

Bush picks right-wing crony for Supreme Court

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The nomination of White House Counsel Harriet Miers to fill the vacancy on the US Supreme Court created by the retirement of Justice Sandra Day O'Connor has laid bare the real political relations in official Washington. The Bush administration is a weak and crisis-ridden government which can pursue its right-wing agenda only by relying on the support of the Democratic Party.

Within hours of the announcement Monday morning, Christian fundamentalist groups and right-wing talk radio hosts were bemoaning Bush's selection, and ultra-right senators like Tom Coburn of Oklahoma and Sam Brownback of Kansas were declaring that they would "reserve judgment" on the nomination. Meanwhile, the leading Senate Democrat, Minority Leader Harry Reid, publicly welcomed Miers, calling her "worthy of consideration." Reid even took credit for first suggesting Miers as a potential nominee, in a conversation with Bush last month.

Barely a day later, at a hastily called press conference at the White House, Bush defended his choice for the Supreme Court and sought to assuage his right-wing critics, who claim that Miers is an unknown quantity on such issues as abortion, gay rights, stem cell research and the separation of church and state.

What has provoked this conflict between the Bush administration and its most fanatical supporters? It is certainly not the personal views of Miers, who by all accounts is a very conservative evangelical Christian, a reliable defender of big business in her career as a corporate lawyer, and a long-time Bush loyalist.

Her selection to replace O'Connor will mark a further shift to the right in the political composition of the court, above all on such critical issues as the deregulation of business, the weakening of anti-discrimination statutes, the curtailment of civil liberties, the expansion of the police powers of the state, and the upholding of the powers of the presidency against constitutional challenges. (O'Connor, despite effusive praise from Democrats, is herself a hardened reactionary. She cast the tiebreaking vote in *Bush v. Gore*, the 2000 Supreme Court ruling that placed Bush in the White House by ending the recount of votes in Florida).

Miers served only briefly as White House legal counsel—nominated in November 2004, she did not take office until February 2005, after her predecessor Alberto Gonzales was confirmed as attorney general. But she has held key administrative positions in the Bush White House since January 2001, and is completely identified with its agenda of war, social reaction and attacks on democratic rights.

Before joining the White House staff, Miers was Bush's personal lawyer, assisted in his transition to the Texas governorship in 1994, and was appointed by Bush to head the Texas gambling commission from 1995 to 1999.

According to press reports, Miers belongs to an evangelical Christian church in Dallas, calls herself a born-again Christian, and contributed money to anti-abortion groups. As head of the Texas Bar Association, she sought to overturn the position of the national association in support of the *Roe v. Wade* Supreme Court ruling legalizing abortion. While telling gay rights groups in Dallas that she did not oppose civil rights for gays, she supported the Texas anti-sodomy law, later struck down by the Supreme Court as unconstitutional.

Miers is not, however, a judicial or political activist identified with the right wing of the Republican Party, which is steeped in anti-abortion hysteria, homophobia and thinly disguised racism. She has not been a crusader on the social issues which energize the Christian fundamentalists, and is accordingly viewed with distrust by those elements who have regarded the Bush presidency as the best vehicle for imposing their bigoted views on the American people.

The Christian fundamentalist groups regard the appointment of Supreme Court justices openly committed to overturning *Roe v. Wade* as the political payoff for their support for the Republican Party and their all-out mobilization behind Bush in both the 2000 and 2004 elections. Instead, Bush nominated first John Roberts, a corporate litigator without a long record of support for the agenda of the religious right, and now Harriet Miers, another corporate lawyer with little political record of any kind.

Roberts was confirmed as chief justice with the support of half the Democrats in the Senate. Miers is likely to win even wider Democratic support. Senator Charles Schumer of New York, a liberal who voted against Roberts, summed up the prevailing opinion: "It could have been worse." Senator Diane Feinstein of California, another anti-Roberts vote, praised the selection.

The lack of Democratic Party opposition to the Miers nomination has, if anything, fueled even greater outrage from the ultra-right. Numerous spokesmen for Christian fundamentalist, anti-abortion and other right-wing groups emphasized that Bush should have provoked Democratic opposition with his Supreme Court pick, not sought Democratic support.

Right-wing talk radio host Rush Limbaugh declared, "I think the pick makes President Bush look weak. I think the pick is designed to avoid more controversy; the pick is designed to appease. I can't tell you how that disappoints me." The White House immediately put Vice President Dick Cheney on Limbaugh's program to reassure the ultra-right audience that Miers was a suitable choice.

William Kristol, publisher of the neo-conservative *Weekly Standard*, wrote on its web site: "It is very hard to avoid the conclusion that President Bush flinched from a fight on constitutional philosophy.

Miers is undoubtedly a decent and competent person. But her selection will unavoidably be judged as reflecting a combination of cronyism and capitulation on the part of the president. I'm demoralized."

Perhaps the most revealing comment came from another ultrarightist, Paul Weyrich, chairman of the Free Congress Foundation. He told the *Los Angeles Times*, "The Democrats were promising the battle of Armageddon, and we were going to give it to them. Now we have to sit back and watch for the hearings."

Press commentaries also took note of the apparent crisis in the Bush White House. The *Washington Post* observed: "The nomination appeared designed primarily to avoid a major fight in the Senate and, said skeptics on the left and right, was made out of a position of political weakness, not strength."

The *New York Times* contrasted the White House decision to duck a fight over the Supreme Court vacancy with its attitude only a few months ago to the nomination of John Bolton to be US ambassador to the United Nations: in the face of Democratic opposition, Bush refused to withdraw the nomination and ultimately made a recess appointment rather than concede defeat.

There is no question that underlying the selection of Miers is an element of weakness and crisis. The Bush administration has been staggered by a series of political shocks—the growing public opposition to the war in Iraq, the incompetence and indifference it displayed in its response to the Hurricane Katrina disaster, rising gasoline prices and other indicators of economic crisis, and last week's indictment of a key congressional ally, House Majority Leader Tom DeLay.

There is also the possibility of top White House aide Karl Rove and Cheney's chief of staff I. Lewis Libby being indicted in the investigation into leaks of classified information to smear critics of the Iraq war. Special prosecutor Patrick Fitzgerald faces a deadline of October 25 for bringing charges in the case.

But there are even more fundamental issues at stake. The Supreme Court is one of the central institutions of the American state, and, contrary to liberal myth-making, its principal historical role has been to safeguard the wealth and privileges of the ruling elite. For most of its history, the court has been the arm of the federal government most removed from popular influence and most reliable in upholding corporate power.

Only in the three decades following World War II did the high court play even a limited reformist role, through such decisions as *Brown v. Board of Education* and *Roe v. Wade*, which extended democratic rights and limited the power of the state over private behavior. It has been more than 30 years since a Supreme Court decision significantly expanded democratic and civil rights. Since then, the high court, like the entire political establishment in the United States, has moved drastically to the right.

Nonetheless, the limited reforms of the 1950s and 1960s raised the stature of the court in public opinion, giving rise to illusions that the court could serve as the defender of democratic rights and the interests of working people.

Such illusions play a vital role in the political calculations of the US ruling elite. It would otherwise have been impossible for the Supreme Court to intervene as it did in December 2000, in a brazenly partisan fashion, to award the presidency to Bush, and have that decision accepted, not so much by Al Gore and the Democratic Party leaders, who would swallow anything, but by the population as a whole.

There are undoubtedly concerns in the most powerful sections of the

ruling elite that to pack the court with right-wing ideologues promoting the agenda of the Christian fundamentalists would permanently discredit this institution in the eyes of the masses and undermine its authority in future political conflicts.

The Miers nomination, however, undermines the court in a different way, by elevating to the highest judicial office an individual who is a creature and political crony of the president. (One Republican critic of Miers' nomination, former White House speechwriter David Frum, reported that Miers had once told him George W. Bush was "the most brilliant man she had ever met.") The selection of a personal retainer to fill a lifetime position on the US Supreme Court is virtually unprecedented.

On this score, the Miers nomination demonstrates the increasingly narrow, isolated and shut-in character of the Bush administration, which more resembles a court cabal than a government. Former White House aides now run the State Department (Condoleezza Rice), the Justice Department (Alberto Gonzales) and the Department of Education (Margaret Spellings). The secretary of another huge department, Health and Human Services, Mark McClellan, is the brother of Bush's White House spokesman Scott McClellan.

This exercise in cronyism has given pause even to such organs of the extreme right as the *Wall Street Journal*, which published an editorial expressing reservations about the Miers nomination, and an op-ed column excoriating it. The op-ed columnist even suggested that placing a crony on the Supreme Court might constitute an impeachable offense. He added, "Imagine the reaction of Republicans if President Clinton had nominated Deputy White House Counsel Cheryl Mills, who had ably represented him during his impeachment proceedings, to the Supreme Court."

The mention of impeachment is not without significance. The Bush administration has committed countless crimes—not only in its illegal wars in Afghanistan and Iraq, but in the cover-up of likely US government complicity in the events leading up to the terrorist attacks of September 11, 2001. Placing a White House loyalist on the Supreme Court may thus have a practical as well as political significance. In the event the unfolding political crisis in the United States culminates, as is possible, in legal charges being brought against current or former US government officials, Bush knows that he will have at least one vote in his pocket on the highest US court.



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