

The newest US justice

Judge Stephen Breyer would bring to the US Supreme Court special expertise in science.

IN nominating Stephen G. Breyer of the federal district court in Boston to the US Supreme Court, President Bill Clinton has made an excellent choice, but for the wrong reasons. Breyer, who is 55, has degrees from Stanford and Oxford as well as a law degree from Harvard, where he is a professor. He is widely admired by colleagues, who describe him as intellectually astute, widely read in law and literature and utterly fair. Although he has been widely described as a conservative jurist, his greatest strength is his willingness to judge cases on their merits; all too often, Supreme Court judges are encumbered by the expectation that their political philosophies (right or left) and even prejudices will take precedence over facts and the law.

Breyer's appointment is especially welcome because it will bring rational jurisprudence to bear on the complex issues in science and technology likely to find their way to the Supreme Court in the coming decade. Breyer knows about regulatory issues in novel industries, from aerospace to biotechnology. His quality is illustrated by his decision, during a sabbatical from Harvard, to immerse himself in a study of risk analysis to produce a book (*Breaking the Vicious Circle: Toward Effective Risk Regulation*, Harvard University Press) that cannot now be had in Washington for love or money.

His good sense is illustrated by the important case involving the US Superfund law for cleaning up toxic waste, when he argued that public misperceptions of risk can distort reality and skew government policy. Thus the law demands that the last 10 per cent of chemical waste at a dump site in New Hampshire be cleaned from the soil at a cost of \$9.3 million despite what the judge said was valid scientific evidence to the effect that the soil had so little toxic material that children could safely eat it. Because the site is a swamp, he added, there were no dirt-eating children to protect in any case. But he also carries solid environmental credentials. He has upheld a ban on land-destroying dune buggies on the fragile Cape Cod seashore and ruled against an oil refinery in northern Maine that posed a genuine risk to endangered species.

So how can the reasons for this paragon's nomination to the Supreme Court be called wrong? Mainly because Clinton foolishly let it be known that he would prefer to have named a good friend from Arkansas (who has cancer) or Bruce Babbitt, the strong, sensible, but controversial Secretary of the Interior. Babbitt, a former governor of Arizona, quickly made his mark as a member of Clinton's cabinet with a sensible strategy for dealing with conflicts between development and endangered species by promoting a broad ecological approach to environmental issues. But he also made headlines (and enemies) when he courageously (and correctly) attempted the politically unthinkable by seeking the preservation of western lands by increasing the derisory fees

paid by cattlemen, miners and others for their use, free from the obligation to restore what they destroy.

But Babbitt's nomination was stillborn. When Senator Orrin Hatch (Republican, Utah) threatened to fight it in the Senate, Clinton backed down; although Babbitt would probably have won through, Clinton (with so much else on his hands) chose not to make a fight of the issue. By having said so clearly that he wanted Babbitt and then shying away with hardly a word, the president did nothing to enhance his reputation as a leader of courage or a man of principle. Indeed, while praising Breyer's qualifications, Clinton has also let slip to colleagues that he had not found the new judge a scintillating luncheon companion. Luckily the new Supreme Court justice (his confirmation is all but inevitable), who has endured the companionable jogging ritual, has had the good manners to stay silent on his luncheon conversation. His interests, thankfully, seem to be with the court. □

Resurgent infections

British newspapers' alarm about a "killer bug" are a reminder that infections are still with us.

THE British public health authorities are right to discount the alarming tales being told in British newspapers about the emergence of a new "killer bug", but they have a problem on their hands. Since the beginning of this year, fifteen cases of the condition known as necrotizing fasciitis have been recorded and have been attributed to infection by group A *Streptococcus*. The condition is one in which subcutaneous tissue is destroyed by the infecting organisms, but those affected may die of bacterial shock, disseminated blood coagulation or respiratory or renal failure. Only two of the fifteen known patients have survived. What seems to have alarmed the physicians is the speed with which those infected have been overwhelmed.

The condition of necrotizing fasciitis is by no means unknown, but has become more common in the past decade. Most (but not all) of those infected in the past few months in Britain had been in hospital for surgery, but there is little doubt that the publicity given to a few cases has prompted physicians to be more zealous in reporting similar cases that have come their way (some of which have not been linked with *Streptococcus A*). Bizarre though it may seem, unless antibiotics are given quickly, survival may turn on the physical removal of flesh by surgery.

Even so, none of us should be all that surprised by this development. For several years, there has been mounting concern that intractable infections of various kinds could prove a resurgent threat to public health, believed in the 1960s to have been routed by antibiotics (and synthetic pesticides). AIDS is the most worrying novelty of this kind. Antibiotic-resistant bacteria are another. In all cases, the urgent need is that the molecular mechanisms of their persistence and pathology should be understood. That is where the British authorities must put their energy. □