

## NATION

## Former Supreme Court Justice Blackmun dies at 90

Is still reviled, praised as author of landmark 1973 Roe vs. Wade ruling

By Frank J. Murray  
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Retired Supreme Court Justice Harry A. Blackmun, whose opinion forbidding states to outlaw abortion still divides the nation, died yesterday at age 90 of complications from surgery for a broken hip.

Until his death, the crusty self-styled "old goat" who survived vile threats and a bullet fired through a window of his Rosslyn apartment in 1985 tried to avoid being saddled with a one-issue legacy from a court career spanning three decades. But he never backed off his conclusions in the 7-2 opinion.

"I'll carry this one to my grave," Justice Blackmun predicted on the 10th anniversary of the Jan. 22, 1973, Roe vs. Wade ruling that assured easier access to abortion nationwide.

"If it goes down the drain, I'd still like to regard 'Roe vs. Wade' as a landmark in the progress of the emancipation of women," he said in 1988, shortly before the high court began allowing some abortion restrictions.

His second most memorable moment in jurisprudence came in 1994, when he abandoned his stance holding capital punishment constitutional.

"From this day forward I no

longer shall tinker with the machinery of death," he wrote.

The lawyer who once hoped to be a physician and served as resident counsel of the Mayo Clinic died at 1 a.m. at Arlington Hospital, where he had a hip-replacement after breaking his left hip Feb. 22 in a fall at his apartment in the Jefferson assisted-living facility in Arlington.

Born on Nov. 12, 1908, in Nashville, Ill., he grew up in the Minneapolis-St. Paul area. After graduating from Harvard Law School in 1932, he practiced law in Minneapolis.

As in life, Justice Blackmun was eulogized yesterday by pro-choice activists and damned by those who call abortion murder.

"As president of Planned Parenthood Federation of America, and as a woman who remembers life before Roe vs. Wade, I am deeply saddened by the loss of Justice Harry Blackmun," said Gloria Feldt.

Those with different opinions had labeled him "butcher" and "murderer" in more than 60,000 letters he insisted on reading over the years, including a 1984 death threat attributed to the "Army of God."

Pro-life activist Michael Bray of Bowie, who never acknowledges claims he is a prime mover of the

shadowy "Army of God," yesterday denied claims that he wrote the threat or did the 1985 shooting. Police and FBI wrote it off as an unintended random bullet, a verdict Justice Blackmun never accepted.

"Judgment day comes for every man. He's got a lot to answer for. He is the architect, I guess, of the Roe doctrine that has been a blight on this nation. Good riddance," Mr. Bray said.

Without dissent, all nine justices of the present court praised their former colleague, as did its only surviving retiree.

In 1973, it was Justice White and a new associate justice, William H. Rehnquist, who dissented from Roe vs. Wade's finding that a fundamental "privacy right" — adapted from a decision assuring married couples the right to use contraceptives — prevented states from interfering in a woman's decision made with her doctor.

At the time, 14 states specifically permitted abortion, including Maryland and Virginia. Four others had repealed criminal laws prohibiting it. The court ruled that 32 states that had virtually banned it since the 19th century violated the Constitution.

"The common claim before us is that for [convenience, family planning, economics, dislike of children, the embarrassment of illegit-

imacy, etc.], or for no reason at all, and without asserting or claiming any threat to life or health, any woman is entitled to an abortion at her request if she is able to find a medical adviser willing to undertake the procedure," the dissenters said.

Yesterday, Chief Justice Rehnquist noted Justice Blackmun's "major contributions to the case law" and his custom of breakfasting in the court's public cafeteria.

"He will be missed by his friends throughout the building, from his breakfast gathering in the cafeteria every morning to his continuing association with his colleagues after he retired," Chief Justice Rehnquist said.

"We will miss him enormously," agreed Justice Stephen G. Breyer, who succeeded Justice Blackmun.

Justice Blackmun was an Eisenhower appointee to the U.S. Eighth Circuit Court of Appeals, based in St. Louis. A lifelong Republican and "strict constructionist," he joined the Supreme Court in June 1970 after being unanimously confirmed by the Senate. He was President Richard M. Nixon's third choice for the seat vacated in disgrace by Abe Fortas.

He was widely portrayed as an acolyte of kindergarten classmate Warren E. Burger, who became



Judge Harry A. Blackmun is introduced at the Senate hearings on his confirmation to the Supreme Court. He is flanked by Sen. Walter F. Mondale (left) and Sen. Eugene J. McCarthy, both Minnesota Democrats.

chief justice a year earlier. They were called "the Minnesota Twins," and Justice Blackmun was scoffed at as "Hip Pocket Harry" on the theory Chief Justice Burger had his vote in his hip pocket.

But during his first 10 years on the court, Justice Blackmun swung dramatically to the left and joked about being Mr. Nixon's "No. 3" after first Clement Haynsworth of South Carolina and G. Harrold Carswell of Florida failed to win Senate confirmation.

"It always kept me a little on the humble side to know that there are other factors in life rather than I being the selection, which I was not," he said.

When Justice Anthony M. Kennedy became President Ronald Reagan's third choice in 1987 to replace the retiring Lewis F. Powell Jr., after failure of nominees Robert Bork and Douglas Ginsburg, Justice Blackmun welcomed the newcomer to "the No. 3 Club."