

Week 8

# **PRIVACY AND ABORTION**

**Section B  
(Feb 27, 2008)**

# **THE SUPREME COURT'S 1971 TERM IN THE NATIONAL POLITICS**

- President Nixon nominated William Rehnquist and Lewis Powell to fill the vacancies left by Justices Black and Fortas.
- Presidential election in 1972
- President Nixon did not wish that the Court strike down the state laws prohibiting abortion in the election year.

# **ROE V. WADE**

## **410 U.S. 113 (1973)**

- **Facts**

- The Texas statutes make it a crime to “procure an abortion . . .” with an exception of “an abortion procured . . . by medical advice for the purpose of saving the life of the mother.”
- Jane Roe claimed that the laws were unconstitutionally vague and that they abridge her right of personal privacy, protected by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments.

- **Questions before the Court**
- Whether the Texas abortion statute is overbroad and abridge the personal privacy of a pregnant woman; specifically,
- Whether the state interest in regulating abortion (pro-life) is compelling;
- Whether the personal right of a pregnant woman (pro-choice) is absolute

## ● **Judicial Politics**

- Judicial conferencing and straw polling
- Who should have an authority to assign the case?
  - Chief Justice, if he/she is in the majority
  - The most senior member in the majority
- Who should write the opinion of the Court?

# The 1971 Term

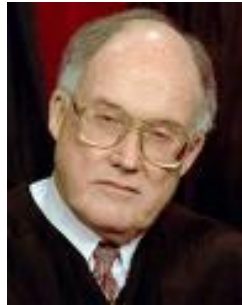
**Brennan**



**Marshall**



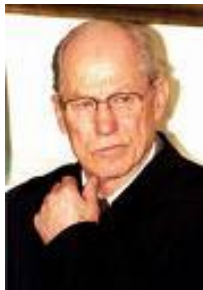
**Blackmun**



**Rehnquist**



**Powell**



**Douglas**



**Burger**



**White**



**Stewart**

# The 1972 Term

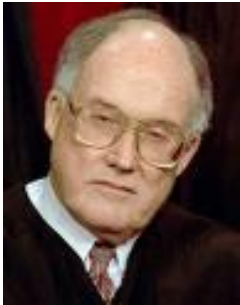
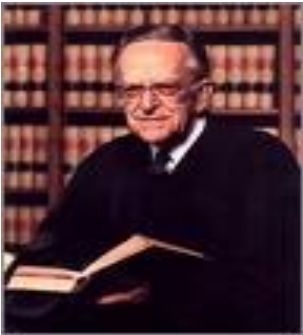
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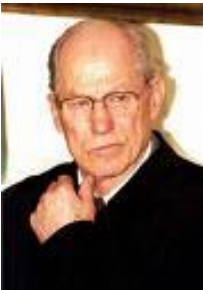
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# ● **Justice Blackmun's Journey in 1971-1972**

- The first report in May 1971
- The Mayo Clinic in Rochester Minnesota
- Re-argument in 1972
- The second report 1972
- The opinion of the Court

## ● **Opinion of the Court**

- Justice Blackmun delivered the 7-2 opinion of the Court, holding that the Texas statute violated the personal right of privacy (“ordered liberty”) of the Due Process Clause.
- Further held:
  - Personal right of privacy, albeit fundamental, is not absolute and can be regulated;
  - State may not interfere with this fundamental right unless it has a compelling reason (e.g., saving life);
  - If it has, the means chosen should be narrowly tailored.
  - Set forth a balancing act of the trimester scheme.

## ● **Underlying Rationale**

- Pregnancy presents two stark realities: the personal right of privacy in part and the matter of another life in part
  - Individual right v. State interest
  - A balancing act, which requires a strict scrutiny analysis
- “Conception is a process over time, rather than an event.” P. 406
- The trimester system would best balance the competing interests between a pregnant woman and her government