

LEGIS

# Supreme Court Reflects A Conservative Trend

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WASHINGTON, July 2—The Supreme Court's record for the term that closed last week reflected a bench divided ideologically and politically and moving over-all toward a more conservative posture but with its members still unpredictably independent on some major social issues.

Landmark decisions of the 1972-73 term ranged from legalization of all but end-of-term abortions, shocking to many conservatives, to the imposition of tighter controls and local standards on obscenity, prompting a comparable protest from liberal critics.

Such widely varying reactions by the Justices mirrored the fact that they range from Justice William O. Douglas on

the left, who dissented on nearly half the decisions, to Justice William H. Rehnquist on the right, a new acerbic voice for the "strict construction" views of President Nixon.

On two major subjects, the Court displayed some consistency over the last nine months, upholding protection of the environment in a number of key cases and reshaping the criminal law bit by bit to strengthen the hand of law enforcement at the expense of the rights of the accused.

The Court's shifting majorities ranged over the field of education, denying public assistance to parochial schools, upholding better school systems

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# A Divided Court Shifts to the Right

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for richer communities and showing preliminary tendencies to be strict against remaining segregation in the North but more lenient in the South.

In the first full term during which four Nixon appointees were on the bench, they formed one of three recognizable units on the Court, with Chief Justice Warren E. Burger and his colleagues, Harry A. Blackmun, Lewis F. Powell Jr. and Mr. Rehnquist voting together on 70 per cent of the cases heard and decided during the term, virtually always in the majority.

Judge Douglas and two other liberal Democrats, William J. Brennan Jr. and Thurgood Marshall, also voted together 70 per cent of the time, but, unlike the Nixon Justices, they were often dissenters rather than lawmakers.

The "swing" justices were Byron R. White, a Democrat originally sponsored by President Kennedy, who joined the four Nixon men 94 per cent of the time that they voted together, and Potter Stewart, a Republican picked by President Eisenhower, whose comparable cooperation with the Burger bloc was 74 per cent.

Justice Douglas cast the most dissenting votes by a wide margin, in 70 of the 153 cases. His fellow Democrats, Justices Brennan and Marshall, were his nearest rivals, with 49 and 46 dissenting votes respectively.

The most frequent participants in the majority decisions were Justices Powell and Blackmun, who only dissented 11 times each. The most contentious Republicans were Justice Stewart with 34 votes against the majority and Justice Rehnquist with 33. The Chief Justice and Mr. White each dissented 19 times.

Following is a summary of the Court's major rulings during the 1972-73 term that closed on Monday:

## Abortion

Striking down anti-abortion laws in 46 states, the Court ruled, 7 to 2, that a woman may have her pregnancy medically terminated without any restriction during the first 13 weeks and under minimal state health regulation for the next 16 weeks. Only during the final 10 weeks when the fetus is judged to be capable of surviving if born, may state laws prohibit abortion altogether.

The majority rejected the theory that the fetus becomes a "person" upon conception and thereafter enjoys a "right to life" that is paramount to all other social concerns except the health of the mother. Rather, the Justices emphasized that a pregnant woman enjoys a constitutional right of privacy that extends to terminating the pregnancy.

Despite President Nixon's public endorsement of strict anti-abortion laws, expressed during his 1972 re-election campaign, three of the four Nixon appointees on the bench voted

in the majority. Dissenting were Justices Rehnquist and White.

## Obscenity

With Chief Justice Burger writing for a 5-to-4 majority, the Court rewrote the Federal definition of obscenity to cover any works "which appeal to the prurient interest in sex, which portrays sexual conduct in a patently offensive way and which, taken as a whole, do not have serious literary, artistic, political or scientific value."

The majority specifically rejected a 1966 ruling that a book, play or motion picture could not be judged obscene if it had some "redeeming social value."

Juries applying new state laws based on the Burger definition were instructed to base their decision of what is "prurient" or "patently offensive" on the local community viewpoint, rather than any theoretical national standard, a move that is likely to promote widely differing decisions in different parts of the country.

Justice White joined the four Nixon appointees to constitute the majority. Dissenting with the three other Democrats was Justice Stewart.

## Education

By a 6 to 3 vote, the Court invalidated a group of New York and Pennsylvania laws that were designed to provide direct or indirect financial assistance to hard-pressed private and parochial schools, notably those of the Roman Catholic church. The majority said the laws clearly violated the constitutional barrier between church and state.

Dissenting were Chief Justice Burger and Justices White and Rehnquist.

Earlier in the term, the Court ruled that a system of school finance based in part on property taxes was not unconstitutional because it resulted in wealthier suburban communities providing a better education for their pupils than inner-city districts could afford to.

Had the 5-to-4 decision gone the other way, most states would have been forced to rewrite their education laws extensively and tax areas with high property value more heavily to raise school standards elsewhere. Here the majority votes were cast by Republicans and the minority votes by Democrats.

## School Desegregation

Without setting a precedent for future cases, the Court divided 4 to 4 over the issue of whether Richmond should be required to integrate its black city school system with two adjacent white suburban counties. The tie vote had the effect of affirming the lower court, which had thrown out the proposed metropolitan merger.

The Court will have a second opportunity to resolve that issue early in its next term when a similar desegregation plan centered on Detroit comes up for review. Then Justice Powell, who disqualified himself in the Richmond case as a former state and city school board member, will presumably cast the tie-breaking vote.

In their first look at school

integration in a major Northern city, Denver, the Justices ruled 7 to 1 that a substantial pocket of segregation in a city district will make it unconstitutionally discriminatory, even though the racial pattern resulted from social and economic pressure rather than from the kind of segregation law formerly in effect in the South.

With Justice Rehnquist dissenting, the Court sent the Denver case back for further lower court examination of the facts, but the tenor of the decision indicated that the Justices would be at least as strict in their attitude toward Northern city school systems now as they had been toward the South in the past.

## Environment

In the field of water pollution, the Court upheld, 6 to 3, an 1899 Federal law that has formed the basis for a number of industrial prosecutions, and it voted unanimously in support of a tough Florida law aimed at coastal oil spills.

By another 4-to-4 vote, the Justices affirmed a lower court decision that prohibited the states from allowing air quality to deteriorate from present levels anywhere, even if Federal standards might permit such deterioration. And in a case involving railroad freight rates for recyclable material, a 5-to-3 majority held that citizens concerned about the environment had legal standing to challenge an increase in such rates.

## Criminal Law

The Court decided 36 criminal cases, all but seven of them by divided votes. Some evidence of the extent to which the rulings formed a pattern in favor of stricter law enforcement can be gained from the fact that almost two-thirds, 23 of 36, sustained the position of the prosecution on the issue involved.

Among the decisions were those holding that government attempts to lure a suspect into committing a crime may not give him a defense in court if he was "predisposed" toward such action, that incriminating fingernail scrapings may be taken from a suspect without a warrant and against his will, that it is permissible to search without a warrant a car abandoned by a drunken driver and that the government need not prove that the subject of a voluntary search conducted without a warrant knew he could refuse to allow it.

## Reapportionment

In February, the Court ruled, 5 to 3, that apportionment plans for state legislatures need not follow the "one-man, one-vote" rule as strictly as those for Congressional districts and approved a Virginia plan that had a population discrepancy of 16.4 per cent between its largest and smallest house districts.

Later the Justices reinstated legislative districting plans for Connecticut and Texas that had been struck down by intermediate Federal courts as allowing too much variation between districts. The Justices returned to the lower courts cases from Idaho, Arizona, Georgia and South Carolina for decisions based on its new, relaxed policy.