

Chariots of Breyer

by Gary L. Bauer

President Clinton has just ring-mastered another media circus over choosing a Supreme Court nominee. Just as he did after the retirement of Justice Byron White last year, the President dragged his heels, allowing various names to float unofficially ("selection by trial balloon," one reporter called it). White House spokesmen ran out of synonyms for "very soon."

When the announcement finally came, Clinton again did something unexpected. Bypassing this year's leading candidates and runners-up, he chose last year's runner-up: Stephen Breyer, Chief Judge of the U.S. Court of Appeals for the First Circuit.

Judge Breyer is being hailed by Democrats and Republicans, liberals and conservatives, as a solid consensus nominee, a moderate who will sail effortlessly to confirmation.

I am prepared to admit that, from the pro-family point of view, we could do much worse. A more left-leaning candidate, Interior Secretary Bruce Babbitt, was quietly "shopped" on Capitol Hill—and Senate Republicans, to their credit, gave him the big nix. Clinton might have had the votes to get Babbitt confirmed, but it would have cost him political capital that he can't afford, so he went with a safer nominee.

All in all, it looks a lot like the decision President Bush made in 1990 when he chose "stealth nominee" David Souter over the more controversial (because more principled) Edith Jones. Now, if only the future Justice Breyer can disappoint Clinton as badly as Justice Souter has disappointed pro-family Americans.

So, should we rejoice at the choice of Breyer? Not at all—not yet anyway. No nominee is entitled to an uncritical coronation in place of a robust confirmation process. Yet that is exactly what we seem to be headed for once again.

The Constitution assigns the power to appoint Supreme Court Justices to the President, "by and with the advice and consent of the Senate." In the 1980s, liberals argued for an extreme interpretation of the Senate's role. Following the debacle over Robert Bork, there were even suggestions that the Senate could and should force the President to choose his nominee from a Senate-generated list.

That was too extreme—but so is the notion that the Senate should be a mere rubber stamp. The Senate has the right

and the duty to scrutinize a nominee's record, to engage him in an exchange of views, and to air the major jurisprudential issues of the day, even

though it may be improper for the nominee to comment too specifically on live controversies. Above all, Senators should come to confirmation hearings with open minds. Singing hosannas to the nominee within 24 hours of his being selected is hardly evidence of this.

On Supreme Court nominations, Republicans seem obsessed with not emulating the bad example set by some Democrats during the Reagan and Bush years. Granted, they should never stoop as low as that; but must they start burning incense to the nominee before he has even been officially presented by the President? Does their role as the opposition party stop with a behind-the-scenes veto of an objectionable nominee for reasons that are never fully articulated for public reaction?

The Administration's record on issues of family, faith, and freedom makes it essential that this articulation be openly made. Any Supreme Court nominee that the President sends up should be made to state what he thinks about religious liberty; about Judeo-Christian values; and about the relation of the family to overreaching state power. Consensus may have its charms, but the possibility of a negative vote on the nomination should be ever-present.

WE ARE ENTITLED TO A ROBUST
CONFIRMATION PROCESS.

ON THE HORIZON

Previous predictions that Congress would not face **fresh battle on federal abortion funding restrictions** in 1994 look inaccurate. Capitol Hill sources say new Appropriations Committee chairman David Obey (D-Wis.) is likely to seek taxpayer funding of broad **"health of mother" abortions**, historically wide-open category. House action possible in early June. Meanwhile, major 6-1 ruling by California Supreme Court May 16 **permits murder prosecutions** against persons charged with killing unborn child against mother's will, even during first three months of pregnancy. Ruling expands protections of California homicide statutes, grave worry to national abortion advocates.

Freshmen Republican Congressman Jim Talent (Mo.) and Senator Lauch Faircloth (N.C.) recently introduced bill to tackle squarely America's illegitimacy crisis by **eliminating benefit hikes to young women who bear additional children out-of-wedlock**. Welfare reform legislation moving to front burner in House of Representatives as Rep. Tom DeLay (R-Tex.) and others continue to push for swift consideration. Talent-Faircloth emerging as **major alternative to soon-to-be-unveiled Clinton welfare reform package**. Administration continues to grant states **legal waivers for welfare reform experiments** as illegitimacy rates keep climbing.

New study by Roper Starch finds that 1) **teenage sexual activity is declining**, and 2) of the teens who have had sex, **over half wish they had waited**. Regrets about early sex may not be limited to teenagers, though. FRC's 1994 Family Issues survey will ask married adults if, looking back on their experience, they believe **premarital chastity is a good idea**. Poll results will be released this summer, in conjunction with unveiling of FRC's new **advertising/poster campaign celebrating sexual virtue**.