

Judge Blackmun

In his third try at filling the vacancy on the Supreme Court, President Nixon has come up with pretty much a carbon copy of Chief Justice Burger. Not at all a bad idea.

Judge Harry A. Blackmun brings the kind of background one hopes to find in Supreme Court nominees, a career marked by distinction at every stage: Eleven years on the appellate bench, Phi Beta Kappa and summa cum laude from one of the nation's best universities, service as a law clerk and law professor, and most important of all, widespread respect from his colleagues within the legal community.

Now, the Senate has lately been subjecting Supreme Court nominees to the kind of scrutiny few if any Senators could stand. It's impossible to predict what this kind of scrutiny might turn up on any man. But by now political motivations ought to be pretty obvious when legislators attack potential conservative Justices, or for that matter, sitting liberal ones. The time has come to examine any such attacks with a skeptical eye, especially when the general context of a nominee's record suggests a man of substance.

In terms of judicial philosophy, Judge Blackmun is cut from the same mold as the Chief Justice; the two are long-time friends, and Justice Burger reportedly urged this appointment. Neither believes the law need be paralyzed before social problems, as evidenced by their generally sympathetic attitudes toward civil rights suits. But in most areas both have expressed a

strong preference for applying existing law and letting legislatures create whatever new laws may be needed.

President Nixon has been trying to use his appointments to encourage this philosophy, as an antidote to the Court's recent, and divisive, tendency to find some Constitutional grounds for correcting anything it deems a social flaw. History warns against being too categorical in predicting how nominees will rule once confirmed, of course, and some of Judge Blackmun's opinions definitely indicate that he views the Supreme Court's law-making prerogatives as far broader than those of the Appellate Court where he has been sitting.

Even so, the similarity of backgrounds and philosophies suggests that Justice Blackmun's opinions are likely to be quite in line with Justice Burger's. These have been ideal in supplying a strong and closely reasoned challenge to judicial activism, but without falling into reckless broadside attacks. In the same way, Judge Blackmun's leading opinions show that his "strict constructionism" has its roots not in emotions or policy preferences but in intellectual principle.

Surely these are the firmer roots for bringing about a really meaningful change in judicial philosophy. By all indications, Judge Blackmun brings the kind of record that is a credit to the Supreme Court as an institution. And it may be he also brings the qualities that will best serve the President's purpose as well.