re-evaluation of the assumptions that underlie the Court’s approach in this area.

Given the size of the sample and the purpose of the interviews, the interview data were not subjected to a rigorous statistical analysis. However, in order to highlight the thematic links between the individual stories and facilitate comparisons with the quantitative data, percentage responses are included. These comparisons are not offered as evidence of statistical rigor; rather, they permit exploration of broad areas of convergence and difference between the two sample groups, and provide an assessment of whether the interview group was different in any remarkable way from the quantitative sample.

The findings are organized thematically by area of inquiry. Following a presentation of the socio-demographic characteristics of the interviewed minors is a discussion of the abortion decision, including reasons for pregnancy termination and adult involvement in the decision-making process, followed by reasons for non-involvement of parents, as well as a discussion of the nature of the court experience.

a. Socio-demographic Characteristics of Minors Interviewed In-Depth

The age of the minors who were interviewed in-depth ranged from 14 to 17 years of age, with a mean age of 16.4 years. In terms of race/ethnicity, eleven of the minors (42.3%) were white, an equal number were black, 2 minors (7.7%) were Hispanic/Latina, and 2 (7.7%) were Asian.

With respect to their living situations, nineteen (73%) lived with one or both parents. More specifically, nine lived with both parents, eight lived with their mother (several of these households also included a stepfather), and two lived with their father. Five minors (almost 20% of the sample) lived in some kind of residential facility, such as a DSS group home, teen parenting program, or shelter. One minor lived with her brother, and one lived on her own in a house with roommates. The majority (57.6%) of these minors lived in Boston and surrounding cities and towns, with much smaller percentages coming from other regions of the state.

Most of the minors (80.8%) were in school and generally described themselves as good students. At the time they were interviewed, five of the minors were not in school. Of these, two were mothers of very young children, 174 As with the quantitative sample, there were no minors from the western part of the state. Additionally, none of the interviewed teens were from the Cape and the Islands. This is not surprising, given that teens from this area only made up 1.4% of our quantitative sample.

This figure includes one minor who had recently received her G.E.D. 176 At the time of the interview, two of these minors had recently begun a G.E.D. program.

174. In Massachusetts, minors who are in the custody of DSS must go to court to obtain authorization for an abortion. MASS. REGS. CODE tit. 110, § 11.07 (2002). Parents no longer have the authority to consent, and DSS has taken the position that it will not do so.

175. As with the quantitative sample, there were no minors from the western part of the state.

176. This figure includes one minor who had recently received her G.E.D.

177. At the time of the interview, two of these minors had recently begun a G.E.D. program.
two had dropped out due to difficulties in their lives (e.g., depression), and one had been expelled for disruptive behavior.

All of these young women had plans for the future. For most, these plans involved further education and/or specific career goals. Almost all of those who were in school planned to go to college. Most of these minors also identified specific areas of study or careers that they intended to pursue, with the stated career goals, such as law, pediatric surgery, and adolescent psychology, generally requiring an advanced degree. The future plans of the minors who were not in school at the time of the interview also included furthering their education and/or specific career goals. Their goals, however, tended to be more "modest," such as completing high school or obtaining a Graduate Equivalency Degree (G.E.D.), and did not encompass the same kind of professional aspirations that many of the "in-school" minors expressed.

Although the purpose and methods used in the interviews were different than those in the quantitative analysis of the PPLM data, it is worthwhile to examine how comparable the two groups were. Although not identical, the two groups share many important characteristics.

The mean age of the minors in the two samples is virtually identical—16.4 years in the qualitative sample compared to 16.3 years in the quantitative sample. As for race/ethnicity, the overall percent breakdown between white and non-white minors is fairly similar—42.3% white and 57.7% non-white in the qualitative sample, compared to 35.8% white and 64.2% non-white in the quantitative sample. There are, however, differences in the distribution of minors of color. In comparison to the quantitative sample, the in-depth interview sample contained a substantially higher percentage of black minors (42.3% compared to 30.3%) and Asian minors (7.7% compared to 1.0%), and a lower percentage of Hispanic/Latina minors (7.7% compared to 30.3%).

With respect to the geographical distribution of minors, the two samples were quite similar in nature, with almost identical percentages of minors coming from Boston and the surrounding cities and towns. Likewise, the samples were very similar with respect to the percentage of minors living with one or both parents (73% in the qualitative sample compared to 75.4% in the quantitative). However, a noticeably higher percentage of minors in the qualitative sample lived in some kind of residential facility as compared to the quantitative sample (19.2% compared to 5.8%), with a higher percentage of minors in the quantitative sample living with a relative (12.3% compared to 4.8%).

The samples were also quite similar with respect to educational characteristics and future plans. Most minors were in school (80.8% in the qualitative

178. There is no way to know if this difference is significant in any way, particularly because, as discussed above, many of the minors who were referred for an interview did not follow through. Thus, there is no information about their socio-demographic characteristics.

179. This difference may be attributable to the fact that it was probably easier for minors living in shelters to arrange for an interview, especially since, unlike with minors living at home, many of the interviews actually took place in the residences in which they lived.
sample compared to 84.6% in the quantitative), with the majority reporting that they were good students. Virtually all of the minors reported having plans for the future. Of the minors who were in school, the clear majority in both samples (84.6% in the qualitative sample and 80.7% in the quantitative sample) mentioned future plans that included college or a career that required college, and possibly also graduate level education.

In sum, the demographic characteristics of the minors interviewed in-depth are quite similar to those in the quantitative sample. Given this similarity, it appears that, when taken as a whole, what we learn from these interviews is not biased in any significant way. Accordingly, in addition to capturing the unique experience of each minor, the interviews also provide a window into the collective experience of young women who go through the judicial bypass process. Of course, because of the small sample size, the findings should be seen as exploratory rather than definitive in nature.

Each of the minors agreed to participate under conditions of confidentiality, including changing their names. In the following discussion of the key findings, the young women are referred to by the names they selected—all names are therefore pseudonyms. To assist the reader in making a connection between an individual minor and her background characteristics as discussed in this section, a table is included listing these characteristics for each minor, including the name she selected.
Table 1: Selected Demographic Characteristics of Minors Interviewed In-Depth

<table>
<thead>
<tr>
<th>Name (pseudonym)</th>
<th>Age</th>
<th>Race/ Ethnicity</th>
<th>Home</th>
<th>Lives with (or custody, if not parents)</th>
<th>Parent(s) Occupation(s)</th>
<th>Other Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amy Michaels</td>
<td>17</td>
<td>White</td>
<td>SE Mass.</td>
<td>Both parents</td>
<td>Both: Professional</td>
<td>In school; plans include college.</td>
</tr>
<tr>
<td>Angel Cavenaugh</td>
<td>17</td>
<td>White</td>
<td>Greater Boston</td>
<td>Mother</td>
<td>Mo: Skilled; Fa: Professional</td>
<td>In school; plans include college.</td>
</tr>
<tr>
<td>Anna Lynne Albano</td>
<td>17</td>
<td>Asian</td>
<td>NE Mass.</td>
<td>Both parents</td>
<td>Mo: Retail/Office; Fa: Skilled</td>
<td>Not in school; plans include college.</td>
</tr>
<tr>
<td>Beth Smith</td>
<td>17</td>
<td>White</td>
<td>SE Mass.</td>
<td>On own (not sure)</td>
<td>Mo: Retail/Office; Fa: Skilled</td>
<td>In school; plans include college.</td>
</tr>
<tr>
<td>Bianca Jones</td>
<td>17</td>
<td>Black/Afr. Amer.</td>
<td>NE Mass.</td>
<td>Both parents</td>
<td>Mo: Retail/Office; Fa: Professional</td>
<td>In school; plans include college.</td>
</tr>
<tr>
<td>Corey Adams</td>
<td>17</td>
<td>White</td>
<td>&quot;Metrowest&quot;</td>
<td>Both parents</td>
<td>Both: Professional</td>
<td>In school; plans include college.</td>
</tr>
<tr>
<td>Dion Smith</td>
<td>16</td>
<td>Black/Afr. Amer.</td>
<td>Greater Boston</td>
<td>Mother</td>
<td>Mo: Other; Fa: Missing</td>
<td>In school; plans include college.</td>
</tr>
<tr>
<td>Jane Smith</td>
<td>17</td>
<td>Hispanic/Latina</td>
<td>Greater Boston</td>
<td>Relative (not sure)</td>
<td>Mo: None; Fa: Other</td>
<td>Not in school; plans: wants security in life.</td>
</tr>
<tr>
<td>Jasmine Cruz</td>
<td>16</td>
<td>White</td>
<td>Greater Boston</td>
<td>Group home (DSS)</td>
<td>Mo: Other; Fa: Missing</td>
<td>Not in school; plans n/a.</td>
</tr>
<tr>
<td>Jill Casey</td>
<td>17</td>
<td>White</td>
<td>Greater Boston</td>
<td>Both parents</td>
<td>Mo: Professional; Fa: Retail/Office</td>
<td>In school; plans include college.</td>
</tr>
<tr>
<td>Kathleen Johnson</td>
<td>17</td>
<td>Black/Afr. Amer.</td>
<td>N/A</td>
<td>Mother</td>
<td>Mo: Skilled; Fa: Missing</td>
<td>In school; plans include college.</td>
</tr>
<tr>
<td>Keisha Wood</td>
<td>17</td>
<td>Black/Afr. Amer.</td>
<td>Greater Boston</td>
<td>Group home (DSS)</td>
<td>Missing</td>
<td>In school; plans include college; has child.</td>
</tr>
<tr>
<td>Keiza Smith</td>
<td>16</td>
<td>White</td>
<td>Central Mass.</td>
<td>Mother</td>
<td>Mo: Skilled; Fa: Missing</td>
<td>In school; plans: complete H.S.</td>
</tr>
<tr>
<td>Mary Jane</td>
<td>17</td>
<td>Black/Afr. Amer.</td>
<td>Greater Boston</td>
<td>Mother (not sure)</td>
<td>Mo: None; Fa: Missing</td>
<td>In school; plans include college; has child.</td>
</tr>
<tr>
<td>Mary Smith</td>
<td>17</td>
<td>White</td>
<td>NA (out of state)</td>
<td>Both parents</td>
<td>Both: Professional</td>
<td>In school; plans include college.</td>
</tr>
</tbody>
</table>
### Name (pseudonym)  | Age  | Race/Ethnicity  | Home  | Lives with (or custody, if not parents)  | Parent(s) Occupation(s)  | Other Details  
--- | --- | --- | --- | --- | --- | ---  
Mary Souza  | 16  | White  | NE Mass.  | Father  | Both: Professional  | In school; plans include college.  
Miranda Roberts  | 17  | Black/Afr. Amer.  | N/A  | Both parents  | Mo: Skilled; Fa: Professional  | In school; plans include college.  
Molly Moe  | 16  | White  | Greater Boston  | Mother  | Skilled  | In school; plans include college.  
Monique White  | 14  | Black/Afr. Amer.  | Greater Boston  | Mother  | Mo: At home; Fa: Missing  | In school; plans include college.  
Sandra Kiwi  | 14  | Black/Afr. Amer.  | N/A  | Group home (DSS)  | Mo: Missing; Fa: Other  | In school; plans include post-H.S. vocational education.  
Sandra Llonas  | 16  | Hispanic/Latina  | Greater Boston  | Mother  | Other  | In school; plans include college.  
Stephanie Paul  | 17  | Black/Afr. Amer.  | Greater Boston  | Mother  | Mo: Skilled; Fa: Professional  | In school; plans include college.  
Taylor Jordan  | 15  | Asian  | Greater Boston  | Both parents  | Mo: Professional; Fa: Skilled  | In school; plans include college.  
Theresa Clark  | 14  | White  | N/A  | Both parents  | Both: Retail/Office  | In school; plans include vocational education.  

**b. Pregnancy and the Abortion Decision**

**i. Responding to the Pregnancy**

The pregnancy was unplanned for all of the interviewed minors. Each minor learned she was pregnant as the result of a pregnancy test during her first trimester of pregnancy after she either missed a period or experienced pregnancy-related symptoms, such as nausea. When asked in the interview about their reactions to finding out they were pregnant, all of the minors described responding with dismay to the news. In relating their response, they used words...
such as "confused," "scared," "upset," and "nervous." Many mentioned crying at the news. For example, Jill described reacting with "uncontrolled sobbing."\textsuperscript{181} Bianca responded: "I cried. I cried a lot."\textsuperscript{182} Several mentioned an initial response of disbelief and denial; a few described how they repeated the pregnancy test to be sure the result was accurate.

Miranda’s response to her home pregnancy test encompasses many of these themes: "I looked at it . . . and I saw one line. At that point I started crying. I was like ‘there’s no way.’ It wasn’t complete yet, but it was like the first line is the one that tells you you’re pregnant. I was like ‘no way,’ and I started crying. And then I kept going back to check to see if it was sure. . . I just wanted to die. It was just awful."\textsuperscript{183}

Only one minor, Stephanie, responded with an initial sense of happiness to the news she was pregnant. Describing this reaction, she explained: "Well, first I was happy. I was like ‘Oh my God! I have a little baby growing inside of me!’"\textsuperscript{184} Her happiness, however, was short-lived and immediately turned to sadness when she considered how her family would respond to the news: "I was happy, and then . . . I was thinking, you know, how my family would react . . . . And that’s when I was like, ‘Nope, I can’t have the baby.’"\textsuperscript{185}

In responding to the inquiry about their reaction to finding out they were pregnant, many of the minors spontaneously talked about how they began shifting into a decision-making mode. For instance, when asked about how she felt upon learning she was pregnant, Molly replied as follows: "Very confused. I didn’t exactly know what I wanted to do at the time . . . I definitely considered all my options."\textsuperscript{186} Beth responded:

I don’t want to say devastation. I mean, life is wonderful, it should never be devastating, but it was really confusing. Where I am right now. You know, I’ve worked since first grade—I knew I was going to college . . . I did the math in months, and if I had a child it would be like August, which is right when I would be getting into school, starting my freshman year of college. So many things are just so important . . . it’s just not the right time."\textsuperscript{187}

\textsuperscript{181} Interview with Jill Casey, in Newton, Mass. (Jan. 1, 1999) (transcript on file with author).
\textsuperscript{182} Interview with Bianca Jones, in Somerville, Mass. (July 12, 1999) (transcript on file with author).
\textsuperscript{183} Interview with Miranda Roberts, in Everett, Mass. (Aug. 5, 1998) (transcript on file with author).
\textsuperscript{184} Interview with Stephanie Paul, in Cambridge, Mass. (Mar. 25, 1999) (transcript on file with author). As will be discussed, Stephanie’s concern about her family’s response stems from her mother’s abusive behavior and her isolation within her family
\textsuperscript{185} Id.
\textsuperscript{186} Interview with Molly Moe, in Chelmsford, Mass. (Nov. 25, 1998) (transcript on file with author).
\textsuperscript{187} Interview with Beth Smith, in Cohasset, Mass. (Dec. 18, 1998) (transcript on file with author).
ii. Making the Abortion Decision

Although some of the young women responded to the news of the pregnancy with a sense of disbelief or denial, all recognized the importance of making a relatively prompt decision. In this regard, Amy noted how abortion requires the making of an affirmative decision, whereas becoming a mother can simply happen by default by letting nature take its course—something she thought might explain why some teens might become mothers before they are ready (i.e., by not making a decision). For most of these young women, the decision was quite clear. They were certain that at this moment in their lives, they were not ready or able to have a child. Despite this, several mentioned that the decision was nonetheless an emotionally difficult one to make.

The clarity that the minors brought to the decision-making process does not suggest an unthinking or mechanical response to their pregnancies. Rather, as developed in the following section, they all had clearly-articulated reasons for why having a child was not a present option for them, reflecting both an understanding of their present circumstances and a dynamic grasp of future possibilities. Also, as discussed below, they all involved at least one other person in the decision-making process.

Four of the young women in the sample, however, did report struggling with the decision about whether to abort or to carry to term. Molly and Keiza described having conflicting pulls, and both seemed able to imagine themselves as mothers. For Molly, part of this pull was the fact that, at age 13, she had been involved in an exploitative sexual relationship, become pregnant, and had an abortion. Now, at age 17, she was in a caring relationship, and aware of how much older and more capable she was when compared to the time of her first pregnancy. For her, this difference in circumstances made the decision a difficult one. Keiza was also in a long-term, stable relationship with a man she hoped to marry and have children with one day. Her present reality thus contained within it a picture of her future self, leading her to wonder whether she should realize that vision now rather than wait until she was older.188

For the other two minors, Anna Lynne and Mary Jane, the decisional difficulty reflected their ambivalence about abortion. Anna Lynne’s ambivalence was triggered after the close friend of an older sibling repeatedly told her that by aborting she would be killing God’s creation. Mary Jane, the mother of a young son, clearly considered herself anti-abortion. However, when faced with another pregnancy, she was forced to confront her views: “I just feel like I wasn’t really for abortions until now... I never believed that anybody should have abortions. I felt like if you did it, it’s your fault. But you know, when certain circumstances... you have no choice but to, and that’s how I felt.”189

188. There was some indication that Keiza felt some pressure from her boyfriend to abort, as he wanted to wait to have a baby until they were married. No other interviewed minor felt pressured to have an abortion.

189. Interview with Mary Jane, in Boston, Mass. (June 10, 1999) (transcript on file with author).
iii. To Whom Minors Talked in the Course of Making the Abortion Decision

All of the minors in the interview sample spoke with at least two people about their abortion decision, with the exception of one minor who only spoke with one person. The mean number of contacts was 3.5 (very close to the quantitative mean of 3.14). Thus, no minor made her abortion decision without involving at least one other person.

The person that the minors turned to most frequently was a boyfriend, with almost 75% of the interviewed minors involving him in the decision-making process. (The figure was a bit higher in the quantitative sample—80.5% of those who talked to someone talked to a boyfriend/partner.) Virtually all of the boyfriends agreed with their partner that abortion was the best option. With the possible exception of Keiza, whose boyfriend wanted to wait to have a baby until they were married, the interviews do not suggest that any of the boyfriends pressured their partners into having an abortion.

The next most important category was friends, with 65% of the minors speaking with at least one friend (40.8% of the minors in the quantitative sample who spoke to someone spoke with a friend). Thus, it is clear that peers, including both boyfriends and friends, were a very important source of support. They also tended to be the people that the minors turned to first.

Focusing on contact with adults, all of the interviewed minors spoke with at least one adult about their abortion decision. If parents, boyfriends, and friends over the age of 18 are excluded, all but two of the minors involved an adult. Of these, the largest percentage of minors involved professionals, with 57% speaking with at least one professional (this percentage matches closely with the 58% in the total quantitative sample). Most of these contacts were with health professionals, but minors also spoke with guidance counselors, school professionals, teen parent advocates, and residential staff in DSS facilities. Adult relatives were also important, with 30.7% of the minors involving a relative age 21 or older (this compares with 25.1% in the quantitative sample or 35% of those who talked to someone). As in the quantitative sample, the relative most often turned to was an older sister.

Most minors discussed the issue of talking to their parents during some or all of their conversations about their abortion decision. Perhaps not surprisingly, boyfriends and friends generally concurred with the minor’s perception of how her parents would respond. Most of the professionals raised the issue of parental involvement with the minor. Some pursued it in some detail while others offered to help the minor speak with her parents, but ultimately, all respected their

190. Individuals that the minor would have spoken to as part of seeking court consent, such as a Planned Parenthood counselor, her lawyer, or the judge, are not included here, as the focus is on the contacts that minors sought out on their own.

191. Almost all of the interviewed minors had become pregnant in the context of an ongoing relationship with a boyfriend. A few, however, had become pregnant through a more casual encounter, and two reported having become pregnant as a result of rape.
decisions not to involve their parents. It should be noted that several minors mentioned that fear of disclosure prevented them from thinking about turning to adults who might have been supportive. For example, Molly worried that if she talked to someone at school, she might be reported to DSS, which would result in notice to her mother.

Although, as noted above, the interviewed minors were clear that motherhood (or having a second child) was not a present option, the involvement of others was nonetheless important to them as they made the abortion decision. These contacts provided them with the opportunity to review and discuss their decision, learn about their options and the legal requirements, and obtain critical emotional support.

iv. Interconnected Reasons for Choosing Abortion

During the interview, minors were asked to discuss why they had decided to terminate their pregnancy. In responding, all of them provided multiple reasons for their decision. The number of identified reasons ranged from two to seven, with the majority of minors providing three or four articulated reasons for their choice. Overall, the minors in this sample gave the same kinds of reasons for terminating their pregnancy as did the minors in the quantitative sample. In both groups, the most frequently provided reasons, clustered thematically, included: future plans, present life circumstances, not being ready for motherhood, and concern for the child. An additional reason for pregnancy termination also emerged in the qualitative sample—avoiding an adverse parental response.192

Although it is useful to identify and discuss these reasons thematically, the richness of the interviews lies in the opportunity they provide to explore the interconnection between themes. Thus, for example, we can learn from the quantitative data that many minors choose to abort because having a child would interfere with future plans. We can also learn that many minors choose to abort because of child-related concerns. What, however, we cannot see from quantitative data is how minors drew connections between themes—how they interwove the various considerations. The in-depth interviews make these links visible.

Important to this motif of the interconnectedness of reasons for terminating a pregnancy was awareness on the part of the minors of the contextual nature of the abortion decision. Most of the minors, whether discussing future plans, their ability to care for a child, or concern about the impact a child would have on their lives, implicitly distinguished between the present and the future. Anchored in the present, they recognized the need to have more provisions in place, be it education, greater emotional stability, or financial readiness, before bringing a child into the world. Some articulated this from their own perspective—what they would need before being ready to parent. Other minors looked at this

192. A number of minors also gave reasons that do not fit into these thematic clusters, including: that abortion was the best (or only) option, that the father was not her boyfriend, and that she was not ready to be pregnant (as distinct from not being ready to be a mother).
from a more child-centered perspective, expressly recognizing the link between their readiness to parent and the well-being of a prospective child. Closely related, a number of minors expressed the desire to have children in the future or a belief that, had the pregnancy occurred in the future, they might have made a different decision.

Tying this together, almost without exception, these minors carried both an awareness of the present as a moment in time, and a sense of themselves as dynamic and developing individuals whose circumstances would change as they grew older. Their decision thus incorporated an underlying awareness of continued growth and promise. This strand weaves through the thematically distinct reasons for pregnancy termination, to which we now turn.

**Future Plans:** The most frequently mentioned reason for choosing abortion was future plans, with over half the minors interviewed in-depth mentioning this. For virtually all of these minors, future plans centered on continuing their education. For those who were presently in school, this meant college; for those not in school, this meant returning to high school or obtaining a G.E.D. Most spoke with a sense of certainty about their future goals. As Jill put it, she needed to stick to her plans:

> I’m not saying that [the pregnancy] is a little problem that gets in your way that you get rid of... because it’s not. But, you know, [to] do what I want to do in life... and that’s not what I want to do... [It’s] not in my plans... my plan is to go to college... find something that I’m so interested in and just do it for the rest of my life. And get married and have a family.194

Others also framed this reason in definitive terms, using language that brooked no uncertainty about their aspirations. Capturing this confidence, Amy, in describing why she was not ready to become a mother, stated: “I can’t even think of it... I am going to college. I am definitely going to college.”195 Likewise, Molly explained: “Before I wasn’t sure if I wanted to go to college. I didn’t know what the meaning of it was... how important it was in life. And definitely at this time... now I realize I’m a senior... This is pretty much what’s determining my whole life.”196 As mentioned above, Molly was one of

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193. As discussed above in the section on socio-demographic characteristics, all of the interviewed minors had future plans, but not all mentioned these plans as a reason for aborting. Fewer than half (40.2%) of the minors in the quantitative sample identified future plans as a reason for aborting. The reason for this difference is not entirely clear. It may be because the in-depth nature of the qualitative interviews gave minors a greater opportunity to reflect on their lives. However, the discrepancy could also indicate difference between the two samples, such that the minors in the qualitative sample tended to be more mature than the average minor. (Regarding the link between maturity and future orientation, see infra Section V.B.3.b, “Future Time Perspective.”)

194. Interview with Jill Casey, supra note 181.


196. Interview with Molly Moe, supra note 186.
the few minors to struggle with the abortion decision. As indicated here, the goal of going to college was clearly a significant factor in her decision not to carry her pregnancy to term.

Sandra Kiwi was one of the few minors to mention a future plan that was not related to continuing her education. At the time of the interview, Sandra was living in a DSS shelter. She had recently been kicked out of her grandmother’s house, where she had spent most of her childhood as a result of maternal abandonment. As Sandra explained, “when I turned one, she [Sandra’s mother] had left, and then she went somewhere, and left me with the baby-sitter, and the baby-sitter decided to leave.” Following the departure of her mother, Sandra’s grandmother took her in. When she was 9-years-old, her grandmother sent her to live with her father, but Sandra returned to her grandmother’s home because her stepmother was very abusive, only to be kicked out at age 14. While in the shelter, Sandra made contact with her mother for the first time since infancy, and her dream was to go live with her in Michigan. She feared, however, that her mother would reject her if she had a baby. In deciding to abort, Sandra was thus seeking to protect this future plan from disruption; although not educational in nature, the abortion was directly related to Sandra’s goal of leaving the shelter and moving ahead in her life.

Although the minors made clear that their future plans were related to their own life objectives and dreams, many also linked achievement of these goals with the ability to be a good parent who could provide a stable life for a child. In drawing this connection, these minors expressed an awareness of the interconnection between their own well-being and their desire to create a good life for a child in the future.

Given the approaching end of high school, one might have anticipated that the 17-year-olds would have been most likely to identify future plans as a reason for aborting. This would also be consistent with the developmental literature that links the acquisition of future-oriented thinking to identifiable life stages. However, this did not turn out to be the case—the four minors who were 15 years or younger all identified future plans as a reason for terminating their pregnancy, while only slightly more than half of the 17-year-olds included this as a reason. Recall that, in the quantitative analysis, there were no significant differences between the younger and older minors with respect to whether they mentioned “future plans” as a reason for seeking an abortion. Taken together, these findings suggest that the link between future-oriented thinking and life stage development for adolescents may need to be reexamined—at least for minors seeking judicial authorization for an abortion. Because of the size of the interview sample, definitive conclusions cannot be drawn about the relationship

198. See infra Section IV.C.2.b.iv, “Interconnected Reasons for Choosing Abortion: Child-Related Considerations.”
199. See infra Section V, “Discussion.”
between age and the incorporation of future plans into the decision-making process. Nonetheless, the findings do suggest that contextual variables may be an important determinant of a future-oriented perspective. To illuminate this possibility, a closer look at the circumstances of the older minors who did not mention future plans and those of the younger minors who did is warranted.

Already having a child is one of the contextual variables that may influence whether a minor considers future plans when deciding what to do about an unplanned pregnancy. Four of the 17-year-olds in the sample were mothers of very young children (accounting for all of the mothers in the sample). For three of these young mothers, their primary focus was on how difficult it would be to take on the present challenge of having another child. For instance, Keisha, who was living in a group home for teens, spoke about the impact having another child would have on her ability to remain in school and keep her job:

I probably could have done it, because of the type of person that I am. I’m strong, you know. I know I probably could have [done it], but it just would have been ten times harder. And I couldn’t imagine waking up in the middle of the night again . . . and trying to juggle school and work.200

Of these mothers, only one, Mary Jane, mentioned a specific future plan as a reason for terminating her pregnancy. Mary Jane had recently completed a G.E.D. program and was planning to start classes at a local community college in the fall. Although she briefly considered having a second child, she felt that this would make returning to school too difficult. When asked her reasons for the abortion, she explained: “Right now, my daughter’s not even two, she’ll be two in July. And I’m not even with her father. I’m doing this on my own, and I want to go to school in September. I mean, being pregnant, going to school, having another kid, it’s too . . . it’s a lot.”201

It is worth noting that Mary Jane’s future plan was not articulated as a free-standing goal, as it was for the non-mothers planning to go to college. For the non-mothers in the group, the ability to imagine this future was not bogged down by the weight of present circumstances. In contrast, for Mary Jane, this goal was enmeshed in the complexities of her current life. Although no less important to her, her vision of her future was more precarious—more vulnerable to disruption.

The fact that, with the exception of Mary Jane, these young mothers did not focus on future plans as a reason for aborting does not mean that they did not have plans for their future. When asked directly about future plans, these minors, like the others in the sample, mentioned educational and/or career goals. However, in making the decision to terminate their pregnancy, it appears that the more immediate and pressing concern was not to damage the present by adding

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201. Interview with Mary Jane, supra note 189.
the burden of a second child. Protecting future plans appears to have been a more remote reality. However, embodied in their responses was a dynamic awareness of change and shifting future possibilities. Although firmly rooted in the present reality of their lives, these young mothers, as illustrated by Kim's mention of her inability to have another child "right now," conveyed a sense that the present might change, and that they might be ready to have a second child some time in the future.

Trauma may also be one of the contextual variables that influences whether a minor considers the future. Stephanie and Jane, two of the other 17-year-olds not to mention future plans as a reason for aborting, had very difficult home lives. As with the teen mothers, it may be that their present circumstances forced considerations of the future into the background.

Growing up, Stephanie had been physically abused by her mother. Although, as mentioned above, she initially responded to the news of her pregnancy with happiness, her thoughts immediately turned to how her family would respond. In deciding to abort, Stephanie's overriding concern was to avoid increasing her suffering or further marginalizing her position within the family. These concerns dominated her thinking and may well have overshadowed any ability to project beyond her present vulnerability into the future.

At the time of the interview, Jane was living in the projects with an older sibling who both used drugs and was sometimes violent with her. Over the course of her childhood, Jane had been bounced from home to home; she also had spent two years locked in a juvenile detention facility. Drugs and violence were ever-present themes in her life. Having been expelled from school, and lacking both a stable job and a home, Jane's future dream encompassed a desire for security and stability. When asked about her future, Jane responded: "As long as I'm somebody. As long as I got a crib, car, and I'm healthy. I'm straight." Overwhelmed by the desperate circumstances of her life, Jane, in deciding to abort, focused on what she lacked in her life and her desire to protect a child from the kind of suffering she had experienced over the course of her childhood. Given the precariousness of her life circumstances, Jane's hold on her future was, at best, tenuous—encompassing a longing for stability and well-being. For Jane, there was little in the way of future certainty to disrupt.

Kathleen was the other 17-year-old not to mention future plans as a reason for aborting. Although she was neither a mother nor living in an untenable situation, she also may have been so overwhelmed by present concerns that she could

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203. As discussed below in Section IV.C.2.c, "Why Minors Did Not Tell Their Parents." Stephanie did not fear physical abuse as much as emotional abuse and isolation within her family.
204. Interview with Jane Smith, in Boston, Mass. (June 21, 1999) (transcript on file with author). For Jane, being "straight" meant being on the right path in life and was not a reference to sexual orientation.
205. For additional detail, see infra Section IV.C.2.b.iv, "Interconnected Reasons for Choosing Abortion: Child-Related Considerations."
not see her way through to the future. In choosing to abort, Kathleen believed she was committing murder. Although certain that abortion was her only option, and firmly believing that it would have been worse to give birth to an unwanted child, she nonetheless felt that her decision was morally “wrong.” For her, the abortion decision was cloaked in a sense of wrongdoing. This emotional overlay seemed to dominate Kathleen’s thinking and may well have overshadowed any thoughts about her future, although, of course, there is no way of knowing this for certain.

We turn now to the younger minors who included future plans as a reason for aborting. Of potential significance, two of these minors, Theresa and Monique, had both assumed significant domestic responsibilities at a very young age due to difficult family circumstances, and a third, Taylor, had grown up with a stable and consistent sense of future direction and confidence in her own abilities.

Although only 14, Monique had been entrusted with a great deal of responsibility by her mother—a single parent who suffered from a debilitating illness. As the oldest of three children, Monique recognized her mother’s dependence on her, and she assumed responsibility for making sure her siblings pitched in to keep the household running. As indicated by the following quote, Monique was the intermediary between her mother and her younger siblings, functioning in effect as a shadow parent. As she explained, “well, I mostly ... I clean, I cook. We all, like, we all, chip in. Like my little brother and sister, I always make them help ... whatever my mom needs done, really, I help her.”

206 Although her younger siblings “chipped in,” Monique clearly felt that it was her duty to ensure their participation.

Also only 14, Theresa similarly saw herself as responsible for her younger siblings. She felt obligated to see that they remained safe and did not get into trouble as she had done at their age. As their protector, she saw herself as fulfilling a parental role, even though her siblings were only slightly younger than she was—one was 13 and the other 11. Her sense of responsibility was triggered by recent family traumas; most notably, her mother’s slide into serious alcohol addiction, and her father’s depression leading to a series of hospitalizations. As a result of these events, Theresa had begun hanging out with the “wrong” crowd, leading both to drug use and trouble with the law. Notwithstanding her own chaos, Theresa felt responsible for her younger siblings during this difficult time.

At the time of the interview, Theresa was working hard to get her life together, and although her family situation had stabilized, she continued to feel responsible for her younger siblings. She explained:

By the time I was their age, I had already had sex. And I had already been smoking weed for almost a year and drinking for almost a year. So

206 Interview with Monique White, in Allston, Mass. (Feb. 11, 1999) (transcript on file with author).
it just kind of scares me, the thought that I was like that when I was younger. So I look after them both . . . like wicked protective. Anything happens to them, I’m right there. Anyone says anything to them, I call them up . . . I almost [am] the way that a parent is supposed to act, where I’m looking out for them, telling them what’s right and wrong, and what not to do. And the thing is, they listen to me.”

Theresa saw herself as a parent with direct authority over her siblings. Seeking to shield them from what had happened to her at their age, and perhaps commenting on her parents’ shortcomings in relation to her upbringing, she saw herself acting in “the way that a parent is supposed to act.”

What stands out is the sense of responsibility that both Monique and Theresa felt and their awareness that others in their family depended on them. It may well be that this early assumption of adult-like responsibilities provided them with a well-developed sense of their own capabilities and place in the world, which, in turn, may have contributed to their ability to consider the future when making the decision to abort. In short, their life experience may have vested them with a maturity beyond their chronological age.

Another consideration emerges from the interview with Taylor—namely, that one’s self-perception and long-held future plans may play a role in the abortion decision. Taylor, age 15, lived in a relatively stable family in an upper middle-class community. She attended a high school where the vast majority of graduates attend four-year colleges. For her, having a professional ambition had been a motivating force since she had been quite young. As she explained, “my whole life, I’ve always wanted to get a good education . . . . I’ve always wanted to become a lawyer.” These plans were an integral part of Taylor’s vision of who she was in the world. With such a clear sense of her future, it is not surprising that even at a young age, these plans assumed a prominent place in her decision-making process.

**Impact on Present Life and Present Life Circumstances:** Over half of the interviewed minors also focused on the realities of their present lives as reasons for terminating their pregnancies. Some emphasized the impact a baby would have on their present life while others focused on the fact that the circumstances of their present life were not conducive to having a baby. In focusing on the impact of a baby, they worried that they would not be able to manage everything (which for most included both work and school) if they also had to care for a baby.

Highlighting their attachment to their teen years, some spoke of the resentment they would feel toward a child who entered their life at this stage of their development. As Bianca explained, “I wouldn’t be able to take care of a

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208. Id.
baby . . . with school. And financially [and] emotionally, it would be a drag. I didn’t want the baby to be an inconvenience for me. I wanted the baby to be more like, in a loving environment, where I could care for the baby.”

In a similar vein, Miranda stated: “It would be awful to bring a child into a situation where the mom doesn’t like him cause it ruined her life, you know. . . . I don’t want to be reminded of that every time he does something bad . . . I’ve seen it happen.” Emerging from the duality of perspective that permeated the decision-making process of many of the interviewed young women are echoes of concern for the child, as heard in these two quotes. It is not simply that these two young women do not want to live under the yoke of resentment. Both also expressed concern for the child, with Bianca not wanting a child to experience being “an inconvenience” and Miranda worrying about not liking her child.

Although this reason for choosing an abortion is firmly anchored in the present, these minors also seem to be expressing concerns beyond the immediate—that by impacting the present, a baby would also alter their life course. Rooted in the immediate, with branches into the future, this reason appears to embrace the meaning and value of their teen years—of the need to respect the integrity of their claim to education and to growing up unencumbered by the responsibilities of parenthood.

Closely related, many of the interviewed minors felt that the present circumstances of their lives were not conducive to having a baby—this was a particularly important concern for the teenage mothers in the sample. In reflecting on their lives, several spoke poignantly of the need to have things in order before they would consider themselves ready for parenthood. For Sandra Kiwi, this meant not living in a shelter: “I’m 14 and I’m trying to get my life together, go live with my mother in Michigan . . . .” For Anna Lynne, a young woman who, at the time of the interview, had dropped out of high school because of serious and recurring bouts of depression (which at times included suicidal tendencies), it meant being able to return to school: “I’m not in school and I want to get my life back on track with school and then maybe with work and stuff.”

In mentioning their present circumstances as a reason for aborting, most minors also seemed aware of the situational nature of this consideration. As exemplified by the above quotes, contained within the statements of present limita-

210. Interview with Bianca Jones, supra note 182.
211. Interview with Miranda Roberts, supra note 183.
212. Interview with Sandra Kiwi, supra note 197. This quote makes clear how difficult it is to categorize reasons with mathematical accuracy. Within this very brief passage, Sandra mentions as reasons for aborting: future plans, youthfulness, and present circumstances, as well as concern for the child.
213. Interview with Anna Lynne Albano, in Boston, Mass. (Dec. 4, 1999) (transcript on file with author). This quote again illustrates how the reasons for aborting are closely entwined. Although the dominant motif here is Anna Lynne’s desire to get her life back on track, thus recognizing that her present life circumstances were not compatible with parenthood, she is also expressing a concern for her future—fearing that a child would interfere with her goal of completing her education.
tions was a sense of future expectation—of a time when different circumstances, such as a stable living arrangement, a good job, or family assistance, might support a different decision. Thus, although rooted in the present, a sense of the future again weaves through their thinking.

Turning to the teenage mothers in the sample, all four focused on how difficult it would be for them to have another child in light of their present life circumstances. They spoke about not being able to support another child, either emotionally or financially. This concern was well-articulated by Kim, who explained, “my first son is... he’s hard enough to take care of. He’s not old enough, and I’m not stable to be taking care of two kids, and I just can’t do it right now. I’m not ready.”

Two of the mothers also spoke about how their difficulties would be compounded by the fact that they were living in a shelter. For Keisha this was a significant consideration, and she spoke movingly about what it would be like to have another child while living in a shelter:

It wouldn’t have been easy for me to have two, and live at ‘Warren House’ . . . I know DSS would have definitely looked down on me even more, or said I was irresponsible. You know ... I feel that’s why they treat us, especially teen moms, I think that’s why they treat us so bad . . . . But they don’t realize that we’re teenagers and we’re human and things are going to happen. And we’re no different from someone that does have a family to stay at and does have a family to support [them].

These young mothers also seemed to recognize the contingent nature of their decisions. As captured in Kim’s statement that her son was not old enough and that she just couldn’t “do it right now,” or in the fact that Mary Jane, who, in struggling with whether to have the child, stated that abortion was the best decision because “right now, my son’s not even two,” these minors implicitly recognized the potentially changing nature of their lives—that their children would grow older, and that at some point they might choose to have another child.

Thus, although rooted in the demands of the present, they also carried with them an awareness that the future might support a different reproductive choice.

Too Young for Motherhood: Being too young for motherhood was also an important consideration, with slightly less than half of the minors mentioning this. Not surprisingly, this was more of a consideration for the younger mi-

215. Interview with Keisha Wood, supra note 200. The name of the shelter has been changed to protect confidentiality.
216. Interview with Kim Johnson, supra note 202; interview with Mary Jane, supra note 189.
217. This reason was given by 57.1% of the minors in the quantitative sample. Given the similarity in the age distribution in the two samples, it is not clear what accounts for this difference. It may be that the interviews gave the minors the opportunity to embed this relatively uncomplicated response in a more nuanced consideration of their life circumstances. It is also possible that the difference suggests that the minors who agreed to be interviewed exhibited a degree of development beyond their chronological age.
nors. All the minors age 15 or under mentioned this as a reason for pregnancy termination, whereas it was only mentioned by two of the 17-year-olds. Recall that, in the quantitative sample, age was significant in feeling too young to have a baby. For most of the minors, this reason was expressed as a self-evident truth, requiring no elaboration. It was simply, "I'm too young," or "I'm only 15." Articulated as a self-contained reason, requiring no explication, motherhood seemed an almost unthinkable concept—one that defied their sense of place in the world.218

In mentioning being too young as a reason for choosing to abort, a number of minors mentioned that they hoped to have children in the future. Several also indicated that they might have looked at the situation differently had they been older at the time of pregnancy: "I don't think I'd be able to take care of it as well as I would've, if I was like 24 or 30."219 Amy (one of the two 17-year-olds to mention youthfulness as a reason for aborting) expressed the centrality of age in reflecting upon her abortion experience: "I wish I could have done something [else], but I had no options. When I was waiting...I was talking to the ladies and...they were all older. It makes me sad because I was like, why are you doing this if you're older? I don't think I could."220

In looking at age and reflecting on how, with the passage of years, they might make a different decision from the one they were presently making, these minors again seemed to have an awareness of life's changes. Contained within their present sense of self was an ability to project a more developed future self—one that might welcome becoming a mother.

**Child-Related Considerations:** More than two-thirds of the young women mentioned concern for the child they were carrying as a reason for deciding to abort.221 About half of them spoke from a "self-oriented" perspective, focusing mainly on their inability to care for a child. For example, the difficulty of balancing school with motherhood or of raising two young children were concerns mentioned by the young women. Although noted here because of the mention of the child, these responses were thematically linked with the "present life circumstances" response and are not our present focus. However, about half of

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218. In thinking about this reason for aborting, a question emerges that did not suggest itself at the time of the interviews, perhaps because "being too young" seemed such a cogent response that further inquiry seemed superfluous. However, in retrospect, it is not entirely clear what this reason embraced. Were these young women focusing on their own lives, and expressing a concern about the impact a child would have on them because they were so young, or were they focusing on the child, and expressing a concern about their ability to be good mothers? It is possible that at least for some, it was a combination of the two, as many minors interwove these perspectives in making the abortion decision.

219. Interview with Taylor Jordan, *supra* note 209. As indicated by this quote, her reasons for choosing an abortion are closely intertwined.

220. Interview with Amy Michaels, *supra* note 195.

221. Slightly less than one-third of the minors in the quantitative sample were coded as giving a child-related reason for aborting. This difference may reflect the fact that child-related concerns were often embedded in a reflective consideration of the minor's life, and thus may not have emerged as distinct considerations in the quantitative data.
these young women spoke directly about concerns they had for the well-being of the potential child, thus incorporating a “child-oriented” perspective into their decision-making process. These responses are the focus of this section, as they have not been considered elsewhere.²²² Although cutting across all age groups, those speaking from a “child-oriented” perspective were more likely to be 17, although this group also included two of the 16-year-olds and one of the 14-year-olds in the sample.

The young women spoke with great poignancy about not wanting to bring a child into this world who would suffer or not be well provided for. Many spoke out of their own experience of loss and deprivation, and a desire to shield any child they might have from the pain they had endured growing up. Others focused instead on protecting a child from the sadness of being unwanted.

Jane spoke sadly about not wanting her child to suffer. As discussed above, Jane had grown up in a family where domestic abuse, drugs, and alcohol were a constant presence. She had been bounced from one home to another, and had been locked up in a juvenile detention facility for two years. Now expelled from school and living in the projects with an older sibling (who used drugs and on occasion became violent with her), she recognized that if she had a child in her present circumstances, it might be doomed to suffer a similar fate. She explained, when asked why she had decided to terminate her pregnancy:

I know right now I’m not capable of bringing a child to the earth because I don’t got a job.... I don’t have my own crib, know what I’m saying? I have nothing to lean back on. Why am I going to bring a child onto this earth if I have nothing to offer it? I don’t want me and my son or my daughter to suffer. To go through shit.²²³

Similarly, in deciding to abort, Beth was also seeking to protect a child from having a life as bleak as the one she had suffered. At age 17, she was living on her own with several roommates. Immediately before this, she had attempted to live with her mother (after having spent much of her childhood living with various relatives), only to be kicked out after an ugly fight. Although she described her relationship with her father as a close one, living with him was not an option. He suffered from serious mental illness as well as drug and alcohol addiction, and he had been in and out of jail throughout her childhood and adolescence.²²⁴

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²²² Of course, the distinction between the “self-oriented” and the “child-oriented” perspectives is not always clear, and in some instances they are closely connected. Thus, for example, a minor who focused on her inability to financially or emotionally support a child may also have been deeply concerned about the impact this would have on the child. Similarly, a minor who spoke of not wanting her child to suffer may have linked this suffering to her own inability to provide for that child.

²²³ Interview with Jane Smith, supra note 204.

²²⁴ Interestingly, however, Beth’s father was one of the only parents to have spoken with a daughter about sex in a way that could be described as positive. See infra Section IV.C.2.c.ii (“Talking About Sexuality”).
When asked about her abortion decision, Beth explained that after a brief moment of uncertainty about what she should do, the decision was not a difficult one to make because “I always, always promised [myself] that I would never bring a child into the world if I couldn’t give it a life ten times better... than my own. And I couldn’t.” She continued:

If I had a child now, it wouldn’t be good for them. They wouldn’t have any kind of life. I wouldn’t be able to give them anything. You know... I want to become an adolescent psychologist. I want to make money... I want to have nice things. And I want to be able to give nice things. And I can’t do that right now.”

Like Beth and Jane, Jasmine also sought to protect her child from the trauma she had experienced while growing up. At the time of the interview, Jasmine was in the custody of DSS. She had also been in DSS custody when she was younger, but since the age of 11, when custody had been returned to her mother, she had mostly lived on her own, until custody was again taken away from her mother. When asked about why she had decided to terminate her pregnancy, Jasmine angrily responded: “I honestly don’t think the kid would have a nice life because my mother would have gotten custody of it, and look how the hell I turned out when my mother raised me. I’m not having her raise another kid.”

Although Beth’s vision of the future was clearly brighter than Jane’s or Jasmine’s, as she had a sense of certainty about her ability to provide for a child in the future, to give it that better life they all hoped for, all three teens knew that at the present time they could not give a child the kind of life they would want it to have. In terminating their pregnancies, they were seeking to protect a child from another cycle of deprivation.

Not all of these young women had suffered such difficult childhoods. For example, Bianca, a very high-achieving teen who lived with both parents in a stable, middle-class home, also spoke about wanting to protect her child from suffering. For her, however, this did not reflect a desire to protect her child from suffering the kinds of deprivations she had experienced growing up, but a desire to spare the child the pain of being born to a mother who was not yet ready to care for it. As she explained, “I just don’t think that I should bring a kid into my world. I just don’t want to bring my kid into misery.” Like Bianca, Mary Smith is a high-achieving teen. A National Honor Society member and an accomplished athlete, Mary had been accepted into college at the time of the inter-

225. Interview with Beth Smith, supra note 187. Beth also made clear that having a child would interfere with her future plan to become an adolescent psychologist so that she could help troubled kids.

226. Interview with Jasmine Cruz, in Brookline, Mass. (Apr. 6, 1999) (transcript on file with author). Jasmine’s abortion decision was also based on the facts that the pregnancy was the result of a rape and that she was just starting a G.E.D. program.

227. Interview with Bianca Jones, supra note 182.
view. She described herself as being close to her parents, and especially to her mother. Her concerns echo those of Bianca, as she explained, "it wasn't fair for me to raise a child that I couldn't take care of, and I want to be able to give it a good life . . . ." 228

Encompassed within the above interview passages, we see two interconnected threads—the desire to safeguard a child from pain and the desire to provide a better life for a child than would be possible at the moment. Whether speaking from the depth of their own traumas or simply from their own lack of readiness for parenthood, the minors who spoke from a child-oriented perspective grasped the profound connection between where they were in their own lives and what they would be able to offer, or perhaps not offer, a child. Many also grasped the temporal nature of this concern, and expressed the hope that one day they would be able to care for a child in the way they thought best.

**The Contextual Nature of the Decision to Abort:** Before discussing the final thematic reason for why teens in the sample chose to terminate their pregnancy, a brief comment about an emerging theme is in order. During the course of the interview, most of the minors imagined the possibility of a different, older self who might make another decision at some point in the future. Thus, for example, Bianca expressed this sentiment in very direct terms, stating that had she been "old enough, and had my own house . . . I would’ve kept the baby . . . just five years down the line, you know, it would’ve been alright." 229 Other young women expressed this sentiment in less direct ways, through an emphasis on the immediate, such as in "I just can’t do it right now." 230 This ability to imagine a divergent self at a different moment in time suggests both a future orientation and an awareness of the situational nature of the abortion decision. Anticipating future developmental changes, or a more integrated self, most of the young women in this sample grasped the dynamic quality of their lives. Their responses embodied an awareness of the shifting nature of the present, and a recognition of life’s passages.

As developed more fully below in Section V, this is a potentially significant finding with important implications for framing the dialogue regarding the decisional capacity of teens confronting the abortion decision. The future orientation and the abstract quality of their thinking suggests an ability to reason in an "adult-like" manner about the abortion decision, in contrast to the concrete and present-oriented thinking generally associated with younger children.

**Anticipated Adverse Parental Response:** In identifying reasons for aborting, five young women stated that they feared an adverse parental response to their pregnancy. They anticipated that their parents would take some kind of concrete, punitive action against them upon learning they were pregnant and/or sexually active. Feared responses included being thrown out of the house, harm

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228. Interview with Mary Smith, in Boston, Mass. (Feb. 24, 2999) (transcript on file with author).
229. Interview with Bianca Jones, supra note 182.
to a boyfriend, emotional or physical cruelty, and the initiation of punitive delinquency proceedings. As developed further below, these fears were generally well-rooted in the realities of their lives, with most of these minors having previously suffered harsh parental treatment.

While not fearing the kind of adverse reaction identified above, Bianca’s situation is worth noting, as she too considered the anticipated reaction of her parents, most notably her mother, in deciding to abort. For Bianca, the high-achieving teen mentioned earlier, the concern was disappointment. Bianca felt that her mother had no understanding of who she was and made no effort to do so. Expressing concern that her mother “wants to think the worst of me,” she also expressed hope that “deep down inside she [her mother] knows I’m a good person.”

Struggling with how her mother saw her, fear of disappointing her parents figured heavily into her abortion decision. As she explained, “I didn’t want to disappoint them. They know me in some ways. They know certain things about me, like, I don’t do drugs; I don’t do alcohol. I’m not the type to go around and just party all weekend . . . . I just like staying home. To them it would be like, why her?” She feared that by continuing the pregnancy she would validate her mother’s tendency to think the worst of her, and risk losing her mother’s “deep down” sense that she was, in fact, a good person.

c. Why Minors Did Not Tell Their Parents

A primary goal of the in-depth interviews was to learn more about why some teens do not involve their parents in their decision to terminate a pregnancy. A key finding of this study is that these young women took this decision very seriously. As developed in this section, they had multiple reasons that were well-grounded in the realities of their lives and reflected the individualized nature of their relationships with their parents.

All of the young women had multiple reasons for why they did not tell their parents about their pregnancy and abortion plans. The number of identified reasons ranged from two to six, with the majority of minors providing three or four reasons for their decision. Overall, the young women interviewed had the same kinds of reasons for not involving their parents as did the young women in the quantitative sample. In both groups, the most frequently provided reasons, clustered thematically, included an anticipated severe adverse parental reaction, that parents would be upset/very upset, anticipated harm to the relationship, concern for a parent’s well-being, anticipated parental pressure to have the baby,

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231. These minors also identified this as a reason for not discussing their abortion decision with a parent. Because fear figured more heavily into the non-involvement decision, it will be discussed in greater detail in that context in order to avoid repetitiveness.
232. Interview with Bianca Jones, supra note 182.
233. Id.
234. As will be discussed below, fear of disappointing a parent was an important consideration in many minors’ decisions not to disclose their pregnancy and abortion plans.
and a problematic family relationship.

Two additional reasons for non-disclosure emerged in the qualitative interviews—autonomy and fear that the information would be disclosed to others. The interviewees did not offer either reason frequently, and when they did, these reasons were often embedded within other more dominant considerations. For example, if a young woman mentioned she was concerned that upon informing her parents of her pregnancy, a parent would divulge the information to others, this concern was usually within the context of a discussion of how upset her parents would be and the ways in which she feared they would respond to the news. 235

To contextualize the non-disclosure decision and discern whether these young women felt there was a history of open communication with a parent with respect to sex, they were asked about their relationship with their parents and the patterns of communication about sexual issues. This history is of particular interest because one concern about parental involvement laws is that they may compel teens to disclose their sexual activity in a family context in which there is no established pattern of communication about sexuality.

i. Relationships with Parents

Thirteen (50%) of the young women reported having a close or a good relationship with one or both parents. 236 Of these, four reported having a close relationship with both parents, and nine reported having a close relationship with one parent (almost always a mother). 237 Of those reporting a good relationship with one parent, all but one who said her relationship with the other parent was simply “not that close,” 238 characterized their relationship with the other parent as either bad or nonexistent.

In discussing what they meant by a close relationship, the young women mentioned matters such as being able to talk openly about problems they were having in school or with friends, having a comfortable sense of being able to chat about the events of the day, or just enjoying spending time together. How-

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235. Given this situation, “fear of disclosure” will not be discussed as a distinct theme, although it was a concern for many of the minors in the interview sample. Considerations of autonomy were more complex and will be discussed separately below.

236. One minor, Stephanie, described her relationship with her mother as very close, but she then went on to discuss how her mother regularly beat her and subjected her to much harsher treatment than her other siblings. Given this, a decision was made not to code this as a good relationship.

237. The minors who described themselves as having a close relationship with one parent include: Beth Smith (father); Anna Lynne Albano (mother); Bianca Jones (father); Dion Smith (mother); Monique White (mother); Sandra Llonas (mother); Kathleen Johnson (mother); Taylor Jordan (mother); and Mary Souza (mother). Of these, Anna Lynne, Bianca, and Taylor lived with both parents; Mary Souza lived with her father (although she was planning to go live with her mother shortly); and the rest lived with their mother. The minors who described themselves as close to both parents include: Molly Moe, Jill Casey, Theresa Clark, and Mary Smith. Of these, Molly lived with her mother and the rest lived with both parents.

238. That minor was Anna Lynne Albano. Interview with Anna Lynne Albano, supra note 213.
ever, most of the minors spontaneously described the limits of this closeness—making clear that it did not include discussions about the deeper, more intimate aspects of their lives—this was where the closeness ended. Thus, despite this closeness, almost all of these relationships were what can best be described as “bounded,” encompassing only certain domains of the lives of these young women.

As Molly explained, despite her good relationship with her mother, “[it’s] not very often [that we] have conversations about intimacy and stuff like that . . . My mom gets really uncomfortable. Like she doesn’t know how to approach the situation. . . . I never ask.”239 Similarly, Anna Lynne, who also had a good relationship with her mother, explained: “She just wants to hear about like, school and stuff, and like what I like to do and everything, but when it has to do with, like, guys, . . . she’s just like ‘Oh, your friend?’ It’s just like she doesn’t want to hear about, like, me having a boyfriend or . . . me going out.”240 As Taylor put it, “my mom and I are close, but we don’t really talk about things that would, like, get her angry, or, like, things that would . . . cause an argument. We sort of, like, avoid that, and so we don’t really talk about, like, sexual, like, things.”241

A possible explanation for this demarcation of domains, as discussed below, is that almost none of the parents had initiated meaningful or positive conversations with their daughters about sexuality, or even about their changing bodies. This failure may well have signaled to these young women that these matters lie outside the borders of the parent-child relationship. It is also possible that the sense of demarcation reflects the developmental process of separation and individuation.

The other half of the young women in the sample did not feel that they had a good relationship with either parent. Of these, eight characterized their relationship with at least one parent as “okay.” Where a young woman described the relationship as “okay,” she usually meant that there was not a sense of closeness, sharing, or connection, but unlike the more troubled relationships, there was not overt hostility, frequent fighting, violence, or complete detachment. Similar to the young women who had a good relationship with one parent, these young women generally characterized the relationship with the other parent as bad or nonexistent.242

The five remaining young women did not have what could be characterized as even an “okay” relationship with either parent. Here, relationships were either bad or nonexistent. Of these young women, three had been removed from the custody of one or both parents due to abuse and neglect, and were now living

239. Interview with Molly Moe, supra note 186.
240. Interview with Anna Lynne Albano, supra note 213.
241. Interview with Taylor Jordan, supra note 209.
242. For minors living with one parent, the comparatively better relationship was almost always with the parent with which she was living.
in some kind of DSS residential facility. When a minor characterized her relationship with a parent as bad, it almost always meant more than simply not feeling close or connected. Rather, the relationship was characterized by frequent fighting, abuse, and/or a complete breakdown in communication.

For example, Mary Souza, who had lived with her father for the past four years, following the divorce of her parents, described their relationship as follows:

I live with my dad, ... and we get into a lot of fights . . . . It’s gotten to a point where we just argue, and I don’t feel comfortable around him . . . .

We just clash . . . . and I don’t feel like, like really wanted. When I walk in the door, I just go to my room . . . . Little tiny things . . . . blow up into big arguments. Cause we talk back and forth with each other, and it gets so overblown that we end up yelling . . . . he starts, like, spitting or whatever . . . . and then it just gets blown up into a bigger argument.

Feeling frightened much of the time, Mary was planning to leave her father’s home and move in with her mother, with whom she had a good relationship. Although less explosive, Corey’s relationship with her mother had deteriorated over the past few years, so that now they could not even go out to eat together: “My mom and I fight . . . . a lot now. . . . I mean we always have argued and fought, but . . . . I used to always go out to eat with my mom, but now we always fight, no matter what. Like, wherever we go, even if I’m in the car with her for ten minutes, we just fight.”

Also included here is Stephanie, despite the fact that when asked about her relationship with her mother, she first responded that her mother is very sweet and one of the best moms in the world. However, as she continued, her own description of the relationship belied this sense of sweetness:

I cannot say she does not care about me, but sometimes I feel like she doesn’t cause, like, if I do something, I get beat up sometimes. I get beat up most in my house—[more] than my brothers and sisters. So, sometimes, that is why I feel like, you know, I am the one that she loves the least . . . . And people that I talk to . . . . they always say that kids that get beat up and gets blamed all the time . . . . ‘[will] probably be the one she’s gonna love more in the future.’ I’m like, ‘Well, I don’t think so.’ . . . then it’s probably gonna be too late for her . . . . I’m still going to think that she . . . . doesn’t care and stuff.

In most instances, when a young woman said she did not have a relation-

243. These minors included: Jasmine Cruz, Keisha Wood, Sandra Kiwi, Jane Smith, and Stephanie Paul. Of these, Jasmine, Keisha, and Sandra were in DSS custody; reflecting the chaos in her life, Jane was not clear who had custody of her.
246. Interview with Stephanie Paul, supra note 184.
ship with a parent, she was referring to a father who simply was not part of her family’s life. As Sandra Llonas explained when asked about her father, who lived apart from her and her mother,

my dad? Well he’s practically never been around. Like, when I was younger, I used to see him, like, two or three times a year. And then a couple of years ago, I went to go live with him, and I lived with him for a year and a half, but he was always working, because he had a full-time job and then he had a part-time job. So I would never see him.

Stephanie’s father maintained a business in his home country and would come to see his family once or twice a year. She thus explained why he did not really seem like a parent to her: “My dad, he’s, to tell the truth, he was only here physically and financially. He wasn’t here as, like, a real dad to . . . show me what’s good in life and . . . help me do the right thing . . . . He was only here physically.”

When asked about their relationship, Monique conveyed her resentment toward her absent father, who had only been to see her twice since she was a young child:

He’s been to my house on two occasions . . . . [He] doesn’t make an effort to come see me. So I take it as—I’m the child—why should I make an effort . . . to go see him? . . . I remember before he told me not to talk to boys on the phone . . . . And I was just, like, “Who do you think you are?” I don’t know, I guess I make him feel smaller, less manly. It just surprised me, like, “How are you going to tell me what I can do? I mean, you never even bought me a gift. You don’t even know my birthday.”

After Sandra Kiwi left her father’s home at the age of nine, due to abuse by her stepmother, she attempted to stay in touch with him through letters, but she sadly explained: “I guess he don’t want to talk to me. I sent him letters, but they keep on coming back.”

It is clear that the young women in the interview sample cannot be pigeonholed regarding their relationships with their parents. It is far too simplistic to assume that all minors who do not involve their parents come from abusive or

247. These fathers were generally living elsewhere, including out of state, in another country, or in jail. No conclusion should be drawn from this discussion about whether teen daughters tend to have worse relationships with their fathers than they do with their mothers; this topic is well beyond the scope of this study.

248. Interview with Sandra Llonas, in Boston, Mass. (July 2, 1999) (transcript on file with author). Although Sandra did not have what she considered to be a relationship with her father, unlike some of the other minors, she did have some regular contact with him. She described him as “cool” and always making “sexual jokes.” Id.

249. Interview with Stephanie Paul, supra note 184.

250. Interview with Monique White, supra note 206.

251. Interview with Sandra Kiwi, supra note 197.
dysfunctional families. Although certainly true for some of the young women in the sample, others enjoyed a good relationship with at least one parent, and clearly valued the connection. As developed below, this complexity is reflected in the reasons given by these young women as to why they did not tell their parents—as both the lack of and the presence of meaningful connections were factored into the decision not to disclose.

ii. Talking About Sexuality

Overall, the minors in the sample did not feel that they could comfortably talk to either parent about sex. None of them had told a parent she was sexually active, and, in a similar vein, none of the parents had initiated a meaningful or informative conversation with their daughter about what it means to become sexually active. However, a few parents, perhaps upon suspecting their daughter was sexually active, had provided snippets of advice, such as “use a condom,” but none had sat down with their daughter to discuss contraceptive choices with her.

This lack of meaningful dialogue is not surprising, if one considers the long-standing patterns in these families regarding communication about sex. Excluding from consideration the three minors who had not had a relationship with a parent since early childhood, almost half of the young women in the sample reported either that their parents had never talked to them about sex, including the basic facts of life, or that if they had, the message that was conveyed had been quite negative, such as that sex was bad and fraught with lurking dangers.

For example, the attitude that Miranda’s parents sought to instill in her was that sex was for bad teens: “My parents and I have never talked about me having sex. Sex is always the bad thing, bad girls have sex. Girls who have sex always get in trouble.” Mentioning how she would randomly try to bring up the topic of sex, her mother would consistently respond: “Don’t have sex. It’s bad for you, something bad’s going to happen. You don’t want to be one of those bad teens, or get pregnant.” A similar message was conveyed to Taylor, who understood her mother to be saying that even when married, sex was something bad—something to be avoided whenever possible.

For Angel, who had lived with her father until he kicked her out of the house after a fight, and whose mother suffered from a serious and debilitating mental illness, the only communication she had had with a parent regarding sex consisted of her being called a whore by her father because she had friends who were boys. This was also the only communication about sex between Mary

252. See infra Section V for a discussion regarding studies on this issue.
253. Interview with Miranda Roberts, supra note 183.
254. Id.
255. Interview with Taylor Jordan, supra note 209. Both Miranda and Taylor were born to immigrant parents, and both linked their parents’ negative views toward sex with the cultural outlook of their home cultures. This is simply noted here. This study did not attempt to correlate parental views to racial or cultural backgrounds.
Souza and her father, with whom she lived. As Mary explained, her father’s basic attitude was that teens who had sex were tramps, resulting in him calling her a whore when he learned she was sexually active.\footnote{As discussed below, Mary’s father also filed a delinquency petition in court when he learned she was sexually active.}

The other young women in the sample described having at least some communication about sexual matters with at least one parent, almost always a mother. For some, this communication consisted of basic information about the facts of life; for others, it was a caution about using protection if she had sex. Most of the young women reported that their mothers seemed uncomfortable talking about these matters with them, and, as a result, they did not feel comfortable turning to their mothers for information or advice. The sense that many conveyed in the interview was that their mothers seemed to feel some kind of responsibility to provide them with basic information, but were neither looking to open up a dialogue with their daughters nor inviting them to come to them with questions as they matured. In a rather poignant example of this tension between discomfort and responsibility to inform, Anna Lynne described how her mother would “happen” to turn on the Discovery Channel when educational shows about sex were on and then casually suggest that Anna Lynne sit and watch television while she finished preparing dinner.

In contrast, three young women felt that a parent (and in Beth’s case, both parents) had been open and direct with them about sexual matters, although not necessarily recognizing or accepting their daughter’s sexuality. Beth sensed that both her parents felt pretty comfortable talking with her about sex, joking that they did not break out into cold sweats. She explained that her father told her he would prefer that she not be sexually active, but then caringly told her, “‘if I was going to, that it should be with someone special . . . who cares as much for me as I care for them.’ That was his big thing.”\footnote{Interview with Beth Smith, supra note 187.} Her mother also echoed this concern. Interestingly, these communications did not occur within the context of a stable parent-child relationship; as discussed above, Beth had spent most of her childhood being bounced from one relative to another due to her parents’ inability to care for their children.

Jill and Theresa were also able to talk openly with their mothers about sex; however, neither could broach the topic of her own sexual activity with them. Jill’s mother had begun informing her about sex when Jill was in elementary school; since that time, Jill described conversations about sex as being relatively informative and comfortable. However, despite this atmosphere of openness, Jill’s mother had not broached the issue of birth control or her daughter becoming sexually active with her. As Jill understood it, this was because they lived in a very sheltered, middle-class community, where people did not think teenagers had sex. As she explained, “I didn’t think that teens of the age of 16 [her current age], would ever do something, you know what I mean? And I think they [her
parents] think that too. They just don’t think, especially where I live. Nice little town, no real issues.” Theresa also felt that she could talk openly with her mother about sex and could ask anything she wanted to about sex and sexual practices. Similar to Jill, however, she could not discuss birth control or her own sexual activity with her mother, although for her, it was because her mother strongly opposed premarital sex on religious grounds.

Although more open about sex than the other parents, neither of these mothers comprehended her own daughter’s sexuality. This topic remained “off-limits,” notwithstanding the general ease of communication about sex. Thus, of the entire group, only Beth’s parents seemed able, or willing, to comprehend and respond to their daughter’s emerging (or perhaps better, emerged) sexuality in a direct and immediate way.

### iii. Reasons for Non-disclosure

Like the young women in the quantitative sample, these young women had multiple reasons for why they did not tell their parents about their pregnancy and intended abortion. As with the reasons for pregnancy termination, the interviews reveal the connections that they drew between themes. For example, a young woman who feared a parent would react with extreme anger might also be concerned that this anger would destroy whatever relationship they had. Similarly, a young woman who worried that a parent would be upset might have been concerned for herself, but she might also have been expressing a desire to protect her parent from having to experience this worry or anxiety.

All of the young women interviewed, including those living with both parents, distinguished between their parents when discussing reasons for non-disclosure. Recognizing each parent as a distinct person and each relationship as having its own dynamics, they grounded their reasoning in this awareness. Thus, for example, a young woman may have been concerned with protecting her mother from the burden of the news, while focusing on her father’s anticipated anger.

Before looking at the reasons for non-disclosure, it should be noted that the parents of five of the minors in the sample did in fact learn of their daughters’ pregnancy and intended abortion. The parents of three of these young women learned of their daughters’ situation from a third party. Two of the young women, Melissa (who already had a young child) and Jasmine, told their mothers directly. Ironically, both of these minors were in DSS custody due to parental abuse, and had extremely troubled relationships with their mothers. It is instructive to briefly consider how some of these parents responded to the news.

Although Melissa did not want to discuss the details, she indicated during the course of the interview that her mother had been quite abusive towards her, and as a result, they had almost no relationship. The only instruction Melissa

258. Interview with Jill Casey, supra note 181.
had received about sexuality or the facts of life was when her grandmother, with
whom she was very close, told her about the "period situation." When Melissa
first became sexually active, she had hoped that this would be an opportunity for
her and her mother to sit down and talk about things. Accordingly, one day, she
announced to her mother, "Mom, I'm not a virgin," hoping desperately that her
mother would "talk to me about it. She don't talk to me." She also hoped her
mother would express some concern for her well-being and tell her to "use con-
doms." However, this disclosure had no impact on her mother. She expressed
no interest in or concern for her daughter. In telling her mother of the preg-
nancy, Melissa again hoped to find a way to connect with her; she also hoped her
mother would support her abortion decision. Apparently not realizing that hav-
ing lost custody to DSS, Melissa's mother no longer had the authority to consent
to the abortion, she told Melissa that she would come to the clinic to give per-
mission for the abortion, but she never showed up. Adding to the poignant-
ness of her situation, Melissa, although much closer to her father than to her mother,
chose not to tell him about her pregnancy because she knew he would be very
upset. Still grieving over the recent death of her grandmother, who had been the
most stable adult figure in her life, Melissa could not bear the thought of losing
the support and respect of her father.

It was not clear from the interview why Jasmine decided to tell her mother
about her pregnancy and intended abortion. Jasmine was a very angry young
woman who, as mentioned earlier, had not lived with her mother for most of her
life due to abuse and neglect. At the time of the interview, Jasmine was living in
a halfway house. After learning of her pregnancy, Jasmine's mother put enor-
mous pressure on her to have the baby. She went so far as to enlist relatives to
call Jasmine and pressure her into keeping the baby.

Dion was not sure how her mother had learned she was pregnant, but once
she realized her mother knew, Dion told her of her plans to terminate the preg-
nancy. Her mother responded to this news with complete indifference, except to
tell Dion that she was not going to help her pay for the abortion. In light of her
mother's lack of interest or concern, Dion decided to seek court authorization for
the abortion rather than try and involve her mother further. Following this
conversation, her mother remained completely indifferent to her situation, and
never asked Dion about the abortion.

Corey's parents learned of her abortion when they found information from
the abortion clinic in her room. Her father confronted her with tremendous an-
ger and threatened to break down her door in order to force her to speak with

259. Interview with Melissa Silver, in Boston, Mass. (July 20, 1999) (transcript on file with au-
thor).
260. Id.
261. Id.
262. As noted earlier, DSS will not consent to abortions for minors in their custody. See supra
note 174.
263. It is not clear whether her mother knew that Jasmine's pregnancy was the result of a rape.
them. Once she opened the door, he held her arms, dragged her down the stairs, held her down on the couch, and would not let her leave the house until she told him what had happened.

With reactions ranging from indifference to abuse, these parents hardly appear to be the supportive parents envisioned by the Court. Their reactions underscore the importance of listening to these young women as they describe the complex realities of their lives rather than relying upon judicial platitudes regarding the “one-size-fits-all” approach to family life and parental engagement at this critical moment in a young woman’s life.

**Anticipated Severe Adverse Parental Reaction/Parental Anger:** A reason given by five of the young women in the sample for not disclosing their pregnancies and intended abortions to a parent was fear of a serious adverse reaction; an additional five young women feared that their parents would be very angry or upset with them. With the possible exception of Miranda (see below), the young women who feared a serious adverse reaction had all experienced harsh parental treatment; their fear was thus well-grounded in past patterns of harm. Significantly, no young woman who felt she had a good relationship with a parent gave fear of an adverse parental reaction as a reason for nondisclosure. Similarly, young women who feared parental anger generally pointed to a history of relationship difficulties, which frequently included recurring and often bitter fighting. Fear of an adverse reaction or parental anger was almost always linked to other reasons for non-disclosure, such as lack of a relationship, parental beliefs about abortion, or concern about disappointing a parent. The following discussion illustrates the kinds of adverse reactions that the young women feared.

As described earlier, Stephanie was regularly beaten by her mother and had been singled out among her siblings for this kind of harsh treatment. Already isolated within the family, she feared disclosure would reinforce her mother’s sense of her as the worst of her children, thereby resulting in further marginalization and deprivation of family affection. This worried her more than being beaten, both because she hoped the knowledge that she “would have something inside” would keep her mother from harming her physically and, sadly, because she was so accustomed to being beaten that the prospect of it no longer frightened her: “I’m not even afraid if she beat me and stuff ‘cuz you know when you get used to something, you’re just, like, well, it happens . . . . I always tell her if she thinks beating me will change me, it won’t change me at all.”

Mary Souza was afraid her father would “flip out.” Although perhaps seeming like the kind of response that a teen might give without much thought,

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264. These results are fairly similar to the quantitative results.
265. The only exception to this is Stephanie. As mentioned above, the abusive nature of her relationship with her mother belies her initial characterization of her relationship with her mother as a “good” one. See supra note 236.
266. Interview with Stephanie Paul, supra note 184.
267. Interview with Mary Souza, supra note 244.
the history of Mary’s relationship with her father makes real the fear behind the words. Mary had lived with her father since her parents’ divorce a number of years earlier. Before the divorce, she did not have much of a relationship with her father, but she chose to live with him because her mother had moved to a new community, and she wanted to remain in her hometown. Following the divorce, her relationship with her father deteriorated rapidly. As described earlier, their relationship was punctuated by extremely angry and hostile arguments in which her father would spit at her, and although she did not elaborate, she indicated that there had also been other abusive behavior of a more serious nature. She felt increasingly afraid of him and was planning to move in with her mother at the end of the school term, although this meant changing schools mid-year and leaving her lifelong friends.

In addition to fearing for her safety, Mary worried that her father would respond by once again labeling her a whore\textsuperscript{266} and taking out a delinquency petition on her in juvenile court. This was no idle fear, as her father had filed such a petition previously upon learning that she had been sexually active with a former boyfriend. He had also filed a delinquency petition against her following a particularly bad argument.

To complete the picture of Mary’s situation, it is worth noting her reason for not involving her mother. In contrast to her relationship with her father, Mary felt quite close to her mother, describing her as her “best friend,” and she was looking forward to moving in with her. However, over the years, her father had told her mother that she was a bad girl, and she worried that if her mother learned she was pregnant, she might think less of her and not want her to come live with her. She was also worried about the fact that her mother was under a lot of pressure, and that the news of her pregnancy would be too stressful for her mother to cope with.\textsuperscript{269}

Severing family ties as a way of dealing with anger had been a longstanding pattern in Angel’s family, and she feared that if she told her mother about her pregnancy and intended abortion, she would be thrown out of the house. Angel’s parents had divorced many years earlier. Her father received custody of all five children because her mother suffered from a serious and debilitating mental illness. Angel described how her father hated her mother so much that after the divorce, he lied in court to get restraining orders against her so she could not see her children. However, four years ago, Angel’s father kicked her out of the house following a major argument. Since then, she had lived with her mother, and had not had any contact with her father.

Angel was not certain how her mother would respond. Sadly, she recounted that “I don’t really know her that well compared to how most women know about their moms because I didn’t see her for, like, a couple of years at a

\textsuperscript{266} As mentioned above in Section IV.C.2.c.ii (“Talking about Sexuality”), the only conversation Mary had had with her father about sex consisted of him calling her a whore.

\textsuperscript{269} See infra Section IV.C.2.c.iii, “Concern for a Parent.”
time after my parents got divorced. And she’s a manic depressive so she was always lying in bed and stuff when I was younger.”  

Shifting to the present, Angel continued: “And now it’s so hard to get along with her kind of because she’s a little insane . . . . She’s been on, like, SSI for being insane and stuff, and she takes pills, but it’s hard to talk to her because she talks to herself and stuff.” She also described how her mother constantly yelled at her. Although perhaps less certain of her mother’s potential reaction than the other minors discussed in this section, Angel’s fear of being kicked out of the house was genuine and reflected a complex family history of separation and loss that was rooted in a parental history of cutting ties based upon hatred and anger.

Miranda worried about a different kind of negative reaction. Miranda was born in this country to immigrant parents, whom she described as very strict, traditional, and unable to adjust to the American way of life. As discussed above, her mother had constantly drilled into her that sex was for bad teens who had not been brought up properly. Miranda had seen her mother become extremely angry and agitated when she learned that a second cousin who was visiting them had had an abortion. Miranda recounted how her mother had dragged the whole family into the matter and angrily called the friend who had driven her cousin to the clinic. Knowing how her mother felt about both premarital sex and abortion, Miranda anticipated that her mother would react to her pregnancy with extreme anger. Although she did not fear being harmed physically, as there was no history of abuse, she feared that her mother would respond by forcing her to return to her home country to give birth and raise the child among her relatives, so she could be closely supervised by an extended family network. Of course, there is no way of knowing for certain whether her mother would actually do this, because unlike with the above young women, this anticipated response was not part of the family history. However, Miranda’s fear was very real and well-grounded in the belief structure of her mother, which supported her prediction of parental outrage if she learned of Miranda’s situation.

Although one might easily assume that most teenagers, when asked how their parents would react if they found out their child was pregnant, would reflexively respond that “they’d kill me,” the above discussion makes clear that for the young women in the qualitative sample, the fear of an adverse parental response was generally well-rooted in a history of troubled relationships and past negative treatment. Young women with a good relationship with one or both parents did not worry about an adverse parental response; lacking a relational dynamic that would have supported this concern, it was not a consideration in the decision not to disclose. Similarly, young women who feared parental anger generally looked to a history of significant difficulties in the relationship, including frequent and serious arguments, in deciding not to discuss their pregnancy.

270. Interview with Angel Cavanaugh, in Boston, Mass. (July 13, 1999) (transcript on file with author).

271. Id.
and intended abortion with a parent.

**Concern for the Relationship:** Eleven young women (42%) feared that disclosure would harm the relationship they had with one or both parents. They worried their parents would not trust them again, would lose respect for them, or would be profoundly hurt or disappointed. Almost all of the young women who did not tell a parent because of a concern that disclosure would negatively impact their relationship had a "good" or an "okay" relationship with that parent.

Both Jill and Mary Smith expressed these concerns. As mentioned earlier, Jill lived in a fairly wealthy suburb where, according to her, adults simply assumed that their high-achieving children were not sexually active. Thus, although her mother had talked openly with her about the facts of life, they had never discussed the possibility of Jill's own sexuality. At the time of the interview, she and her mother were actively working on her college applications, and Jill was hoping that she would get into an Ivy League college. Focusing on the importance of her relationship with her parents, Jill explained: "If I had told my parents, eventually they would have let me have an abortion.... Yet, our relationship would never be the same after that. I'm sure of it. The respect, the trust, everything would kind of be gone.... I didn't want to jeopardize that."273

Like Jill, Mary came from a middle-class professional family, and was planning to attend college in the fall. Also describing herself as close with both of her parents, she feared that her mother would be horrified to learn she had been sexually active, and would lose respect for her: "She would have been disgusted.... I feel that she would look at me different; she would just think of me different. She'd act different toward me...."274 Mary explained that the only situation under which she would have told her mother about being pregnant was if the pregnancy had resulted from a rape, because then it wouldn't be her fault:

If we had gotten pregnant, say, not by choice,275 but by rape... then I think she would've completely understood.... If I had told her it was because of my own mistake... I think she has this assumption, like, I'm too smart to make a mistake because I'm in the National Honor Society and stuff. I got into... college.... I think it would've definitely affected her viewpoint.... She would think I was irresponsible about

272. A considerably smaller percentage (22.4%) of the minors in the quantitative sample gave this as a reason. This may reflect the differing methodologies, as the in-depth interviews gave minors a much greater opportunity to reflect on their lives. However, it may also say something about the samples. Although a concern with respect to both components of the study is that minors in abusive families are underrepresented, this may be a more salient concern with respect to the interview sample, given the complications of arranging for an interview.

273. Interview with Jill Casey, supra note 181.

274. Interview with Mary Smith, supra note 228.

275. When Mary uses the word "choice" here, she is referring to the voluntary nature of the sexual encounter, not to becoming pregnant.
A number of these minors mentioned the high expectations that their parents had for them—expectations that they feared would be destroyed with the news of their pregnancy. In not telling, these minors hoped to preserve their parents' vision of them. As Sandra Llonas explained when discussing why she did not tell her mother,

I'm the oldest out of all the kids on my mother's side of the family .... All the grandkids, all the cousins, and so everybody looks up to me, and everyone depends on me—you're the oldest, you're doing so good in school, you're gonna go to college, and you're going to do this and that . . . without messing around with dudes.277

For the most part, the concern that disclosure would disrupt a relationship was not an important consideration where there was no relationship to protect. However, both Corey and Bianca, who at the time of the interview characterized their relationships with their mothers as terrible, were concerned that their mothers would be deeply disappointed in them, thus further damaging their already-tenuous relationships. This concern may reflect the fact that, in contrast to most of the young women who reported having a bad or nonexistent relationship with a parent, both of these young women had previously enjoyed times of closeness with their mothers and, during the course of the interview, had expressed sadness over the deterioration in the relationship.

As Corey, who previously described how she and her mother now fought all the time, explained, "there was no need to tell them because it would just hurt them. It would make it worse; it would make them more disappointed in me. And it would make them think, like, she's making such bad decisions. She's irresponsible . . . But they would just worry so much."278

Although there is no way to be certain that all these young women were correct in their belief that disclosure would damage the relationship they had with their parents, what was striking was the seriousness and sincerity of their concerns. This is made evident by the fact that rather than risk disruption of these connections, these young women were willing to submit this intimate decision to the authority of the court, which, as discussed below, was a daunting prospect for all of them. Thus, rather than signaling dysfunction or a flippant "teen" attitude toward parents, non-disclosure may represent the desire to preserve connection rather than to risk its disruption.

**Concern for a Parent:** Distinct from the concern for the impact that disclosure would have on a relationship with a parent, almost one-third of the

276. Interview with Mary Smith, *supra* note 228.
278. Interview with Corey Adams, *supra* note 245. Recall that Corey was one of the minors whose parents found out about her abortion—her father's abusive response is described above.
young women interviewed expressed concern about the impact that disclosure would have on the well-being of a parent.\textsuperscript{279} In this regard, a number of young women expressed concerns about burdening a parent who was suffering from a serious physical illness or condition. Mary Smith, who, as discussed above, did not disclose her situation to her mother because she worried it would harm their relationship, explained:

I never once thought of telling my dad. He has high blood pressure . . . and I think that would have just set him off. It would have made him worry too much. A lot has been going on with him medically, like . . . he had a stroke a few years ago. He's retired now actually. So . . . I didn't want to push because he gets upset easily . . . I never thought of telling him.\textsuperscript{280}

Both Anna Lynne and Monique considered the health of a parent in combination with other factors in deciding not to disclose their situation. Anna Lynne's father had suffered a heart attack several years earlier and was now under considerable stress. As she explained in discussing why she did not involve him, "I just didn't think it was the right time, because my dad, he was the assistant vice president at the bank, and he just got laid off because of the merge . . . and since then, he hasn't had a job . . . They're kind of, like, tight right now with, like, money . . . . They have a lot of financial problems . . . . It's just my mom working, and she doesn't like her job, and she wants to quit . . . So they're just kind of stressed out . . . ."\textsuperscript{281} For Monique, it was her mother's chronic, debilitating illness and the fact that she was a single parent of three children, in combination with her emotional volatility (Monique described her mother as becoming completely emotionally overwhelmed when Monique first got her period), that prompted her non-disclosure decision. Speaking not just of the abortion, Monique explained: "I wouldn't, like, put the burden on my mother . . . She has enough problems. I just keep on."\textsuperscript{282}

For other young women, it was an awareness of parental vulnerabilities. Thus, although Beth, the young woman who was living with roommates after being kicked out of house by her mother, could talk openly about her emerging sexuality with her father, she felt she needed to protect him from the news of her pregnancy: "I don't know how he would have handled it . . . He's manic-depressive. He's an alcoholic . . . . Right around the spring [the time of her pregnancy], it's his time to try and commit suicide, and . . . I, like, didn't want to

\textsuperscript{279} This is a significantly higher percentage than in the quantitative sample, where only 6.6\% of the minors mentioned this as a reason. Like concern for the relationship, this may say something about the different methodologies employed, with the interview allowing for a more reflective response, or it may say something about a possible difference between the two samples.

\textsuperscript{280} Interview with Mary Smith, supra note 228.

\textsuperscript{281} Interview with Anna Lynne Albano, supra note 213.

\textsuperscript{282} Interview with Monique White, supra note 206.
add to any of his ... problems.²⁸³

Molly, who had told her mother about a prior abortion, this time sought to shield her from further stress:

My mom has got a lot of stress. She’s got bills to pay off, she’s working two jobs. . . . I think that if she, you know, were to find out about it, that she would have been, you know . . . even more emotionally stressed, you know. And, you know, to bring her through something like that again would be, you know, really hard for her to deal with, you know. . . . So I figured to save her the emotional, you know, stress and stuff . . . I would, you know, keep it from her.²⁸⁴

As these quotes make clear, these young women were very attuned to the difficulties in the lives of their parents and felt a sense of responsibility to shield them from further distress. As with the focus on preserving relationships, these minors were seeking to avoid inflicting harm through disclosure of information they believed would be upsetting to their parents. Thus, again, non-disclosure was rooted in a protective impulse—in a desire to prevent harm and safeguard existing familial dynamics.

**Lack of Relationship:** About one-third of the young women in the sample did not involve a parent because of their lack of a relationship with that parent. In most instances, this applied to a father who was living apart from the family and was simply not part of the young woman’s life. Several of these fathers were living in other states, a few were in other countries, and one or two were in jail.

Reflecting the profound lack of connection with their absent fathers, many of these young women, when asked why they did not involve their parents, spoke only of their mothers. Their fathers were so removed from their lives, it was as if they had been shorn of their parental status and were thus outside the scope of the inquiry. Only upon being specifically asked about why they did not talk to their father, did they consider him.²⁸⁵ As Monique succinctly put it when explaining why it never even crossed her mind to tell her father about her pregnancy, “I didn’t even call him to say Merry Christmas, so I definitely didn’t call him.”²⁸⁶ Reflecting this total lack of engagement, and in contrast to the dominant pattern of multiple reasons for non-involvement, the absence of a relationship was the only stated reason for not involving these absent fathers.

The context was different for several of the young women who did not involve a parent because of the lack of a relationship. Here, the consideration was

²⁸³. Interview with Beth Smith, supra note 187.
²⁸⁴. Interview with Molly Moe, supra note 186.
²⁸⁵. Logically, a significantly smaller number of the minors in the quantitative sample mentioned the lack of a relationship as a reason for non-disclosure (a total of 11.2% did not involve a parent due to problematic family relationships, including the lack of a relationship) as these minors most likely would not have considered an absent parent when completing the Client Data form.
²⁸⁶. Interview with Monique White, supra note 206.
less due to the total absence of a parental bond than the sense of distance and lack of a context for disclosure. For both Amy and Corey, the lack of a relationship was a relatively recent occurrence. Both of them had been engaged with their mothers while growing up, but, as described earlier, had entered into stormy times with them during adolescence. Unlike the young women who did not even think of mentioning their absent fathers, both Amy and Corey were painfully aware of the shift in their relationship with their mothers, and mentioned that they would have told their mothers had the relationships not deteriorated so badly.

As Amy explained, "my mom [and] I have no relationship . . . . If probably I hadn't moved out, I would have thought about telling my mom, but not now. I have no relationship with her. Her and my relationship basically dissolved." 287 Similarly, Corey, who, as discussed above, was also worried about parental disapproval, explained: "I felt like if I had a better relationship with her, I really would have [told her]. And, like, it's too bad that we had such a bad relationship when, like, the worst thing happened to me. But I couldn't tell her at [that] point . . . ." 288 For Amy and Corey, the absence of a relationship was intertwined with other considerations. For Amy, it was a fear that her mother would tell her father. For Corey, it was anticipated anger, disappointment, and the risk of an irreparable breach in the relationship, reflecting a shifting dynamic, rather than a fixed, categorical lack of connection.

**Parental Pressure and Ideology:** Five young women in the qualitative sample also gave as a reason that they were concerned that if they told a parent about the pregnancy and intended abortion, they would be pressured or forced into having the baby. 289 None of the young women interviewed reported being afraid that her parents would pressure her into marrying the father of her child.

For the most part, these young women described their parents as staunchly anti-abortion and identified this ideology as the wellspring of anticipated parental opposition to their intended abortion. At least two young women also expressed the concern that they would be forced to have the baby as a kind of penance for their "wrongdoing." For Beth, however, the concern was that her mother would push her to have the child based on her mother's desire to care for a child:

She loves children. Loves them, and she would want me to have it. Not because she's anti-abortion, but because she wants to be a grandmother . . . . Like if I had it and gave it to her, she would be fine with that . . . . There's the whole situation with that child would be raised the same way

287. Interview with Amy Michaels, supra note 195.
288. Interview with Corey Adams, supra note 245.
289. A similar percentage (22.2%) of the minors in the quantitative sample mentioned fear of parental pressure as a reason for nondisclosure, with some of these minors mentioning anticipated pressure to marry.
I was raised, and that’s just not good enough.\textsuperscript{290}

**Autonomy:** As mentioned earlier, it is easy to assume that many teens do not tell their parents about their pregnancy and intended abortion because they are seeking to assert their independence from parental control. Depending on one’s perspective, this might be viewed as an unreasoned act of defiance or as a normal aspect of adolescent development in which separation from parents is considered an essential step toward healthy adulthood.

However, autonomy did not emerge as an important theme in the interviews as a reason for non-disclosure. Only two young women, Jane and Kim, spoke of “autonomy” as a self-contained reason for non-disclosure. As described earlier, Jane had an extremely troubled relationship with her family, and at the time of the interview, Kim was living in a shelter with her infant daughter. Her father was long absent from her life, and she had sporadic contact with her mother. As Kim saw it, her abortion was simply none of her mother’s business; for Jane, her decision represented a claim to her own body and an assertion of attempted control over the chaos in her life. As she explained, “it’s my life . . . . It’s my body. My brain runs my body. I run my body. I run my mind . . . . I’m doing what I gotta do because I’m the one that’s really going through this shit. That’s the way I see myself.”\textsuperscript{291}

For others, considerations of autonomy were subtler and more contextual. Thus, for example, several young women articulated their claim to an autonomous decision in a context of assessing the harm that disclosure would have. This dynamic is captured in the following quote from the interview with Keiza: “It just wasn’t their decision. I just made my decision of whether or not to have it, and why and if I’m just going to have it [the abortion], why should I bring them down . . . if I don’t have to.”\textsuperscript{292} Molly felt that rather than upsetting her mother, she should take responsibility for her own actions: “She would probably blame it on herself, you know, say ‘well, why did I let this . . . go and happen, and stuff like that.’ You know it’s not her fault. I can’t . . . put her through that because of . . . the choice that I made.”\textsuperscript{293} This was also a consideration for Monique, who was deeply concerned about burdening her mother: “Me, I feel like it’s something you just don’t involve . . . you got in this situation, why involve your mother?”\textsuperscript{294}

Thus expressed, autonomy appears as an expression of contextual considerations, rather than an absolute claim to self-expression. Here, the young woman’s consideration of self, either in terms of her decision or the underlying conduct, is linked to considerations of parental relationships and the impact that  

\begin{footnotesize}
\textsuperscript{290} Interview with Beth Smith, \textit{supra} note 187.
\textsuperscript{291} Interview with Jane Smith, \textit{supra} note 204.
\textsuperscript{292} Interview with Keiza Smith, in Worchester, Mass. (July 20, 1998) (transcript on file with author).
\textsuperscript{293} Interview with Molly Moe, \textit{supra} note 186.
\textsuperscript{294} Interview with Monique White, \textit{supra} note 206.
\end{footnotesize}
disclosure would have on these connections. It is not separateness devoid of consideration for others. This theme of connection and autonomy is returned to in the Discussion.

D. The Court Experience

As previously mentioned in the description of the methodology, all of the young women in the sample had gone to court for a judicial bypass hearing and had been found mature by a judge. As part of the interview, they were asked to discuss what being in court had been like for them. Although not the focus of our inquiry, many of the young women, when asked about the nature of court experience, mentioned some of the logistical difficulties they had encountered in arranging to get to court. Although not examined systematically, it is clear from their spontaneous descriptions that these difficulties weighed heavily on them and were an integral part of their overall reaction to the court experience.\(^{295}\)

Critically, a number of young women reported getting incorrect information from various sources about their legal options. For example, one young woman was told that she could not get an abortion in Massachusetts if she was under the age of 18; another was given inaccurate information about the court process. In both cases, the minors were ultimately referred to PPLM, where they were given appropriate information, but the incorrect information resulted both in delay and significantly increased anxiety.

Many of the young women also recounted difficulties in arranging to get to court. Transportation was often hard to obtain and unreliable. One young woman had originally planned to go out of state, but her ride backed out on her twice, thus causing her to delay the abortion.\(^{296}\) Another young woman described being so worried that she would not make it on time to court that she made a dry run:

> Two days before I was actually going, I drove out there and looked for it. And I found my parking space, the exact one I was going to park in. And I went in, and I found exactly where I was going to sit, and then I went home. And two days later I went. I sat. I parked. I did all the stuff that I had practiced doing.\(^{297}\)

A number of young women mentioned how lucky they were to be old enough to drive or have a friend who could drive them, and they wondered what getting to court would be like for younger teens. Similarly, several mentioned how grateful they were to have a friend or boyfriend accompany them and imag-

\(^{295}\) This is not to suggest that logistical difficulties are not an enormous problem for minors seeking judicial authorization. For a discussion of some of these difficulties, see Donovan, supra note 135; Helena Silverstein, Road Closed: Evaluating the Judicial Bypass Provision of the Pennsylvania Abortion Control Act, 24 LAW & SOC. INQUIRY 73 (1999).

\(^{296}\) Interview with Theresa Clark, supra note 207.

\(^{297}\) Interview with Jill Casey, supra note 181.
ined how frightening and lonely it would be to have to go alone. As Mary Souza explained, “I think that a girl, a young girl under 18, that finds out she’s pregnant . . . [it’s] already nerve-wracking.”298

Virtually all of the young women reported being extremely nervous or frightened about going to court. Overall, the greatest fear was that the judge would deny them consent for the abortion. Over and over they described how, despite the assurances of their lawyers that almost all teens in Massachusetts are granted consent, they worried that they would be the one teen to be denied permission. Focusing on the fear of being turned down, Monique explained: “I was actually scared . . . . Because my doctor . . . she’s like ‘99% of [the time] she [the judge] agrees to’ but I’m like ‘what about the 1%?’ I could be the 1% . . . and I was nervous.”299 The following quotes also capture this anxiety. As Mary Jane describes it, “I was nervous because [I’d] never been to court before . . . . It was a little nerve-wracking for me . . . I was just nervous.”300 Similarly, Amy described her feelings upon entering the court: “I was . . . aaaaah! . . . scared just thinking about . . . . if I don’t get this, what am I going to do? . . . . If this doesn’t work, what am I going to do next? . . . . What if the judge says ‘no’? That’s the only thing you think about, I think. What are you gonna do next?”301 Melissa described being so frightened that she forgot the answers to some of the questions she was asked: “They asked me, ‘How do you know you’re pregnant?’ and I was going to say ‘ultrasound,’ but I couldn’t think of the words because I was so nervous . . . . I was like, ‘Oh, my God,’ then I said ‘test,’ because I forgot.”302

Afraid of being denied consent, these young women worried about making a mistake that would make them appear stupid or immature. They worried that they would not be able to convey their maturity to a judge who knew nothing of them or their life circumstances, or that their reasons for not involving their parents would not be considered satisfactory. Taylor worried about how she would come across to the judge: “They’re, like, judging you to see if you’re mature or not. And, like, just wondering, like, what you’re gonna say. Like, ‘what if I say this, and then maybe they don’t think I’m mature enough,’ or, like, ‘what if I do this’ and . . . stuff like that . . . .”303

In worrying that she would be denied consent, Jill’s primary fear was that the judge would not approve of her reason for not involving her parents:

I felt . . . uncomfortable. I was proving something to her . . . . I felt like my reason for not telling my parents wasn’t good enough. Like I needed to have a better reason, like ‘oh, my mom and dad would throw me out of the house if I told them,’ and that’s the only way that I would be able

298. Interview with Mary Souza, supra note 244.
299. Interview with Monique White, supra note 206.
300. Interview with Mary Jane, supra note 189.
301. Interview with Amy Michaels, supra note 195.
302. Interview with Melissa Silver, supra note 259.
303. Interview with Taylor Jordan, supra note 209.
to get her to say ‘ok’... I’ve never felt my hands so sweaty... [from]
nervousness, being uncomfortable. Intimidated. Scared that she would
say ‘no,’ that was the main thing. 304

Aware of the power that the judges had over their futures, this fear of being
denied consent for an abortion reflects the minors’ sense of powerlessness and
lack of control over the outcome. What if I say the wrong word? Give the
wrong reason? Or convey the wrong impression? Will this lead to my being
turned down and forced into motherhood? These kinds of worries played them-
selves out over and over again as these young women entrusted their futures to
the court. The following quote from Beth captures this sense of powerlessness
in describing how court made her feel: “Just unsure of myself. I’m very, very
confident of myself and my decisions, and then going through all that I just felt
very unsure of myself. Very uncomfortable. Very weak and vulnerable. And
I’m not a weak and vulnerable person.” 305

Closely related, a number of the young women, some angrily, questioned
how a judge who knew nothing about them or their life circumstances could pos-
sibly make a meaningful determination about their maturity or readiness to have
a child. The following quote from the interview with Mary Jane captures this
concern:

I don’t understand why you have to go to court and have another proce-
dure, another step .... I mean, if we [are] old enough or mature
enough ... however you want to see it ... to have sex ... to have preg-
nant ... I think that we should be able to make our own decisions. I
don’t think that someone else should be able to make our decision for us
and tell us if they think we’re old enough, mature enough, you know,
have the right mentality. I don’t think that someone else should have to
judge you on that. Because then, well, what they see and what you know
by living your own life, they don’t know. I mean, they might listen to
you and think one way, you know how it is another way. 306

Another important reaction expressed by a number of young women was
that it was uncomfortable to have to divulge such intimate details about their
lives to complete strangers. Some expressed this as feeling exposed or invaded;
one young woman expressed it as a loss of boundaries. Others spoke about a
sense of shame or wrongdoing. As Beth put it,

it was just so overwhelming. I mean to have so much going on and then
to have to go to a huge courthouse to sit and talk to a judge who was go-
ing to make this decision that really doesn’t involve them .... I mean, it
was very uncomfortable ... having to share something so intimate and
so personal with strangers .... I don’t want to say [it’s] embarrassing to

304. Interview with Jill Casey, supra note 181.
305. Interview with Beth Smith, supra note 187.
306. Interview with Mary Jane, supra note 189.
have been pregnant, but it didn’t fit in my picture of what I was sup-
posed to be, how I’m supposed to be viewed by people. And then here
was my big mistake, . . . [and] strangers saying if it was, if my decisions
were right or wrong.307

For Mary Smith, going to court made her feel as if she had done something
wrong: “I was like, ‘wow, I’ve never been to court before.’ You would think
that when you went to court, you were doing something wrong . . . . It kind of
made me feel like, ‘oh well, I’m doing something wrong here. I have to get the
court’s permission to let me, like, fix it.” Mary Souza reported similar feel-
ings when describing what it was like to have to connect with a lawyer to go to
court:

That was actually the most nerve-wracking thing for me . . . . Like, I just
found out I’m pregnant . . . and then, you know, you have to go to a
courtroom with a lawyer. To me, I’ve never seen anything good go on
with authority in courtrooms and stuff . . . you’re getting locked up, you
know . . . . And it’s just, like, so nerve-wracking. Like, I was so nervous
the day I had to go . . . . and then after that, you have to look forward to
your appointment . . . . I’m only 16, and usually at this age, you know,
you don’t see people going to court for good things . . . . I mean, I see
kids going there because [they’re] arrested . . . not for something great,
you know? So . . . I look at it as something just frightening.309

For Taylor, the sense of wrongdoing engendered by the court experience
was particularly unsettling because she planned to be a lawyer, and court now
felt to her like a very scary and horrible place.

Several young women characterized the experience as overwhelming—that
it was simply too much to have to handle at a single time. Thus, apart from the
worry, they experienced a sense of tremendous stress from having to negotiate
too many things at the same time. For some, the stress was due to the burden of
keeping secrets; for others, it was caused by having to negotiate complex ar-
rangements without revealing the underlying situation.

In this regard, Jill raised an important concern. For her, the focus on hav-
ing to negotiate the legal requirements meant that she did not have time or en-
ergy to focus on the emotional aspects of her situation—the burden of arranging
to go to court interfered with what she thought was important in this situation:

The big issue is that I’m pregnant. And that’s what I’m crying about,
and yet all we talk about is, am I going to be able to have an abortion
. . . . I had to be focusing on, like, what am I going to do . . . . [You’re]
crying because you didn’t want this to happen to you . . . because it’s
emotional. I mean it’s not just nothing, you know . . . you could have a

307. Interview with Beth Smith, supra note 187.
308. Interview with Mary Smith, supra note 228.
309. Interview with Mary Souza, supra note 244.
child. That’s huge. But, then you also have to add in... what if I go and try to do this and they say no. What am I supposed to do? \(^{310}\)

It should be noted that a few young women in the sample did not find court to be such a frightening experience. They saw it more as something that had to be done—a task that needed to be completed in order to actualize their abortion decision.

For the majority of the young women interviewed, there was nothing positive about the court experience that counterbalanced the overwhelming sense of fear and anxiety. A few minors, however, did mention a sense of pride in being found mature by a court; and for Stephanie, whose family’s mistreatment of her had forced her to become independent before she was ready, court was a positive affirmation of her separate self.

Already clear about their decision to abort and their inability to involve their parents, the minors, with the exception of Melissa, who appreciated having supportive adult contact, did not feel that going to court helped them with their decision. As Beth put it, “the court really wasn’t a supportive thing. It was more just this person who didn’t know you saying whether or not you’re stable enough to get an abortion.” \(^{311}\) Similarly, Angel, in explaining that the court did not help her with her decision in any way, stated: “I don’t see what was helpful about some person just trying to decide whether I was mature or not .... All they did was ask questions .... I just think that going to court was completely pointless.” \(^{312}\) For Corey, court was a lesson in irony:

I think that it was ridiculous, because they either were going to decide whether I was mature enough to make the decision, but if I wasn’t mature enough, then why would I have the kid, you know? Obviously, if I wasn’t mature enough to make a decision like that, I wasn’t mature enough to have a child .... It was just like a big huge step that I really felt didn’t need to be taken. \(^{313}\)

In reflecting on their experiences, a number of the young women mentioned that it would make better sense for there to be an alternative to court for minors who cannot involve their parents. Focusing on the logistical difficulties, Theresa explained it this way:

It would be easier if you could just go with someone over 18, because the whole court thing, you have to spend a whole day getting into Boston. My parents, I had to lie to them about the whole day .... I think actually there should be someone at the abortion center to decide if you’re mature enough to make your own decision .... It would have been much easier instead of worrying, am I going to get there on time? Am I

\(^{310}\) Interview with Jill Casey, supra note 181.
\(^{311}\) Interview with Beth Smith, supra note 187.
\(^{312}\) Interview with Angel Cavanaugh, supra note 270.
\(^{313}\) Interview with Corey Adams, supra note 245.
going to get [consent] from the court? . . . It’s just so confusing. I was so full of stress for like the month before. Just trying to get everything in order and trying to get there and get it done before it was too late, and it’s just so stressful for you.314

For almost all of the young women in the sample, court was like a high-stakes test they had to pass. Terrified of failing and being forced into motherhood, their focus was on avoiding mistakes or not giving the wrong impression to the judge. They did not experience court as a supportive or informative process that enhanced their decision-making capacities or helped them view their decision in a new light. They felt anonymous and resentful that a stranger held such power over their lives, such that she or he had the authority to undo an essential decision they had made regarding their futures.

V. DISCUSSION

Much of the debate about parental involvement laws has centered on whether teens have the capacity to make the abortion decision. An almost unquestioned assumption is that the validity of these laws depends upon whether or not teens are legally competent to make this decision without adult—most notably parental—support. This focus on decisional capacity can be traced back to the Court’s emphasis in Bellotti II on the “peculiar vulnerability of children,” “their inability to make critical decisions in an informed, mature manner,”315 and the countervailing guiding wisdom of parents to justify limiting the rights of teens seeking to abort.

The present study and, as discussed below, many others that have been done cast serious doubts upon the Court’s unexamined conclusions regarding the decisional abilities of these young women. Although this research is important—indeed, it is hoped that the present study will contribute to this growing body of knowledge—the focus on decisional capacity raises an important concern. If the debate about parental involvement laws is situated in a broader medical context, one must raise concerns about this focus given that minors have considerable autonomy to make other sensitive medical decisions, including those related to pregnancy and childbirth. Perhaps, however, there is a subtext to the Bellotti II decision, and thus to this decisional focus. As developed below, the Bellotti II decision may make more sense when read as the beginning of a shift in the Court’s characterization of abortion which ultimately leads to the Casey Court’s abandonment of Roe’s trimester approach amid assertions that it undervalues the state’s interest in potential life.316

Accordingly, we begin this discussion section by revisiting in greater depth

314. Interview with Theresa Clark, supra note 207.
316. See generally Casey, 505 U.S. 833.
the illogic of the *Bellotti II* decision. From here, we look at the abortion decision, with a focus on the research discussing the decisional abilities of young women. We then consider the involvement of others in the decision-making process, followed by a careful look at the meaning and weight of the decision not to involve parents. Lastly, we examine the nature of the court experience, and what it means to compel young women who do not involve their parents to go before a judge.

**A. Capacity—Now You Have It, Now You Don’t**

As discussed above in Section II, all states have carved out broad exceptions to the parental consent rule in a variety of medical contexts. Most significantly for present purposes, minors have considerable autonomy to make decisions related to their sexual and reproductive health, including pregnancy-related health care. What this means is that a pregnant minor may be treated differently under the law based on her intended pregnancy outcome.

In most states, a pregnant minor can make her own medical decisions, which implicitly means that she has the right to choose to become a mother. Once a mother, she has complete decisional authority over her own and her child’s medical care. Thus, in states with parental involvement laws, a young woman most likely will be able to embrace, but not to reject, motherhood on her own. The law treats her as competent to make one, but not the other, decision without adult involvement. Moreover, as the decision not to become a mother must be actualized through an abortion, both the reproductive choice and the effectuating medical procedure of a young woman seeking to avoid maternity are subject to adult scrutiny, whereas a teen wishing to become a mother enjoys decisional autonomy over her reproductive choice as well as its effectuation through pregnancy-related medical care.317

Although it did not seem to trouble the Court, it is difficult to grasp the logic of a statutory scheme that treats young women differently based on their intended pregnancy outcomes. Certainly, if a young woman is capable of deciding to become a mother, with all of the responsibility this decision entails, she is similarly capable of deciding not to become a mother. In fact, as recognized by the *Bellotti II* Court, the decision to become a mother is one of particularly profound consequence, as “the fact of having a child brings with it adult legal responsibility, for parenthood, like attainment of the age of majority, is one of the traditional criteria for the termination of the legal disabilities of minority.”318

317. Note that this care could include the making of medical decisions with profound and lasting consequences for both the young woman and the child she is carrying, such as whether to undergo in utero surgery to correct a fetal condition.

318. *Bellotti II*, 443 U.S. at 642. In addition to carrying adult-like responsibilities, becoming a mother as a teenager has profound life consequences and is likely to negatively impact a young woman’s future educational and economic opportunities, making it more likely that she will live in poverty. See NATIONAL RESEARCH COUNCIL, RISKING THE FUTURE VOL. I 123-28 (Cheryl D. Hayes ed., National Academy Press 1987). However, see KRISTEN
Thus, one could reasonably conclude that a state would have a particular interest in ensuring that the decision to bring a child into the world is fully informed.

The absurdity of linking decisional capacity to the pregnancy outcome is highlighted by the fact that the same young woman might well make both decisions during her teenage years. Certainly most women, adult or teen, when facing an unplanned pregnancy, consider at least briefly the implications of each choice for her life, perhaps moving back and forth between options before settling on a final decision. Assume for a moment that a young woman, upon learning she is pregnant, first considers motherhood. Not only is she free to make this decision on her own, but by making this choice, she is vested with complete control over her medical care both while pregnant and following the birth of her child.

Now assume that she changes her mind and decides to abort. At this moment in time, her decisional capacity vanishes. No longer legally considered competent, her reproductive choice is subject to adult scrutiny. Should she again change her mind and opt for motherhood, her decisional capacity would be fully restored—this choice would again be hers to make. It is hard to understand how decision-making capacity can be both temporal and contingent, shifting each time a young woman reconsiders her pregnancy options. Yet, this is the implication of a statutory scheme that entrusts teens with the decision to bear a child but not to abort.

On a parallel track, it is also hard to make sense of the contingent nature of the parental role. Regardless of whether parental consent laws are understood as giving expression to a "tradition of parental authority" or as embodying a nurturing function, it is not clear why a role should be statutorily prescribed only where a young woman decides to terminate a pregnancy. Certainly, if parents have an important role to play in helping their daughter with the abortion decision, they could also provide valuable support with respect to the decision to become a mother. This is especially true in light of the multiple medical decisions that pregnancy often entails, in contrast to the singular nature of the abortion decision, and the fact that carrying to term is generally riskier for a teenager than having an abortion.

Yet, as with decisional capacity, the Court viewed the desirability of parental involvement through a partial lens. Honored as an inevitable expression of rightful authority and as an essential counterweight to teen immaturity, the Court failed to address the fact that the statutory scheme before it made selective use of parents—vesting them with central importance when a young woman seeks to

LUKER, DUBIOUS CONCEPTIONS: THE POLITICS OF TEENAGE PREGNANCY 43-80 (1996), in which the author challenges the assumption that early childbearing causes poverty, arguing that poverty is likely to contribute to the decision to bear a child at an early age, thus inverting the traditional causal assumption.

terminate her pregnancy, but not when she chooses motherhood. It is not an answer that if a young woman carries to term, her parents will, with the passage of time, eventually learn of her pregnancy whether she wishes them to or not. By the time a pregnancy is showing enough to reveal her situation, it is often too late for the effectuation of an alternative decision.

Given these inherent inconsistencies, one must ask whether, in the final analysis, the *Bellotti II* decision is really about capacity, or whether it can better be understood as an expression of the Court’s discomfort with abortion. That this may be the truest reading of the case is in fact suggested by the text. Having previously characterized abortion as a medical decision to be made by a pregnant woman and her physician, the Court introduces a new understanding of abortion. In discussing the desirability of parental consultation, the Court explains that a state may reasonably determine that “as a general proposition . . . such consultation is particularly desirable with respect to the abortion decision—one that for some people raises profound moral and religious concerns;”321 thus, abortion has taken on a new symbolic meaning—it has moved from the medical realm to a higher, more spiritual plane.

It is here—in this shifting understanding of abortion—that the Court’s failure to reason about the rights of teens within the medical paradigm it laid down in *Roe* begins to make sense. Had the Court continued to reason within this paradigm, it could not have avoided confronting the reality that teens enjoy considerable autonomy when it comes to their own health care, especially when matters of a “sensitive” nature are at issue. Faced with this reality, the Court would then have been compelled to ask how a state can distinguish between teens based on their intended pregnancy outcome, granting decisional autonomy to those carrying a pregnancy to term, while casting those seeking an abortion as vulnerable and in need of guidance.

However, if the abortion decision is weighted with “profound moral and religious concerns,”322 it becomes distinguishable from the decision to bear a child—these transcendent concerns serve to demarcate the borders between these two choices. Read this way, rather than embodying a concern for minors and the integrity of families, the *Bellotti II* decision can be understood as signaling a shift in the Court’s thinking about abortion.323 No longer a medical deci-

321. *Bellotti II*, 443 U.S. at 640 (emphasis added). Further suggesting that the Court is backing away from its earlier understanding of abortion as a medical decision, the Court goes on to question the ability of doctors, notably those at abortion clinics, to provide minors with “adequate counsel and support.” See id. at 641 n.21 (quoting Planned Parenthood v. Danforth, 428 U.S. 52, 91 (1976) (Stewart, J., concurring)).


323. This reconceptualized understanding of abortion is thematically developed in subsequent Supreme Court decisions involving parental involvement laws. For further detail, see Ehrlich, *supra* note 13. This shift in the Court’s thinking about abortion is also evident in the Medicaid funding cases. There, the Court upheld the constitutionality of statutory funding schemes that denied funding for abortions while paying the costs associated with childbirth, maintaining that laws that encourage women to choose childbirth over abortion are “rationally related to the legitimate governmental objective of protecting potential life.” Harris v.
sion, abortion has been invested with multiple symbolic meanings that a young woman is deemed incapable of deciphering on her own.

We may never know whether or not this shift was a deliberate strategy by the Court to avoid confronting the discriminatory allocation of medical decision-making rights; nonetheless, the shift in paradigm was, from the Court’s perspective, a success. Draped in symbolic meaning, abortion can no longer be compared to other decisions that a teen may be called upon to make, such as whether she is ready to embrace motherhood and the adult responsibilities, including medical autonomy, that this status entails. Accordingly, in reading the following discussion, it is important to keep in mind that the issue of capacity is itself vested with symbolic meaning, as it serves to mask the Court’s emerging pro-natalist impulse, which is given full expression thirteen years later in Casey. There, the Court explains that “there are philosophical and social arguments of great weight that can be brought to bear in favor of continuing the pregnancy to full term,” and thus states may seek to pass laws in order to encourage “profound respect for the life of the unborn.”

B. The Abortion Decision

The debate over whether or not teens are capable of making their own abortion decision is informed by numerous studies that have attempted to compare the decision-making ability of adolescents and adults. Keeping in mind the above caution about the focus on decisional capacity, we begin with a brief overview of this research. In turn, this research will provide the conceptual framework for the discussion that follows regarding the findings of this study.

1. Children or Adults? Evaluating the Decisional Capacity of Adolescents

In 1972, Justice William O. Douglas, in his dissenting opinion in Wisconsin v. Yoder, questioned the historic presumption that minors lack the ability to make informed decisions about their lives. Citing the work of developmental theorists, he suggested that the “moral and intellectual maturity of the 14-year-old approaches that of the adult.” Since then, informed by both Jean Piaget's


324. Casey, 505 U.S. 833, 877 (1992). The regulation, however, may not impose an “undue burden” on the woman’s right to terminate her pregnancy.


stage theory of cognitive development and the legal concept of informed consent—which requires that a decision be competent, informed and voluntary—researchers have sought to compare the decision-making process of adolescents and adults to determine whether this presumption, as well as the legal consequences that flow from it, is valid.

According to the influential developmental psychologist Jean Piaget, cognitive development (cognition refers to the “act or process of knowing” and includes both “perception and reasoning”) occurs in predictable stages beginning at birth. Most significantly for present purposes, somewhere between the age of 11 and 15, children progress from concrete to abstract reasoning, thus reaching the highest development level—the “formal operations” stage. At this point, they are able to “imagine the past, present, and future conditions of a problem and create hypotheses about what might logically occur under different conditions. They can engage in pure thought independent of actions they see or perform. They can hypothesize and draw deductions, understand theories, and combine them to solve problems.” Three primary characteristics differentiate these two stages: “concrete versus abstract thinking, present versus future orientation, and consideration of only some options versus all options.” According to Piagetian theory, once a child makes the transition from the concrete to the formal operations stage of reasoning, his/her cognitive capacity parallels that of an adult.

As Piagetian theory would predict, most of the studies that have looked at the decision-making processes of adolescents and adults have found few, if any, differences in cognitive abilities, at least with respect to adolescents from about age 14 and up. As part of a report that was prepared for the Adolescent Health Project of the Congressional Office of Technology Assessment, researchers reviewed the empirical research on the competency of adolescents to make health care decisions, and concluded that

although the core studies reviewed vary in geographic location, some-

329. Id. See also Laurence Steinberg & Elizabeth Cauffman, Maturity of Judgment in Adolescence: Psychological Factors in Adolescent Decision Making, 20 LAW & HUM. BEHAV. 249, 263 (1996) [hereinafter Maturity of Judgment].
330. Id.
332. Gordon, supra note 328, at 563.
334. Mlyniec, supra note 331, at 1882; Cognitive and Affective Differences, supra note 333, at 1768.
what in sociodemographic [sic] characteristics of participants, in whether or not they are in a real health care decision setting, and in the subject matter domain of the decisions, they generally are uniform in their findings. These studies find few differences in health care decision making as a function of age for adolescents as young as 13 or 14 years of age.335

A few studies on cognitive ability have focused on abortion. For example, in 1980, Catherine Lewis interviewed forty-two women (twenty-six adults and sixteen minors) at the time of their pregnancy tests.336 Although she found differences in the factors that the adults and minors considered in making their pregnancy outcome decisions (see below), age was not predictive of decisional competence.337 This was also the conclusion of Bruce Ambuel and Julien Rappaport, who interviewed a mixed sample of adult women and minors at the time of their pregnancy tests.338 They found “[t]here is no age in middle adolescence which the law can use to draw a ‘bright line’ reliably distinguishing legally competent and incompetent minors.”339 Using three criteria to evaluate each participant’s cognitive process—“(a) consideration of immediate and future risks and benefits, (b) quality and clarity of reasoning, and (c) factors considered in making a decision,” they concluded that “[t]he minors were comparable to the adults on all . . . measures of competence.”340

However, other researchers have challenged this focus on cognition.341 They maintain that the cognitive approach is too narrow a lens with which to evaluate decisional competence because it fails to account for psycho-social fac-

335. GITTIER ET AL., supra note 27 (internal citation omitted). Many of the reviewed studies are summarized in this report. They are also reviewed in Mlyniec, supra note 331, and in Cognitive and Affective Differences, supra note 333.
337. Id.
339. Id.
340. Ambuel, supra note 135, at 3 (summarizing the study undertaken by him and Julian Rappaport, reported in full in Ambuel & Rappaport, supra note 135). Ambuel and Rappaport also looked at “volition” or voluntariness, which is another component of informed consent, and likewise concluded that age was not predictive of volition. Id. at 2. Similarly, in a major comparative study on voluntariness in medical decision-making, David G. Scherer concluded that

[...]the single most important finding of this study is the absence of a clear and consistent developmental trend in the expression of medical decision-making autonomy across decision-making context. In two out of the three medical treatment vignettes employed in this study, treatment decisions made by children and adolescents faced with parental influence attempts are not statistically distinct from those made by young adults who are reacting to similar parental influence.

tors that may impinge upon the decisional process. These researchers believe that it is in the realm of “judgment” rather than cognitive processes that important differences in the decision-making abilities of adults and minors are likely to be found, and that therefore, the studies that “have generally found few cognitive differences between adolescents and adults . . . should not be taken as evidence that adolescents are as capable as adults of making consistently mature decisions . . . ” Accordingly, some have proposed “a judgment model that incorporates peer and parental compliance and conformity, attitude toward and perception of risk, and temporal perspective into the informed-consent model.” Others have proposed that psychosocial immaturity in the areas of responsibility, temperament, and perspective should be considered in evaluating the decision-making capabilities of adolescents.

Most of the work on the significance of psychosocial factors in the decision-making process of young women has focused on juvenile offenders due to concerns that the cognitive approach, which is closely aligned with the informed consent model, does not adequately account for the realities of juveniles who are caught up in the criminal system. More specifically, it responds to the trend of treating juvenile offenders like adults as part of the recent “get tough” approach to violent crime; this approach regards “adolescent offenders as indistinguishable from adults and . . . challenge[s] the notion that tough young criminals are less culpable or less mature than their adult counterparts.” In particular, it has been suggested that “psychosocial factors such as peer influence, temporal perspective, and risk perception and preference” are particularly salient with respect to the decision to engage in criminal activity and may “shape the choices of youthful actors in ways that distinguish them from adults.” Given this focus, this body of work does not appear to have any direct implications for the decision-making abilities of minors in the abortion context, whereas the cognitive approach, linked to the informed consent model, provides an appropriate decisional framework.

342. Beschle, supra note 341.
345. Fried & Reppucci, supra note 343 (referring to the work of Scott, Reppucci and Woolard).
346. See generally Maturity of Judgment, supra note 329.
347. Fried & Reppucci, supra note 343, at 46-47.
348. Scott & Grisso, supra note 343, at 149. See also Beschle, supra note 341; Fried & Reppucci, supra note 343.
349. Scott & Grisso, supra note 343, at 157-58.
2. Confronting an Unintended Pregnancy

Like most teens who become pregnant, none of the young women in the qualitative sample intended this result. Despite this, all were able to focus on the importance of making a decision. None of them reacted with a sense of passivity or a relinquishment of control, which suggests that those who choose abortion as the response to an unintended pregnancy tend to be young women with future aspirations and a belief that "their future (is) worth investing in."

Similarly, as described by Kristen Luker, the decision to abort often reflects a sense of optimism about the future:

The more successful a young woman is—and more importantly expects to be—the more likely she is to choose abortion . . . . Even among young women from disadvantaged backgrounds, those who are doing well in school, who are getting better grades, and who aspire to higher education for themselves are more likely to seek an abortion than their more discouraged peers.

Although the picture of how the young women in the quantitative sample made the decision to abort is not as nuanced, the clear majority in both groups fits Luker's description of doing well in school and having defined future plans.

According to Blum and Resnick, this optimistic sense of the future animates the abortion decision, and distinguishes teens who choose abortion from those who become mothers, for whom there may be "a strong tendency toward inaction, passivity and an inclination to let 'whatever happens, happen.'" This clearly was not the case for the young women in the qualitative sample. Although they may have responded to the fact of their pregnancy with an initial sense of denial, all of them took control of the situation, and moved into a decision-making mode in a timely manner. Acting with a sense of clarity and conviction about what they needed to do in order to preserve both their present situation and their future dreams (see below), they were able to mobilize their social support systems and take the steps needed to effectuate their decision in a timely way.

That these young women responded to their situation in an active and engaged way does not in any way suggest that their decision to abort was reflexive or unconsidered. Rather, as reported in the findings, and developed further below, their decision-making process was complex and multi-dimensional.

350. See NATIONAL RESEARCH COUNCIL, supra note 318, at 52.
352. LUKER, supra note 318, at 154. However, unlike Luker's analysis, this study did not find that the teens choosing to abort were mostly from "affluent, white, and two-parent homes." Id. Only about one-third of the teens were from two-parent homes, and white teens were not overrepresented in either sample. Data on socioeconomic status is not available for the quantitative sample, but the teens in the qualitative sample were from a wide range of socioeconomic backgrounds.
353. Blum & Resnick, supra note 351, at 801.
3. Reasoning Within a Multi-dimensional Framework

As discussed above, both the ability to weigh multiple factors and the incorporation of a future time perspective are important elements of decisional capacity. Also developmentally significant is the ability in decision-making situations to shift focus away from one's self to assess how "one's actions or decisions affect others."\(^{354}\) We turn now to a consideration of how these elements manifested themselves in the abortion decision-making of the young women in the study.

a. Consideration of Multiple Factors

The minors in both the quantitative and qualitative samples had multiple reasons for aborting. The in-depth interviews let us see that these young women grasped the interplay between the reasons that influenced their decision in considering the consequences of their choice. For instance, young women who felt unready to have a baby were also able to see the impact that childbearing would have on their plans for the future. Similarly, young women who worried about the disruption of their future plans linked that to a concern for the well-being of a child they might bear. These young women understood that the decision to bear a child was neither singular nor self-contained in time. They grasped that it was multi-dimensional, with ramifications that would extend out into the future.

Exemplifying the consideration of multiple factors, Beth, when asked about her reaction to her pregnancy and her reasons for aborting, explained:

You know I've worked since first grade—I knew I was going to college . . . I did the math in months, and if I had a child it would be, like, August, which is right when I would be getting into school, starting my freshman year of college. So many things are just so important . . . it's just not the right time . . . I always promised myself that I would never bring a child into the world if I couldn't give it a life ten times better than my own . . . If I had a child now, it wouldn't be good for them. They wouldn't have any kind of life. I wouldn't be able to give them anything . . . . I want to make an adolescent psychologist. I want to make money . . . I want to have nice things. And I want to be able to give nice things. And I can't do that right now.\(^{355}\)

Contained within this quote, one can see both the major thematic reasons that teens in this study gave for aborting, as well as the dynamic interplay among

\(^{354}\) Maturity of Judgment, supra note 329, at 263. According to the authors, the ability to "frame a decision within a 'bigger picture'" is only one aspect of perspective. Id. at 262. The other components of perspective include the ability "to see both short- and long-term consequences" and "to place one decision in the context of others." Id. at 263. In turn, these aspects of perspective "share in common a phenomenon called 'decentration,' the ability to shift one's focus away from the center of a problem." Id. Decentration requires the ability to engage in formal operational thought. Id. at 262-63.

\(^{355}\) Interview with Beth Smith, supra note 187.
them. In choosing to abort, Beth is seeking to safeguard her own educational and professional aspirations; she is focused on the well-being of the child, which she links to her ability to meet her own goals; and she recognizes that her present circumstances are not conducive to caring for a child in the way that she would like to, which again relates back to fulfilling her future aspirations.

The results of this study are consistent with other studies which have found that, like adult women, minors are able to reason about their pregnancy in complex ways that reflect consideration of multiple variables. In comparing the decision-making of minors and adults, Lewis concluded that although there was some difference in the factors that they considered, “minors equaled the adults in their ‘competence’ to imagine the various ramifications of their pregnancy decision.” Likewise, in looking at the decisional capacity of minors facing an unplanned pregnancy, Ambuel and Rappaport concluded that, similar to adults, by the time of middle or late adolescence, “minors have the capacity to reason abstractly, reason about multiple alternatives and consequences, consider multiple variables, [and] combine variables in more complex ways . . . .”

b. Future Time Perspective

According to the Bellotti II Court, minors cannot be trusted to make the abortion decision on their own because they “lack the ability to make fully informed choices that take account of both immediate and long range consequences.” As seen by the Court, minors thus lack a “future time perspective,” which is the “ability to project events to more distant points in the future.”

Although not citing any literature to support this pronouncement, the Court was correct in one regard—that the inability to take long-term consequences into account when making a decision is considered an important indicia of decisional immaturity and is characteristic of the concrete reasoning stage that precedes the development of abstract or formal reasoning abilities. As explained by Blum and Resnick,

one aspect of the transition from concrete to abstract reasoning is the understanding of time as an abstraction and the development of a personal sense of future. One is not born with a notion of time; rather, it develops from early childhood . . . . It is late in childhood and throughout adolescence that one begins to understand time as an abstract concept which we artificially structure through seconds, minutes, hours, and days. Not only is time understood as an abstract concept, but the teenager begins to perceive herself as a being who will live in the future as well as in the present and past. The child and early adolescent rooted in the present is

356. Lewis, Comparison, supra note 336, at 552.
359. Maturity of Judgment, supra note 329, at 266.
360. Gordon, supra note 328, at 563; see also supra text accompanying notes 327-333.
Where the Court goes wrong, however, is in its pronouncement that minors facing an unplanned pregnancy are incapable of considering the future implications of their actions. As the findings of this and other studies make clear, teens are able to think well beyond the present when making the abortion decision.

As reported here, an important reason for choosing abortion was the safeguarding of future plans. The interviews reveal that young women are able to anticipate the impact that having a baby would have on their ability to realize their goals. As representative of the incorporation of a future time perspective, Jill, as quoted earlier in the findings, explained that,

I'm not saying that [the pregnancy] is a little problem that gets in your way that you get rid of... because it's not. But, you know, [to] do what I want to do in life... and that's not what I want to do... [It's] not in my plans... my plan is [to] go to college... find something that I'm so interested in and just do it for the rest of my life. And get married and have a family.\(^\text{362}\)

Evident in this quote is Jill's awareness both of the future as an abstract concept and "of herself as someone who will live in the future as well as in the present,"\(^\text{363}\) thus enabling her to reason about the long-term consequences of her decision.

Although the present study was not comparative in nature, the findings regarding future time orientation appear to be consistent with those of Blum and Resnick, who looked at the contribution of developmental factors to adolescent sexual decision-making and found that the teens who chose abortion had the "most developed future time perspective... [while] teen mothers were found to have the least developed conceptualization of the future."\(^\text{364}\) They also concluded that in addition to "the understanding of time as an abstraction and the development of a personal sense of future,"\(^\text{365}\) a future time perspective also requires a belief that one's "future must be worth investing in."\(^\text{366}\) For teens without future possibilities that "are both attainable and worth attaining, motherhood may be the best alternative available... [Thus,] there is little impetus to defer it to a later age even if one has the cognitive capability to do so."\(^\text{367}\) Optimism about the future is also present in Jill's above quote. Not only do her plans in-

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361. Blum & Resnick, supra note 351, at 804.
362. Interview with Jill Casey, supra note 181.
363. Blum & Resnick, supra note 351, at 804.
364. Id. at 801. In a related vein, Ambuel and Rappaport found that, in contrast to pregnant minors who considered abortion, those who did not consider pregnancy termination "were clearly less competent than the [adult] criterion group in both volition and cognitive competence." Ambuel & Rappaport, supra note 135, at 145.
365. Blum & Resnick, supra note 351, at 804-05.
366. Id.
367. Id. at 805.
clude college, but she is also looking forward to finding a partner, having children, and finding something that she is “so interested in” that she can “do it for the rest of [her] life.”

Although virtually all of the young women in both samples had specific plans for the future, not all of them focused on these plans as a reason for aborting. While the developmental literature suggests that older teens would be more likely to focus on the future than younger teens, as the ability to project into the future is considered a sign of mature reasoning, this was not evident in this study. Age was not predictive of whether a young woman mentioned future plans as a reason for aborting.

The in-depth interviews suggest that strict reliance on age as predictive of a future time perspective, at least in the abortion decision-making context, is overly simplistic, and that consideration of the future as a decisional variable reflects a complex interplay of factors. As suggested by the qualitative results, where a minor is overwhelmed by her present circumstances, this reality, rather than the more remote future, becomes the primary focus in the decision-making process. When, for example, she is focused on the demands of keeping herself sheltered and safe, or of raising a young child, these concerns may dominate the decision-making process and push out consideration of the future. The findings thus suggest that regardless of age, the ability to consider the future requires reasonable control over the present, so that the future appears visible and within reach. Where the urgency of present concerns dominates, the future may be too remote a consideration to play a role in the decision-making process. Accordingly, the failure to focus on the future may reflect a preoccupation with the present rather than a lack of cognitive ability.

Also challenging simplistic links between age and the ability to consider long-range consequences is the fact that some of the youngest minors in the qualitative sample displayed a future time perspective in their decision-making process. This suggests that certain experiences, such as the assumption of important responsibilities, or a well-developed and supported set of goals may, independently of age, contribute to a greater sense of control or mastery over contemporary circumstances, thus making the future seem more real and within reach.

Although not all of the young women mentioned future plans as a reason for aborting, the interviews reveal another dimension of a future time perspective. Captured in phrases such as, “right now, I couldn’t support a child,” or “now, my son is only two,” or “when I am older, I plan to have a family,” or “when I am older, my boyfriend and I will have our own place and better jobs,” these young women expressed an awareness of the present as time-limited and

368. Interview with Jill Casey, supra note 181.
369. See Cognitive and Affective Differences, supra note 333, at 1786-87 (discussing the link between teenage maturity and an ability to contemplate one’s future and the long-term ramifications of one’s actions).
recognized the changing and dynamic quality of their lives. Although rooted in the present, they did not regard the present as a fixed or frozen frame of reference. Instead, they anticipated the possibility of an older self who, facing changed circumstances, might make a different decision from the one they were presently making. Grasping the transitory nature of time, these young women had a clear sense of themselves as evolving persons who would command different resources as they moved into adulthood. Thus, the interviews reveal both an awareness of time as an abstract concept and an ability to locate one’s self in the future.

c. Concern for the Child/Concern About the Reaction of Others

Many of the young women in both samples also incorporated a concern for the child they might bear into their decision-making process. Some worried that they would not be able to give a child what it would need; others focused on wanting to protect a child from suffering. Among the young women who were interviewed, the older teens were somewhat more likely than the younger ones to focus on the suffering of the child as distinct from concerns about their inability to care for a child.370 Of those who focused on protecting a child, some spoke out of the chaotic circumstances of their own childhood and a desire not to visit this kind of suffering on the next generation; others reflected on what it would be like for a child to be born to a mother who was not ready to be a parent. These young women were able to imagine the impact of their decision on another and loop this information back into the decisional matrix as another variable. This ability to move beyond the self and incorporate another perspective or interest into the abortion decision is also suggestive of the complex and abstract nature of the decisional process engaged in by these minors.371

Interestingly, Lewis, in her 1980 study comparing the abortion decision-making of minors and adults, found that concern about the ability to care for the child was not a particularly important consideration for the minors, who tended to be more focused on the impact of their decision on parents and other family members.372 However, she also found that when answers to a hypothetical question about pregnancy decision-making were included, the difference in concern between minors and adults about the ability to care for a child disappeared, and that “minor and adult subjects were differentiated... only by [the] minors’ greater concern with parents and family.”373 In seeking to understand these results, she concluded that the actual (as distinct from the hypothetical) decision of minors was more likely to be influenced by “external” considerations, and thus perhaps less freely made when compared to the abortion decision of the adults in

370. A similar conclusion cannot be drawn for the quantitative data because the nature of the survey instrument did not permit careful delineation between these differing emphases.
371. Maturity of Judgment, supra note 329, at 263-64.
372. Lewis, Comparison, supra note 336, at 448.
373. Id. at 449.
the sample. She also theorized that the attribution of cause to “a convenient external ‘excuse’ . . . compelling abortion may ‘short-circuit’ the thinking of the younger adolescent, allowing her to avoid full consideration of the implications of immediate childbearing, both in terms of her own life and the quality of the child’s life.” However, this pattern of attribution of cause to external constraints, as distinct from a focus on the quality of their own and the child’s life, did not appear in the present study.

C. Involvement of Others

Based on the results of this, as well as other studies, it appears that virtually all minors who terminate a pregnancy involve at least one other person in the decision-making process. All of the young women in the qualitative sample, and all but twelve in the quantitative sample, talked to at least one person upon learning they were pregnant. Similarly, in a study based on a nationally representative sample of more than 1500 minors, Stanley Henshaw and Kathryn Kost found that all of the minors “reported that at least one person—a relative, a friend, or a professional—had taken part in the decision process or had helped them arrange the abortion.” Consistent with Henshaw and Kost, as well as with Resnick’s study of 184 minors from Minnesota and Wisconsin, the person a minor turned to most often in the present study was her boyfriend, with over three-quarters of the minors in each of the studies involving their boyfriend. This study also found that most of the young women involved more than one person in the decision-making process, with a considerable number involving three or more. According to the Resnick study, upon confirmation of the pregnancy an average of 2.9 persons were consulted.

An equally significant finding of this study is the importance of adults in the decision-making process. Adults comprised about three-quarters of the total pool of persons consulted, with almost 90% of the minors speaking with at least one person age 18 or over. Looking at adult involvement results from other studies, Henshaw and Kost found that 81% of minors involved at least one adult; Resnick found that more than three quarters of minors facing an unplanned preg

374. Id.
375. Id. at 450. Lewis thus suggests that the focus on the reaction of others may reflect a less developed reasoning process (although she also recognizes that it reflects the reality that most minors live with their parents). However, one might also conclude that the ability to consider the impact of one’s decisions on others reflects well-developed cognitive capabilities. See also Maturity of Judgment, supra note 329, at 262-64.
377. Id. See also Michael D. Resnick et al., Pattern of Consultation Among Adolescent Minors Obtaining an Abortion, 62 J. ORTHOPSYCHIATRY 310, 313 (1994). According to Resnick’s study, minors are more likely to consult others once a pregnancy is confirmed. Thus, upon suspicion of pregnancy, 57.1% of the minors consulted with their male partner, increasing to 83.2% upon confirmation of pregnancy. Id. at 313.
378. Resnick et al., supra note 377, at 312.
nancy involved an adult; and, in a study involving 334 black, urban teens in Baltimore, Zabin found that 95% of minors involved an adult. With a percentage range of 75% to 95%, these studies make clear that few teens facing an unplanned pregnancy do so without adult support.

Narrowing the parameters of the universe of involved adults to exclude boyfriends and friends (due to the peer nature of these relationships) and parents (because all consulted parents had denied consent and were thus not a source of support or advice), results show that just over three quarters of the young women turned to a "responsible adult," including professionals, relatives, and "parental" figures (either a foster parent or the parent(s) of the young woman's boyfriend), with professionals being by far the most common. Likewise, Henshaw and Kost found that professionals (such as doctors, nurses, school counselors, and social workers) were the most frequently consulted adults for teens who did not involve their parents. However, in their study of black, urban teenagers, Zabin found that a teen who did not discuss her pregnancy with a parent was most likely to turn to a parent surrogate, defined as an adult who had helped to raise her or to whom she felt responsible. Thus, even if not formally related, it appears that persons who functioned as relatives were a more significant source of support to these young women than were professionals. In the present study, race was also an important factor in determining if a teen involved a professional, and even more significantly, whether she involved an adult relative. When compared to the white young women in the quantitative sample, black young women were almost two times as likely to speak with a professional and almost three and a half times more likely to speak with an adult relative. Thus, as with Zabin's study, it appears that relatives or persons who function like relatives may be particularly important in the decision-making process of black teens. However, this study can do no more than note this pattern and recommend that further research be done to explore the significance of this result, particularly as it appears to be consistent with the Zabin study's findings.

Age was clearly associated with adult involvement, with more of the older teens not involving an adult as compared to the younger teens. Other studies have also found a consistent link between age and the involvement of adults.  

379. Henshaw & Kost, supra note 377, at 205; Resnick et al., supra note 377, at 312; Laurie S. Zabin et al., To Whom Do Inner-City Minors Talk About Their Pregnancies? Adolescents' Communication with Parents and Parent Surrogates, 24 FAM. PLAN. PERSP. 148, 151 (1992). None of these studies had as their focus teens who were seeking judicial bypass for abortion; accordingly the pool of adults included far more parents (usually mothers) than in the present study.

380. Henshaw & Kost, supra note 377, at 205. Henshaw and Kost did not look specifically at parents of boyfriends or foster parents. However, they did find that in addition to being consulted more often than relatives, professionals were consulted more often than adult friends.

381. Zabin et al., supra note 379, at 154.

382. For a discussion of the importance of "personal kinship networks" in identified black communities, see Carol Stack, All Our Kin: Strategies for Survival in a Black Community 90-107 (1974).

383. See Henshaw & Kost, supra note 376, at 200; Resnick et al., supra note 377, at 314; Zabin,
In fact, the Resnick study found that age was the only difference between those minors who did or did not consult an adult. In fact, the Resnick study found that age was the only difference between those minors who did or did not consult an adult. Age was also significant with respect to the involvement of professionals: slightly more than half of the 17-year-olds talked to a professional, compared to 70% of the 13 to 14-year-olds. However, age was not associated with the involvement of an adult relative.

The reasons for the association between age and adult involvement have not been established with any certainty. In focusing on parents, Henshaw and Kost theorized that younger teens may be “less able or less motivated to keep their parents from finding out about their pregnancy.” They also found that these minors were most likely to report needing help. It may be that younger teens are more willing to run the risk of an uncertain parental response because they are in greater need of assistance in either making or actualizing their decision. It may also be that as adolescents approach their own adulthood, they become more self-reliant and have less of a need to call upon adults for support or assistance in negotiating the decision and/or its actualization.

That independence may be associated with a greater likelihood of not involving adults is suggested by Henshaw and Kost’s finding that full-time employment was significant for non-disclosure. Similarly, Griffen-Carlson and Mackin found that the teens in their study who did not discuss their pregnancy with a parent were “older, considered themselves more mature, and were more financially and emotionally independent” than those who confided in a parent. However, as discussed more fully below, an intriguing implication appears if one considers the possibility that rather than suggesting immaturity or decisional incompetence, involvement of others in the decision-making process suggests a thoughtful, mature approach as well as one which “serves as a buffer against stress.”

The in-depth interviews make clear that communication with select individuals during the decision-making process was important to these young women. These interactions were a source of advice, support, and critical information. Although autonomous decision-making is often regarded as a benchmark of maturity, in fact, the developmental literature presents a more nuanced and complex picture. As explained by Steinberg and Cauffman regarding maturity of judgment in adolescence, “[h]ealthy decision making is not equivalent to decision making that disregards the advice or expertise of others. Indeed, one

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of the hallmarks of mature judgment is knowing where to turn for advice, knowing how to solicit it, and knowing whether and to what extent to follow it.\textsuperscript{391} Similarly, Lewis writes that across adolescence, teens become increasingly likely to "consider information and opinion[s] from diverse sources."\textsuperscript{392} Thus, the support-seeking behavior of the young women in this study suggests a mature decision-making process in which they drew upon multiple and diverse sources of support as they made their abortion decisions.

Lewis and others have further suggested that the ability to seek out objective sources of information and support, as distinct from relying upon persons with a "vested" interest in the outcome, is associated with maturity of decision-making.\textsuperscript{393} In her comparative study, Lewis found that adults were more likely than minors to "plan consultation with a professional" when making the abortion decision.\textsuperscript{394} However, as noted above, in the present study, professionals were the most important category of adult contact (with boyfriends a close second), with about two-thirds of the minors who involved an adult turning to a professional. Additionally, as discussed above, younger minors were more likely than older minors to involve professionals. Also notable here is the lack of an association between age and the involvement of relatives, whom one might reasonably assume are less likely than a professional to assume an objective stance.

Given this, there may be another lens through which to view the association between age and adult involvement. Perhaps rather than simply reflecting undeveloped reasoning abilities, these younger teens recognized that because of their age, they were not experienced decision-makers and would thus benefit from drawing upon the experience of others. Accordingly, their advice-seeking behavior may have been a purposeful, adaptive strategy that enabled them to fill the gaps in their own knowledge base with the experience-derived wisdom of others.

The link between experience and competence has in fact been suggested by a number of researchers.\textsuperscript{395} According to Lewis, any differences that exist in the decision-making performance of adults and minors may, rather than reflecting distinctions in cognitive ability, reflect the "circumscribed role of adolescents in family and society."\textsuperscript{396} Similarly, Ambuel and Rappaport urge recognition of the "social process and context of treatment decision making" and the adoption of procedures that "create competence by empowering minors as decision mak-

\begin{footnotes}
\footnote{391}{Maturity of Judgment, supra note 329, at 254.}
\footnote{392}{Catherine C. Lewis, Minors' Competence to Consent to Abortion, 42 AM. PSYCHOLOGIST 84, 85 (1987) [hereinafter Lewis, Minors' Competence].}
\footnote{393}{Lewis, Comparison, supra note 336, at 448; see, e.g., Schonert-Reichl & Muller, supra note 389, at 722-23.}
\footnote{394}{Lewis, Comparison, supra note 336, at 448. However, in a later report, Lewis also theorized that this may have reflected the fact that "adult women may be more likely to anticipate such consultations because of greater experience in the health care system." Lewis, Minors' Competence, supra note 392, at 85.}
\footnote{395}{See, e.g., Lewis, Minors' Competence, supra note 392, at 87.}
\footnote{396}{Id.}
\end{footnotes}
Thus, the development of decisional competence may not simply be a function of chronological age; as suggested here, it may also result from having opportunities to "practice." Moreover, as emphasized by Ambuel and Rap- 
aport, opportunities can be structured so as to enhance decisional abilities, such as where the provider "co-create[s], with the patient, a decision-making environ-
ment that enhances the participation and control the patient has over important personal treatment decisions." From this perspective, it may be that the link between age and the involvement of others is an adaptive strategy by younger 
minors to make up for the lack of past opportunities to develop their decision-
making skills, thus indicating a mature response to the constraints of youth.

Although valuing the involvement of others and considering the offered opinion and information, the in-depth interviews make clear that these young women nonetheless saw the abortion decision as one that they needed to make, with several resisting pressure from others who wanted them to have the baby. Recognition of this reality, which existed side-by-side with support-seeking behavior described above, contributes to an understanding of the complexity and richness of their decision-making process. That these young women saw this as a decision which was theirs to make fits with studies showing that during adolescence teens become increasingly self-reliant in their decision-making, and less subject to both parental and peer influence. Borrowing a phrase from Lewis, these young women seemed to "own" their abortion decision, something Lewis concluded was increasingly likely to occur during the course of adolescence, as conformity to parents and peers declines.

In their study of how teens made their abortion decision, Ambuel and Rap-
aport reached an intriguing conclusion that may help to weave together these two aspects of the decisional process—support-seeking behavior and self-
ownership of the ultimate decision. Of the psychosocial variables that they looked at, "social support" was the most consistent predictor of decision-making competence. Seeking to understand this connection, they theorized that social support enhanced competence "by providing a forum to obtain information, receive emotional support and practice decision making."

Other researchers have also looked at how help-seeking behavior can be a positive response to a difficult situation:

Seeking help and advise from individuals in one’s social support net-
work is one type of problem-focused coping strategy that has been found to be associated with better adjustment . . . . Indeed, one of the factors that may be critical for distinguishing between those individuals who

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398. Id.
399. Cognitive and Affective Differences, supra note 333, at 1775.
400. Lewis, Minors' Competence, supra note 392, at 86.
401. Ambuel & Rappaport, supra note 338, at 146.
402. Id.
successfully navigate the adolescent age period from those who do not
may be the extent to which the former are able to utilize different
sources of informal (e.g., parents, peers) and formal (e.g. school coun-
selors, teachers, mental health professionals) support. Such support net-
works have been shown to buffer the effects of stress and provide a
“safety net of support, love, and caring.”403

Thinking about help-seeking as a strategy that enhances individual func-
tioning in the face of a difficult situation is a useful framework within which to
view the decision-making processes of the young women in this study. The
young women who were interviewed in-depth clearly sought out and valued the
involvement of others; at the same time, they exerted control over the decision
and saw it as theirs to make based on an assessment of their present and future
circumstances and the impact that motherhood would have on their lives. Tak-
ing clear responsibility for making the best choice, engagement with others was
nonetheless an integral component of the decision-making process.

D. The Decision Not to Involve Parents

As with the abortion decision, the interviews make clear that the young
women gave considerable weight to the decision not to involve their parents.
Despite common assumptions about teens as lacking regard for their parents,
these teens were neither flip nor casual about the non-disclosure decision, and
their reasons were well-grounded in the realities of their lives. Thus, for exam-
ple, young women who worried that they would be forced to keep the baby re-
lated this concern to their parents’ long-standing and strongly-held opposition
toward abortion and/or pre-marital sex. Also suggesting the careful considera-
tion they gave to this decision, almost all of the young women had multiple rea-
sons for not confiding in their parents; and, as with the abortion decision, the in-
terviews revealed an ability to draw connections between the reasons. For
example, a young woman who worried that a parent was under too much stress
to cope with the revelation of her pregnancy, might also have worried that this
additional burden would increase the strain on an already fragile relationship,
thereby further taxing the family system.

Indicating the seriousness and complexity of this aspect of their decisional
process, the interviews revealed that these young women, including those who
were living with both parents, distinguished between their parents when thinking
about disclosure. They saw each parent as a separate person and their relation-
ship with each as having its own dynamic. They did not simply or indiscrimi-
nately lump their parents together with a dismissive “they’ll never understand”
or “they’ll be pissed” attitude that one might anticipate from teens. Rather, rea-

403. Schonert-Reichl & Muller, supra note 389, at 707 (quoting Ana Mari Cauce et al., Social
Support During Adolescence: Methodological and Theoretical Considerations, in SOCIAL
NETWORKS AND SOCIAL SUPPORT IN CHILDHOOD AND ADOLESCENCE 89 (Frank Nestmann
& Klaus Hurrelmann eds., 1994) (other internal citation omitted)).
sons given for non-involvement reflected the individualized nature of these relationships. This distinction between parents, and the corresponding different reasons for not disclosing to each parent, enables us to see how their reasons were well-grounded in the reality of their lives and not simply expressions of adolescent rebellion or disdain for their parents.

Clustered thematically, the primary reasons that the young women gave for not involving parents included: (1) fear of a serious adverse response or anger, (2) relational considerations, including lack of or a problematic relationship, anticipated harm to the relationship, and concern for a parent, and (3) fear of being pressured into having the baby. Henshaw and Kost also found that the reasons for non-disclosure clustered around these themes, with relational concerns and fear of parental anger being the two most important considerations.404 Likewise, Blum found that “among our sample, avoidance of parental notification was only partly due to perceived parental disagreement with the decision. There were many other reasons for not notifying parents; an absent father, multiple concurrent family stresses, family violence, parental substance abuse and a feeling of having ‘betrayed’ the family by becoming pregnant.”405

One study, however, reached somewhat different results. In their analysis of questionnaires that had been distributed to clinic patients under the age of 21, Griffen-Carlson and Mackin found that “when asked why they did not discuss their abortion decision with their parents, the clients gave four basic responses: fear of rejection, fear of disappointing parents, wanting to spare parents the problem, and wanting to handle the problem by themselves.”406 Thus, unlike other results, fear of an abusive reaction was not an important consideration, while the desire to make an independent decision was. As there was no discussion of these findings, it is impossible to determine why they differ from prevailing patterns. However, a possible explanation is that the Griffen-Carlson and Mackin study also included young adults between the ages of 18 and 20407 who, one can reasonably assume, are more likely than younger minors to be living apart from their parents. Thus, it may have been that this segment of their sample was more focused on considerations of autonomy and less concerned about abuse, which, as found by the present study, is a particularly salient consideration for minors living at home.

The following discussion will focus on two critical themes: fear of a serious adverse response and relational considerations. These are two very different considerations, yet both tell us quite a bit about the circumstances of minors who do not discuss their pregnancy and abortion plans with a parent. Both of these themes are also central to the policy debates about parental involvement laws. Also considered in the discussion regarding relational considerations is the issue

404. Henshaw & Kost, supra note 376, at 202-03.
406. Griffen-Carlson & Mackin, supra note 388, at 8.
407. Id. at 6.
of autonomy.

Fear of a serious adverse parental response was an important reason for non-disclosure; almost one-third of the young women in the quantitative sample who lived with both parents gave this as a reason, with the percentage rising to almost 40% for those young women living just with their father. Supporting the significance of these findings, the Supreme Court, in the case of *Hodgson v. Minnesota*, recognized both that many minors "live in fear of violence by family members" and that the consequences of a parental notification law were "particularly pronounced in the distressingly large number of cases in which family violence is a serious problem." 408 The Court further recognized that the disclosure of a daughter’s pregnancy “can provoke violence, even where parents are divorced or separated.” 409

Nonetheless, supporters of parental involvement laws often dismiss this fear as inconsequential, arguing that if you ask any teen how her parents would react to the news she was pregnant, she would reflexively respond, "they would kill me." They assert that this simply is how teens think and talk. However, as supported by the decision in *Hodgson*, 410 the interviews make clear that fear of a serious, adverse reaction is not a reflexive and unconsidered response.

First, not all young women gave fear of a severe adverse reaction as a reason for not involving their parents in the abortion decision. Second, and more importantly, based on the findings from the qualitative sample, when fear was mentioned, it was almost always grounded in a history of harsh parental treatment, such as physical violence. Moreover, fear of an adverse reaction was almost never a stand-alone reason, but was entwined with other considerations, such as the lack of a relationship or parental beliefs about abortion. Also significant is the fact that none of the young women who characterized their relationship with a parent as good mentioned fear of an adverse reaction as a reason for non-disclosure. Thus, far from being an unconsidered response, which can be disregarded as expressive of “typical” adolescent disdain for parental authority, the fear expressed by these young women was well-anchored in long standing family patterns and interwoven with other elements of the relationships they had with their parents.

Perhaps less immediately obvious than fear of a harsh parental response, the young women’ relationships with and concern for their parents were also important thematic considerations. These relational considerations manifested themselves in a number of ways. Some young women chose not to disclose because a relationship was problematic or nonexistent, others were concerned about disappointing a parent or damaging the relationship that they had, and others sought to protect their parent from the news of their pregnancy. Many of the

408. 497 U.S. 2926, 439-40 (1990) (quoting the findings of the District Court).
409. Id. at 438 (quoting the findings of the District Court, which was considering a two-parent notification statute) (internal quotation omitted).
410. See id. at 439-40.
young women were motivated by more than one of these factors.

Although the circumstances of the young women in the quantitative sample who did not involve a parent because the relationship was problematic or non-existent are unknown, the interviews again make clear that these were not casual, flippant responses. Where a young woman said she did not tell a parent because of the absence of a relationship, she was usually referring to a father who was living apart from the family and was not a presence in his daughter's life. Some of these fathers were little more than strangers to their daughters. For these young women (in a departure from the pattern of multiple reasons) the lack of a relationship was the only reason given for not involving their father—these men were so removed from the lives of their daughters that no other consideration was possible, as this would have meant some degree of connectedness or active knowledge of them.

Where the relationship was described as problematic, the young women again rooted this consideration in specific dynamics or occurrences. As described in the findings, in one case, the young woman's mother had recently kicked her out of the house; in another, the young woman and her mother fought constantly, such that they could no longer go out to eat together in a restaurant. These young women expressed a sense of sadness about their alienation from their mothers. They felt that they might have confided in them had things not deteriorated to such an extent that disclosure might have risked placing the relationships beyond repair. Thus, unlike the young women with absent fathers, in not telling, these young women were seeking to protect the possibility of future reconciliation.

Although not the most important reason overall in this study, as it was in the study by Henshaw and Kost, the most significant reason within the category of relational considerations was the desire of young women not to harm the relationship that they had with one or both parents. Young women in the present study worried that as a result of disclosure, their parents would be deeply disappointed in them, that their relationships would be forever altered, that their parents would be hurt and distressed, and/or that their parents would never trust them again. Similarly, in looking at why the minors they represented in judicial bypass hearings had not told their parents, Suellen Scarnecchia and Julie Kunce Field found that they "regularly report a desire not to hurt their parents by telling them about the pregnancy."

What these findings suggest is that in some circumstances non-disclosure may represent a desire to safeguard connection rather than risk its disruption. Instead of signaling family dysfunction or a dismissive attitude toward parents, a young woman who chooses not to tell her parents may make this choice because she does not want to chance damaging the relationship that she has with them.

411. See Henshaw & Kost, supra note 376, at 202-03.
Although it is possible that some of these young women were wrong in their belief that their relationship with their parents would be irreparably damaged by disclosure, the seriousness and sincerity of their concerns and the depth of their desire to avoid damaging the relationship was striking. This is made evident by their willingness to seek court authorization for an abortion—a process that, as discussed above, participants described as very frightening and difficult to negotiate.

Nonetheless, this reason for non-disclosure may, at first glance, seem somewhat paradoxical. It is easy to understand why a young woman who fears that a parent might harm her or force her to carry to term would not want to disclose her situation. It is more difficult, however, to comprehend why a young woman who values her relationship with her parents likewise would want to keep her situation from them. Scarnecchia and Field elucidate an explanation for this seeming paradox:

[T]his reason for requesting a waiver of parental consent may seem irrational to some. After all, if a girl loves her parents and does not want to hurt them, their relationship is probably healthy enough to survive the news of the pregnancy. As adult onlookers, we might be tempted to deny a petition for waiver of parental rights, sympathizing with loving parents, who, we believe, could help their daughter in crisis. This is contrary to the teen's view. Her interest in maintaining a stable and loving relationship with her parents may be paramount in her eyes. The thought of confessing a pregnancy to the parents she loves is possibly the worst fate imaginable.  

Relatedly, in a study looking at communication about sexual behavior, researchers were surprised to find that "[c]ontrary to our predictions, maternal underestimation of sexual activity increased as the quality of the mother-teen relationship improved."  

Seeking to explain this unanticipated result, Jaccard et al. suspected that "mothers who have good relationships with their teens are less prone to believe that their teens would engage in 'inappropriate' behavior, and hence are more likely to deny the possibility of sexual activity. Alternatively, teens who feel positive about their mothers may not want to tell them of their sexual activity so as not to hurt or upset the mother."  

The importance to adolescents of maintaining a relationship with parents recently has received a fair amount of attention in the developmental literature. At least in part, this focus stems from work by feminist psychologists who are dissatisfied with the exclusion of women in neutral models of psychological development: "[T]he male life as the norm, [psychological
theorists] have tried to fashion women out of a masculine cloth." Flowing from this critique, considerable attention has been focused on reconstructing understandings of human development which, rather than focusing on the self as "separate and bounded," seek to place the individual in a relational context—a framework that many have argued is more appropriate for exploring women's sense of self.

Consequently, Erickson's theories regarding "the individuation aspects of self-development," which have played a "major role in theoretical and empirical work on adolescent development," have been criticized in favor of a more relational-focused approach to identity formation. Accordingly, contrary to the "popular stereotype that parent-adolescent relations are conflictual in nature and that adolescents vigorously reject their parents' advice and counsel," research now shows that many adolescents value the support and guidance of their parents as they traverse the teen years. Thus, while from an adult perspective, the desire to preserve connection through non-disclosure may appear to be counter-intuitive, if one takes on the "mental mantle" of an adolescent, it can be readily understood as a strategy to preserve essential parent-child bonds.

A relation-focused approach is also a useful framework for thinking about how the participants expressed the theme of autonomy in the interviews. The young women in the interview sample conveyed a sense of "ownership" of the abortion decision. They also expressed a claim to self-ownership in relation to why they did not turn to their parents. However, as reported in the findings, claims to autonomy were usually interwoven with other considerations. Thus expressed, autonomy usually appeared as an expression of contextual considerations, rather than as an absolute claim to self-expression. Here, the young women's considerations of self, either in terms of their decision or the underlying conduct, were linked to considerations of parental relationships and the impact that disclosure would have on these connections. It was not an "in-your-face" assertion of adolescent rebelliousness.

The fact that the majority of teens, both in states with and without parental involvement laws, discuss their abortion plans with a parent bolsters the contention that the young women in this study, rather than casually disregarding the role their parents might play in their decisional process, instead made a purpose-


417. Id. at 6.


419. See DIFFERENT VOICE, supra note 416, at 23.


421. Schonert-Reichl & Muller, supra note 389, at 726.

422. See Blum et al., supra note 405, at 159 (noting that 57% of the minors seeking abortions in a state with a parental involvement law did not seek judicial bypass and might therefore be inferred to have notified their parents); Henshaw & Kost, supra note 376, at 199 (stating that "61% of respondents indicated that one or both of their parents knew about the pregnancy").
ful choice to preserve a valuable relationship. The possibility that some of the young women may have erred in their evaluation of all relevant factors does not detract from the seriousness and sincerity of their convictions.

An important inquiry for future research is what factors need to be present in order for a young woman to feel that she can confide in her parents about her pregnancy and intended abortion without fearing that the disclosure will damage the relationship. As will be discussed in the following paragraphs, several existing studies shed some light on this question. A critical theme weaving through these studies is the importance of long-standing characteristics of the relationship, particularly with respect to communication about sex.

In looking at determinants of communication in their study of black, urban adolescents, Zabin et al. concluded that "[t]wo variables reflect the importance of prior relationships with the mother (or both parents) in matters concerning sex and childbearing." Specifically, they found that "[a]dolescents who found it easy to talk about sex with the woman who had raised them, and those who had received most of their knowledge about having a baby from their parents" were more likely to confide in a parent than minors who did not find it easy to talk with parents about sex or who had obtained most of their information about sex from another source.

Other studies support the connection between prior communication about sex and the likelihood that a teen will turn to her parents when making a pregnancy decision. In a study of clinic consent and notification policies and their impact on patterns of disclosure, Aida Torres et al. found a significant connection between communication about sex and disclosure. More than half of the teens in their study who had not discussed birth control with their parents did not confide in them about their abortion, while two-thirds of teens who had discussed birth control with their parents chose to confide in them. Similarly, Griffin-Carlson and Mackin concluded that where family communication was poor and communication about sex "closed," a teen was less likely to discuss her pregnancy and abortion plans with her parents. Although not the only relational predictor, Henshaw and Kost also found that telling a parent was more frequent among respondents who could discuss sexual issues with their father, those whose mothers encouraged them to use contraceptives and those whose mothers left decisions about sexual activity up to them. On the other hand, minors were less likely to have told a parent if their father disapproved of their sexual activity.

Paralleling this research, a study looking at factors associated with disclo-

423. Zabin et al., supra note 379, at 152.
424. Id.
425. Torres et al., supra note 383, at 288-89.
426. Id.
427. See, e.g., Griffen-Carlson & Mackin, supra note 388.
428. Henshaw & Kost, supra note 376, at 201.
sure of sexual activity found that mothers who had not engaged in conversations about sex with their daughters were less likely to know that their daughters were sexually active. The researchers theorized that this was because daughters were more likely to disclose that they were sexually active within the context of such conversations, although they also allowed for an alternative explanation: parents initiated conversations about sex upon suspicion that their daughter had become sexually active.

In a study with a somewhat different focus, Mary S. Griffen-Carlson and Paula J. Schwanenflugel examined the factors that might be useful predictors of the quality of parental involvement for those teens who do disclose. They concluded that the most important variable was family functioning, with “adaptability” being the most significant attribute. More specifically, the study defined adaptability as the capacity of parents to “change their interactions with their children in age-appropriate ways,” including the ability to “accept the growing sexuality of their daughters during adolescence.” Thus, although not specifically focused on the initial disclosure decision, this study nonetheless lends further support to the importance of a history of openness regarding sexual matters.

Yet, as a general matter, it is clear that communication about sex between teens and parents is difficult. A number of studies report significant disparities in the perceptions between parents and children as to whether communication about sexual matters has occurred, with parents more likely than their children to report that communication had taken place. One explanation for this discrepancy is that parents may underestimate how much their children want to know; another possibility is that children do not regard the conversations as meaningful because “parents tend to equate ‘meaningful’ discussions of sex with the teaching of morality.”

Difficulties and disparities in perceptions notwithstanding, studies also indicate that over 50% of parents talk to their adolescents about sex, with one
recent study finding that 60% of the respondents had talked with a parent about sexual initiation, and 78% had spoken with them about condoms.\textsuperscript{438} Given this, it is striking how little communication there was in the in-depth interview sample between the young women and their parents regarding sexual matters (at least as reported by the young women), and how much of the communication, when it took place, was negative. According to these young women, almost none of their parents had spoken with them about the initiation of sexual activity or contraceptive use, other than through occasional, off-handed comments about using protection, or negative references to girls who had sex. With very few exceptions, even in the relationships that young women described as being close, sexuality was not an open topic of conversation. In the few instances where there was open communication, it stopped at the threshold of the young women's own sexuality.\textsuperscript{439}

Although the present study did not include young women who disclosed their abortion plans to a parent, and there is thus no comparative data, these results are consistent with the above studies that found patterns of communication about sexuality to be a significant determinant of disclosure, at least where other variables, such as a history of abuse, did not militate against parental involvement. This suggests a rather obvious proposition—that where there is no context for communication about intimate matters, teens may be unwilling to test the waters at such a critical moment in their lives. For the risk of disclosure not to be too great, young women may need to be able to draw upon a past history of open communication about sex in order for them to have some initial sense of how their parents are likely respond to the news of their pregnancy. Otherwise, not only is she revealing that she is pregnant and wants an abortion, but she most likely is initiating the first conversation in the household about her own sexuality.

Thus, it may well be the combination of factors that are particularly significant. Where young women are concerned about preserving the relationship they have with their parents, or not disappointing them, they may be less likely to confide in their parents if there is no history of communication about sex that they can draw upon to predict the parental response, as the risk of rupture is too great in the face of the unknown. Conversely, it may be that a good relationship in combination with a history of engaging in meaningful conversations about sex is a predicate to disclosure. This possible link awaits further study.

Apart from concerns for protecting their relationships with parents, young women in both samples also expressed concerns for the impact that disclosure would have on their parents' well-being. Identifying the difficulties and complexities of their parents' lives, including the burdens of physical and mental ill-


\textsuperscript{439} The one exception to this is Beth. Her father did talk to her in a caring way that acknowledged her emerging sexuality. Interview with Beth Smith, supra note 187.
ness, job and financial pressures, and marital woes, many young women sought to shield their parents from further distress. As the interviews made clear, non-disclosure under these circumstances was rooted in a protective impulse and in the desire to safeguard established patterns of family life. Similarly, Henshaw found that "25% of the minors who had not told their mother and 12% of those who had not told their father said that their parent was already under too much stress. The most common sources of stress mentioned for both mothers and fathers were related to family, work, finances and health."  

In considering the potential impact of disclosure on the well-being of their parents, these young women took into account the potential effects of their actions on others. Highly attuned to the burdens their parents struggled under, the interviewees revealed a sense of responsibility and a desire to not increase existing difficulties. In effect, these concerns reflect a role reversal, with the child taking on the protective function normally associated with parenthood. As discussed above, this ability to move beyond the self and incorporate another perspective or interest into the decision-making process suggests the maturity of these young women. Not bound, as a child might be, by the dominance of self, the teens who gave this reason for non-disclosure embodied an awareness of the ramifications of their actions on others.  

E. The Nature of the Court Experience

When asked to describe what it was like going to court for the bypass hearing, the minors overwhelmingly responded that it was a very frightening, nerve-wracking, and humiliating experience. This description parallels the discussion of the court experience in Hodgson v. Minnesota, where the evidence established that the court experience "produced fear, tension, anxiety and shame among minors."  One witness in the case described it as "nerve-wracking," and a judge from Massachusetts testified that "going to court was 'absolutely' traumatic for minors."  In addition to testifying that some minors were "terrified" of court, a guardian ad litem stated that the minors who appear in court "are often exhausted. . . . They talk about feeling that they don't belong in the court system, that they are ashamed, embarrassed and somehow that they are being punished for the situation they are in."  According to Doctor Hodgson, a plaintiff in the case, some of her patients returned from court "wringing wet with perspiration. They're markedly relieved . . . they dread the court procedure often more than the abortion procedure."  Echoing these findings, the Massachusetts Supreme Judicial Court concluded that the "judicial bypass process can be traumatic for a

440. Henshaw & Kost, supra note 376, at 203.
441. Maturity of Judgment, supra note 329, at 263.
443. Id. at 442.
444. Id.
445. Id. at 443.
Even though most petitions in Massachusetts are granted, the dominant fear expressed by the young women in this study was being denied consent and forced to have a child. These young women recognized the power that the judges hearing the cases held over their lives. Feeling that their future was in the judges' hands, they worried that they would make a crucial mistake or say the wrong thing that would cause the judge to deny consent. Others described the nightmarish feeling of not being able to convince someone of something you know is true—in this case, that they were mature enough to make their own decision. They felt a sense of powerlessness before the authority of the court.

Some of the young women questioned the logic of placing this authority in the hands of a total stranger. They wondered, some with anger, how a person with no knowledge of their situation could assess their maturity or readiness for motherhood. These young women are not alone in wondering about this; some judges who hear bypass petitions have also raised this concern. The loss of privacy was also an important concern. Young women worried about being exposed. For some, this was expressed as a fear that someone they knew might see them in court. Others expressed shame over how a decision that was so private had been placed in the public domain for others to see and judge.

Consistent with the findings of Crosby and English, the court process did not seem to enhance the nature and quality of the young women's decisions. The prospect of going to court invoked panic, anxiety, and for some, a feeling of deep shame. By the time of the hearing, these young women had already drawn on their support systems and were clear about the decision they had made. In facing the judge, they were acutely aware of the enormous authority that s/he had to determine their futures. Rather than enhancing their decisional process, the hearing was experienced as a hurdle they had to clear, causing them to fear and resent the power the judge had over their lives.

CONCLUSION: EXPLORING ALTERNATIVES TO THE PREVAILING JUDICIAL BYPASS MODEL

The findings of this study raise serious doubts about the validity of the Court's decision to limit the abortion rights of young women based upon their decisional incapacity and the importance of parents as a counterweight to youthful immaturity. There is a substantial body of evidence showing that young women are able to reason in a thoughtful and mature way about why motherhood is not an appropriate option for them at this moment in their lives. Whether seeking to protect the integrity of their teen years, their plans for the future, or to take control of their own lives, young women have the right to make decisions about their own bodies.

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447. See Donovan, supra note 135, at 267.
future, the well-being of the prospective child, or some combination thereof, young women are able to grasp the enormity of what it means to bring another life into this world. Likewise, there is substantial evidence showing that young women take the decision not to tell their parents about their pregnancy and intent to abort seriously. Whether seeking to avoid parental abuse, protect the relationship they have with their parents, shield their parents from additional stress, or some combination thereof, young women have well-grounded reasons for not involving their parents, which reflect both the complexities of their lives and the dynamics of their families.

Particularly when considered against the backdrop of the rights that young women have to make other sensitive medical decisions, including carrying a pregnancy to term, these considerations challenge the logic of the Court’s reasoning in the Bellotti II decision and indicate that, like adult women, young women should be vested with decisional autonomy. There is much to commend this approach. However, given that parental involvement laws appear to have a great deal of public support and have been accepted by the Court, other approaches must also be considered which, although not as respectful of adolescent reproductive autonomy, would provide young women with more options than are available under the prevailing parental/judicial involvement paradigm.

Existing Alternatives

In thinking about alternative approaches, it is important to realize that a number of states have enacted statutes that expand the options for young women who cannot involve their parents by providing a legal role for designated relatives and/or professionals. According to interviews with professionals in these states who were involved either with the passage of the law or its implementation, these laws were legislative compromises between anti-choice and pro-choice legislators. Pro-choice legislators and activists who support the right of


450. REPRODUCTIVE FREEDOM PROJECT, ACLU, PARENTAL NOTICE LAWS: THEIR CATASTROPHIC IMPACT ON TEENAGERS’ RIGHT TO ABORTION 3 (1986). According to a 1986 report of the American Civil Liberties Union Reproductive Freedom Project, all the parental involvement laws that had been passed to date had been proposed by anti-choice groups “which have as their primary goal ending all abortions” and many were introduced as a part of “omnibus anti-abortion statutes designed to restrict or completely prohibit abortions.” Id.

In general, professional, social service, and medical groups who work directly with young women are opposed to laws that mandate parental involvement. See id. at 3, 30 n.25. For example, in 1992, the Council on Ethical and Judicial Affairs of the American Medical Association (AMA) issued a report stating that while physicians should encourage pregnant minors to discuss their situation with their parents, parental involvement should not be mandated both because of the risk of abuse and the importance of privacy in matters of health.
young women to make their own choices did not begin to consider these alternative legal approaches until passage of a "traditional" parental involvement statute seemed imminent. Only once it appeared that minors would not be permitted to make their own abortion decisions did these alternatives become part of the public discussion. In short, they were crafted as a way of mitigating the burdensome impact of parental involvement laws. They were not and should not be seen as pro-choice initiatives. These statutes that provide alternatives for teens who cannot involve their parents fall into two broad categories. Some allow for the involvement of specified family members, while others allow for the involvement of designated professionals (with a few states employing a hybrid approach) as an alternative to seeking judicial authorization for an abortion without parental involvement.

1. The Adult-Relative Alternative

The "adult-relative" alternative permits designated family members to receive notice of or grant consent for the abortion in lieu of a bypass hearing. These statutes vary with respect to which family members may be involved and the circumstances under which involvement is permissible. For example, both Maine and Wisconsin have fairly broad statutes. In Maine, any adult family member can give consent, and in Wisconsin, consent can be given by a grandparent, sibling, aunt, or uncle, with the caveat that the person must be over the age of 25. Moreover, neither of these statutes limits the circumstances under which these designated family members can give consent. Other statutes are narrower in scope with respect to who can receive notice or give consent and/or care. The House of Delegates of the AMA Council adopted this council report in 1992. See Council on Ethical and Judicial Affairs, Am. Med. Ass'n, Mandatory Parental Consent to Abortion, 269 JAMA 82 (1993). Statements from other major medical organizations opposing mandatory parental involvement include: Soc’y for Adolescent Med., Position Statements on Reproductive Health Care for Adolescents, 12 J. ADOLESCENT HEALTH 649 (1991); AM. COLL. OBSTETRICIANS & GYNECOLOGISTS, ACOG STATEMENT OF POLICY (1988) (This statement was also approved as policy by the following organizations: the American Academy of Family Physicians, the American Academy of Pediatrics, NAACOG—the Organization for Obstetric, Gynecological, and Neonatal Nurses, and the National Medical Association.); Comm. on Adolescence, Am. Acad. of Pediatrics, The Adolescent’s Right to Confidential Care When Considering Abortion, 97 PEDIATRICS 746 (1996); Governing Council, Am. Pub. Health Ass’n, Policy Statements, Sec. 9001, Adolescent Access to Comprehensive, Confidential Reproductive Health Care, 81 AM. J. OF PUB. HEALTH 241 (1991).

451. As part of the present study, telephone interviews were conducted in December 1999 with professionals in states that have expanded adult involvement laws in order to elicit information about the enactment and implementation of these laws. It should be noted that no effort was made to interview a representative sample of involved professionals; in fact, many of the interviewees were associated with the Planned Parenthood affiliate in their state, reflecting Planned Parenthood’s history of engagement with this issue.

452. Id.


454. WIS. STAT. ANN. § 48.375 (West 1992). This age requirement was the result of a legislative compromise.
the circumstances under which such involvement is allowed. For example, in both Delaware and Iowa, grandparents are the only designated relatives. In North Carolina, grandparents are again the only designated relatives, but here, grandparents can consent only if the minor has lived with them for six months.

2. The Professional Alternative

The states that have carved out a formal role for professionals generally give that person (most commonly a doctor or mental health professional) decision-making authority. Thus, s/he is authorized to waive the parental notice or consent requirement based on a determination that the minor is mature or that notice would not be in her best interest, in lieu of seeking a waiver from the court. In effect, a designated professional substitutes for a judge as the arbiter of maturity or best interest. In some states, the professional cannot be affiliated with a facility that performs abortion, or more narrowly, with the particular facility where the minor is planning to have her abortion.

Connecticut has taken a different approach. It does not have a parental involvement requirement, thus obviating the need for judicial bypass hearings, as there is nothing to bypass. Instead, the law requires that all minors receive adequate counseling and information from either a counselor or a physician (the physician may be the one who is performing the abortion). The counseling must be done in an objective, non-coercive manner, and it must explore all pregnancy options and the possibility of parental involvement.

3. Utilization of Statutory Alternatives by Minors

Based on the interviews that were conducted in December 1999, it appears that minors do not utilize the adult-relative alternative in lieu of court with great frequency. This is particularly true in states with statutes that limit the choice of relatives, impose qualifications on the conditions of permissible involvement, or have some combination thereof. Although further research is clearly needed, a number of explanations for this lack of utilization are possible. First, most of the statutes provide young women with very few choices, thus limiting their value. Other factors may play a role as well. For instance, families often do not live near extended family members, and strong relationships therefore may not develop between teens and their adult relatives. Also, a family crisis often in-

455. DEL. CODE ANN. tit. 24, § 1783 (West 1996); IOWA CODE ANN. § 135L.3.
456. N.C. GEN. STAT. § 90-21-7 (1999). All the statutes discussed above also include a judicial bypass option. See statutes cited supra note 449. Where a statute allows for notice to or consent by either a custodian or guardian, they are not being characterized as a parental alternative, as guardians/custodians are legal substitutes for parents. However, it is possible that in some states, these terms could be defined broadly enough to include persons in a less formal relationship with a minor.
volves a constellation of family members, and teens may feel uneasy about issues of trust and loyalty. They may also worry about confidentiality as well as about burdening relatives with secrets. In contrast, it appears that young women regularly utilize the professional alternative, and, as a result, judicial bypass hearings are fairly rare in states that provide this option.

This pattern of utilization fits with the results of this study, which found that, as a whole, teens turn to professionals in significantly greater numbers than they turn to relatives, with 81.5% of the young women in the quantitative sample who turned to a "responsible" adult involving a professional, compared to 35% who involved an adult relative. However, an important caveat is in order here. Although this pattern was also true for black young women, with 66% involving a professional compared to 50.7% of the white young women, black young women were considerably more likely to involve a relative when compared to those who were white. As reported in the findings, the odds of black young women involving professionals were almost twice as great as white young women, whereas the odds of involving relatives were 3.44 times greater. This pattern needs further study, particularly in light of the policy recommendations that follow, as it suggests that different statutory alternatives will have varying degrees of utility and success with different groups of young women.

Policy Recommendations

As noted above, the simplest policy recommendation, and one that is well-supported by the present study as well as others, is to allow minors to decide for themselves whether they are ready for motherhood. Left to their own devices, almost all minors will involve an adult in the decision-making process, with a majority of them turning to their parents. However, where parental laws are already in place or are an impending reality, minimization of their impact is an important goal. Accordingly, a number of policy recommendations follow that are designed to reduce their burdensome impact.

In reviewing these options, it is important to keep several considerations in mind that have already been discussed here. First, remember that young women can decide to become mothers without adult involvement. Second, although states may require adult involvement in the abortion decision, they cannot mandate that the adult be a parent—the constitutionally-required bypass option already permits "alternative" adult involvement in the person of a judge. Third, if the focus of these laws is truly to enhance the decision-making of young women, allowing them to involve a trusted adult is a more appropriate option than forcing them into the legal system, a process that is burdensome, frightening, and of no demonstrable benefit.

458. See supra Section IV.2. Fear of disclosure to others, including other family members, was mentioned by a number of teens as a reason for not involving a parent.
The following are the suggested policy changes, beginning with the least restrictive option:

1. **Counseling Requirement:** As an alternative to a parental involvement/judicial bypass provision, a statute could simply include a counseling requirement, such as the one found in the Connecticut statute. Any such statute should specify that the counseling be non-directive, include a discussion of all pregnancy options, and encourage the possibility of parental involvement. To minimize any potential burden, professionals from the facility performing the abortion should not be prohibited from providing the counseling.

2. **Expanded Pool of “Alternative Adults”**: If a law is to contain a parental involvement requirement, the pool of “alternative adults” whom a young woman could involve in lieu of seeking court authorization should include both professionals and adult relatives. Each category should be as inclusive as possible, and no restrictions or pre-conditions (such as that the minor demonstrate fear of parental abuse or that the professional not be affiliated with the abortion provider) should be imposed on a minor’s ability to involve one of these designated adults.

3. **Preference for Professionals over Relatives**: If a choice must be made between allowing adult relatives or professionals to constitute the pool of alternative adults, the results of this study suggest that preference should be given to professionals. However, all relevant factors need to be assessed. For example, a nonrestrictive option that includes a broad pool of adult family members may be preferable to a professional option that excludes otherwise qualified persons because they work for the facility where the abortion is to be performed.

4. **Nature of Professional Involvement**: With respect to professional involvement, a counseling role is preferable to a decision-making role, as this would provide guidance to the minor while allowing her ultimate authority over the decision.

5. **Retention of Judicial Bypass**: Judicial bypass should remain an option for those minors who lack a relationship with or access to an alternative adult.

Although denying young women who choose abortion the decisional rights of either young women who choose childbirth or adult women who make either reproductive choice, these alternatives provide them with options that correspond to their self-designated patterns of interaction when seeking to terminate a pregnancy without parental involvement. More closely corresponding to the re-
alties of their lives, these alternatives respect rather than denigrate the decisional abilities of young women facing unplanned pregnancies in states with parental involvement laws. Grounded in their life patterns, rather than in a mythic construction of adolescent life, these options restore some sense of balance to the now-tilted decisional scale.