

# Blackmun Retires; Clinton Taps Breyer

Judge Stephen G. Breyer has been nominated by President Clinton to succeed retiring Supreme Court Justice Harry Blackmun. Blackmun, author of the court's 1973 decision in *Roe v. Wade* which legalized abortion in this country, will step down at the end of the court's term. Breyer is expected to win confirmation with little opposition. Although Justice Blackmun is 85 years old, he had earlier expressed his intention of remaining on the court for another term, so his announcement came as a surprise to many.

President Nixon appointed Justice Blackmun to the high court as a champion of law and order in response to the social upheaval of the 60s; instead, Blackmun became a consistent proponent of liberal causes. It was Blackmun's opinion in *Roe* that ignited the battle over abortion that rages today. The rationale offered by Justice Blackmun to support the so-called constitutional right to abortion has been severely criticized, not only by pro-life advocates but also by legal scholars who have found it to be deeply flawed.

Judge Breyer is currently Chief Judge of the United States Court of Appeals for the First Circuit in Boston. Although it seems clear that liberals hoping for a Blackmun clone were disappointed with Clinton's choice of Judge Breyer, the nominee enjoys wide bi-partisan support from congressional leaders. Senator Howard Metzenbaum, an Ohio Democrat who is one of the Senate's most liberal members, was one of the few who expressed criticism of the nomination. Metzenbaum noted with disapproval Judge Breyer's deregulatory stance and suggested that President Clinton had chosen Breyer over other qualified individuals primarily to avoid a long and contentious confirmation process.

Perhaps as the confirmation process gets underway, we would do well to reflect on St. Augustine's statement that law affects the exterior, rather than the interior, of man. Douglas Kmiec, professor of constitutional law at the University of Notre Dame, analyzed the distinction between law and morality in a recent *Chicago Tribune* editorial where he noted that answers to "serious moral questions are sought by partisans in legislature and court, when they would be better ascertained in church, home, school or voluntary association." "It's time for all to recognize," wrote Professor Kmiec, "that neither the law, nor its primary expositors on the land's highest court, are the moral governors of our live[s]."

Confirmation hearings on Judge Breyer's nomination will most likely begin when Congress returns after its Fourth of July recess.