in *Lawrence v. Texas*,[561] the Supreme Court reversed itself, holding that a Texas statute making it a crime for two persons of the same sex to engage in intimate sexual conduct violates the Due Process Clause.

Similar disagreement over the appropriate level of generality for definition of a liberty interest was evident in *Michael H. v. Gerald D.*, involving the rights of a biological father to establish paternity and associate with a child born to the wife of another man.[562] While recognizing the protection traditionally afforded a father, Justice Scalia, joined only by Chief Justice Rehnquist in this part of the plurality decision, rejected the argument that a non-traditional familial connection (*i.e.* the relationship between a father and the offspring of an adulterous relationship) qualified for constitutional protection, arguing that courts should limit consideration to "the most specific level at which a relevant tradition protecting, or denying protection to, the asserted right can be identified."[563] Dissenting Justice Brennan, joined by two others, rejected the emphasis on tradition, and argued instead that the Court should "ask whether the specific parent-child relationship under consideration is close enough to the interests that we already have protected [as] an aspect of 'liberty.'"[564]

Abortion.—In *Roe v. Wade*,[565] the Court established a right of personal privacy protected by the Due Process Clause that includes the right of a woman to determine whether or not to bear a child. In doing so, the Court dramatically increased judicial oversight of legislation under the privacy line of cases, striking down aspects of abortion-related laws in practically all the states, the District of Columbia, and the territories. To reach this result, the Court first un-

192–93. In a dissent, Justice Blackmun indicated that he would have evaluated the statute as applied to both homosexual and heterosexual conduct, and thus would have resolved the broader issue not addressed by the Court—whether there is a general right to privacy and autonomy in matters of sexual intimacy. Id. at 199–203 (Justice Blackmun dissenting, joined by Justices Brennan, Marshall and Stevens).

[561] 539 U.S. 558 (2003) (overruling *Bowers*).

[562] 491 U.S. 110 (1989). Five Justices agreed that a liberty interest was implicated, but the Court ruled that California's procedures for establishing paternity did not unconstitutionally impinge on that interest.

[563] 491 U.S. at 128 n.6.

[564] 491 U.S. at 142.

[565] 410 U.S. 113, 164 (1973). A companion case was Doe v. Bolton, 410 U.S. 179 (1973). The opinion by Justice Blackman was concurred in by Justices Douglas, Brennan, Stewart, Marshall, and Powell, and Chief Justice Burger. Justices White and Rehnquist dissented, id. at 171, 221, arguing that the Court should follow the traditional due process test of determining whether a law has a rational relation to a valid state objective and that so judged the statute was valid. Justice Rehnquist was willing to consider an absolute ban on abortions even when the mother's life is in jeopardy to be a denial of due process, 410 U.S. at 173, while Justice White left the issue open. 410 U.S. at 223.