

COURTS: Dems, GOP raise questions about Miers' inexperience on the bench

By Alex Kaplun

President Bush's nomination of White House counsel Harriet Miers to the U.S. Supreme Court drew a mixed response from both ends of the the political spectrum yesterday, with officials on both sides saying her limited public record left numerous questions about her legal philosophy.

Senate Democrats and liberal interest groups vowed a close examination of Miers record, but, much like with Chief Justice John Roberts, there was no immediate opposition to her nomination.

"I have to say without any qualification that I'm very happy that we have someone like her," said Senate Minority Leader Harry Reid (D-Nev.). Later, he added, "I just understand the broad outline of this woman, and the broad outline looks very good to me."

Reid reportedly included Miers in a list of candidates submitted to the president of "acceptable" nominees. In a brief appearance with Miers yesterday, Reid declined to go so far as to say that he "recommended" Miers but said he was pleased with Miers' professional background.

Democrats have repeatedly warned they would fiercely oppose -- and possibly filibuster -- a nominee that they deemed too conservative, potentially setting the stage for the kind of fight that officials and interest groups have long been anticipating. But at least immediately in the wake of the nomination, Democrats declined to make a determination on the nominee and several even indicated she could be the kind of consensus nominee they have hoped for.

Sen. Chuck Schumer (D-N.Y.), a frequent critic of President Bush's judicial nominees, said Miers has the "potential to be a consensus nominee."

"My first reaction is a simple one: It could have been a lot worse," Schumer said. "There's hope that Harriet Miers is a mainstream nominee."

White House Press Secretary Scott McClellan said that in consultation with the Senate on the nomination, senators from both parties specifically mentioned Miers as someone who would "serve well" on the court.

On the Republican side, Majority Leader Bill Frist (R-Tenn.) and a few others immediately endorsed Miers' nomination, praising her as a potential justice who "understands the importance of judicial restraint and the limited role of a judge to interpret the law and not legislate from the bench."

But much of the Republican caucus issued brief statements stating only that they looked forward to "fair" hearings and finding out more about Miers' record. "I will reserve judgment on this nominee until the Senate studies her qualifications," said Sen. John Thune (R-S.D.). "It has been my expectation that President Bush would nominate someone in the mold of Justices Scalia and Thomas, and it is my hope that Harriet Miers will prove to be such a person."

Environmentalists were likewise unwilling yesterday to make an immediate judgement on Miers, saying there is nothing in her public record that immediately jumps out as an area of concern or praise." She does not, at least initially, have a public record for good or bad on the key issues," said Earthjustice Attorney Glenn Sugameli.

But some conservative interest groups, who were anticipating that Bush would nominate someone with strong conservative credentials, questioned the selection of a nominee whose judicial philosophy is largely unknown.

"The nomination of a nominee with no judicial record is a significant failure for the advisers that the White House gathered around it," said Manuel Miranda, former counsel to Frist and current head of a conservative advocacy group focusing on judicial nomination. "The nomination of Harriet Miers has not rid us of the repugnant situation that a jurist with a clear and distinguished record will not be nominated for higher service. The nomination did not rid us of the apprehension of stealth nominees."

Bush's allies yesterday made an effort to assuage the party's conservative base, saying the decision to pick Miers' was not due to the president's low approval ratings but instead based on her legal credentials. "This president is not going to be intimidated in discharging the responsibilities of his office," said Sen. Jon Cornyn (R-Texas). "I don't think he's looking for a fight either."

Vice President Dick Cheney told conservative commentator Rush Limbaugh on his radio show, "You'll be proud of Harriet's record, Rush. Trust me."

Still, some Democrats indicated that because of the administration's political woes, the president probably felt he could not select a well-known conservative for the swing seat held by Justice Sandra Day O'Connor. "I think what the president is trying to do is thread the needle by choosing two nominees whose views are not very well known," Schumer said. "On the one hand not alienate the extreme wing of his party, on the other hand not alienate the American people."

The problem for both sides appears to be Miers' relatively short public record and lack of service on any bench. While both parties will spend the next several weeks scouring Miers' past speeches and writings for glimpses into her legal thinking, there was nothing in the way of court opinions or highly publicized statements that could immediately be used as ammunition on either side.

Miers has never been a judge at any level and prior to her recent stint in Washington held only a handful of public posts. Miers has held the post of White House counsel, the top legal adviser to the president, for close to a year, taking over for current Attorney General Alberto Gonzales. She has held several other positions in the White House, including White House deputy chief of staff for policy and staff secretary.

Miers has led the White House search for both the successor to former Chief Justice William Rehnquist and the most recent search to replace Justice Sandra Day O'Connor but has herself been frequently mentioned as a top candidate for the court. Since Miers' work in Washington during the last five years has largely been as an adviser to the president, she has made few public statements and her writings from the White House are not yet publicly available.

Before coming to Washington, she worked for almost three decades in the Texas-based law firm Locke, Purnell, Raine & Harrell, where she specialized in antitrust and trade regulations. She also chaired from 1995-2000 the Texas Lottery Commission and early in her career served on elected term on the Dallas City Council.

Miers was the first female president of the Dallas Bar Association and in 1992 was the first ever woman selected to lead the Texas State Bar. She has also served on Bush's transition team after his election for Texas governor and at one time worked as his personal lawyer.

While Democrats held their fire yesterday, they also said that because of her sparse public record they intend to press the administration to release Miers' documents from her tenure in the White House. One of the main points of contention during the Roberts confirmation hearings was the administration's refusal to release documents from his tenure in the Solicitor General's office and Democrats have already called on the the White House to avoid taking such action this time around.

But Senate Judiciary Committee Chairman Arlen Specter (R-Pa.) said much of Miers' work in the White House may be covered by attorney-client privilege, and the Senate may have to make due with making a decision without a lengthy legal record. "You're not entitled to a paper trail," he said. "You're entitled to whatever trail there is."

First said yesterday that he expects the Senate to confirm Myers by Thanksgiving, though Specter and several Democrats indicated that additional time may be needed to closely examine credentials.

Specter said he has no specific target date in mind for the confirmation and will need to both examine the quantity of record's available to the committee and discuss the timetable with Leahy.

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