

## **IN BUSH WE TRUST?**

**By Don Feder**

That the Supreme Court nomination of Harriet Miers has been mercifully euthanized is good news. What this bizarre episode says about the “conservatism” of George W. Bush is the bad news..

Whenever someone tries to tell me about the supposed commitment to the cause of our 43<sup>rd</sup> president, my off-handed response is: “Colin Powell, Christine Todd Whitman, Alberto Gonzales, Arlen Specter (Bush supported RINO Arlen over a real Republican in last year’s GOP primary), mega-deficits, Nobody’s-gonna-outspend-me-on-Katrina-aid, signing the Campaign Finance fraud, Islam-is-a-religion-of-peace, Ramadan fetes in the White House, an amnesty for illegal immigrants thinly disguised as a guest-worker program, didn’t support a Federal Marriage Amendment until it was politically convenient, supported the ethnic cleansing of Gaza and a PALESTINIAN STATE.”

If Bush is a conservative, Al Franken is a deep thinker, Michael Moore is a patriot, Osama bin Laden is a Zionist, and Bill Clinton is chaste.

Look, I voted for Bush twice, and wrote countless columns supporting him over Al Gore and John Kerry. Given the alternatives in the last two presidential elections, I’d vote for him again.

And, yes, I gladly acknowledge that the president has gotten some things right –the war on terrorism (with certain exceptions, most notably the Saudis, the Pakistanis and the Palestinians), some excellent nominations for the appellate courts and occasional pro-life gestures.

I’ll go further and say that I believe the president is a decent man who’s sincere in his faith. But a conservative, he’s not.

Supreme Court nominations are now a matter of life or death – life or death for unborn children, life or death for the family, and life or death for Judeo-Christian morality. Here, the president has failed us miserably. John Roberts was a mistake. Harriet Meirs was a catastrophe of abrupt-climate-change magnitude.

Mr. Bush lied to us repeatedly -- through two presidential campaigns -- when he promised to appoint justices like Clarence Thomas and Antonin Scalia to the nation's highest court.

By this, it's reasonable to assume that the president did not mean justices who are either black or Italian, or justices who he thinks are strict constructionists, or candidates who we had to hope were committed to the doctrine of original intent.

The obvious implication of the president's pledge was that he'd choose Supreme Court justices who (like Scalia and Thomas when they were nominated) were an open book -- nominees with a paper trail wide as a four-lane highway and long as an interstate whose record demonstrated their judicial philosophy beyond a shadow of a doubt.

Instead we got stealth and super-stealth.

The more we learned of Meirs, the more she looked like David Souter in drag. Her lack of qualifications aside (she never served on the bench, litigated before the Supreme Court or even dealt with constitutional questions) Meirs -- or her law firm -- contributed to the campaigns of Al Gore and Hillary Clinton. Should we check Norman Thomas's donor list?

Bush assured us that HM "will not legislate from the bench." How did he know that? Did she have an "I-won't-legislate-from-the-bench" bumper-sticker on her car? Did she come to work at the White House wearing an "I-heart-original-intent" t-shirt?

Seriously, how did he know that, once she got on the Supreme Court, Miers won't "grow" into another Anthony Kennedy -- because the lady who works for him told him what she knew he wanted to hear?

The president maintained he never asked Miers' opinion on Roe v Wade. Now, that I believe. I don't think the president cares enough about overturning Blackmun's monstrosity to pose such a question. In 2000, the president told us the nation wasn't ready to scrap Roe -- as if the nation/people had anything to do with giving us the horror of 33 million abortions since 1973.

Forget Roe. Did the president ask Miers if she thinks there's a right to sodomy in the First Amendment, if the Establishment Clause makes "One Nation Under God" in the Pledge of Allegiance unconstitutional, if the Fifth Amendment's public-taking clause can be used to evict an 87-year-old woman from her home for a private development, if the 14<sup>th</sup> Amendment actually means what it says (that a state shall not "deny to any person within its jurisdiction the *equal protection* of the laws" based on race), if foreign law can be used as a basis for "interpreting" the Constitution? The answer to all of the above is: Your guess is as good as the president's.

If Bush had nominated Janice Rogers Brown, Edith Jones or any of a dozen other exceptional originalists on the appellate bench, we'd know exactly what we were getting. It wouldn't be a grab bag – where we could pluck out a William Rehnquist or a Sandra Day O'Connor or a David Souter (Republican nominees all), depending entirely on luck.

But the president doesn't have the stomach for a fight with Senate Democrats, left-wing interests and a biased media. Such a battle royal would inform the American people, energize his base and set the stage for an election over real issues next year. Instead, the president's base was on suicide-watch for the past month, and the Beltway-based conservative movement finally revolted.

For most conservative pundits, grassroots groups and court-watchers on the right, Meirs was a bridge too far.

The last straw was revelations of some speeches the president's counsel gave in the early 1990s, wherein Miers declared that "self-determination" (for the woman, not the unborn child) should be the deciding factor in the abortion debate. Said she, "Legislating religion or morality we gave up on that a long time ago." Really? Who's we? This brilliant constitutional scholar doesn't understand that all legislation is morality legislation.

In a speech called "Women and Courage," Miers cited judicial Jacobin Ruth Bader Ginsberg and Hollywood airhead Barbra Streisand as examples of feminine fortitude. Someone in the White House should have checked to see if she has Emma Goldman's name inside a heart tattooed on her arm.

If the right hadn't robotically fallen in line behind John Roberts' nomination (We were told that Roberts *only* did a few hours of pro-bono work paving the way for *Romer v. Evans*, which established men who schtup other men as a protected class for civil rights purposes), the president might have thought twice about trying to stuff Miers down our gullets.

Over the past 5 ½ years, the movement has swallowed so much from this administration, that the public could be forgiven for thinking conservatives have turned into an auxiliary of the Republican National Committee.

I've spent many sleepless nights pondering this phenomenon. Here are the factors that have contributed to co-opting what once was an independent and vibrant movement:

1. **The war on terrorism** – Many conservatives consider it unpatriotic to break ranks with the president in time of war. And while Mr. Bush has made some bold moves here, he's also undercut his success by his inability to identify the Islamist roots of the conflict (terrorism is a *technique*, not an ideology), his choice of allies (if the Pakistanis and Saudis are our friends, we could use more enemies) and his ceaseless agitation for a Palestinian state (Genocide-istan).
2. **Bamboozled by Bush rhetoric** – The president is great at role-playing. The lesson Karl Rove learned from 1992 (when conservative disaffection resulted in the defeat of Bush Sr.) was: Promise them anything but give them Arpege. Thus, every now and then, Mr. Bush will talk conservative and toss a tidbit to his lapdogs on the right (pushing domestic energy development and Social Security reform or appointments like John Bolton as UN ambassador), But he has no real commitment to conservative principles, or even understands them, for that matter.
3. **My-enemy's-enemy-is-my-friend** – The left's hatred for Bush borders on the pathological. It's assumed that anyone despised by The New York Times editorial pages must be an okay guy. But the left loathed Richard Nixon – no one's idea of a conservative – ditto Bob Dole, Newt Gingrich and Trent Lott. Has it now reached the point where liberals are allowed to define "conservative"?

4. **What-choice-do-we-have?** – Bush is the only game in town – the only way to get any part of our agenda through -- so best we put up with his nonsense. This ignores the fact that the president needs us more than we need him. Without grassroots conservative support, he will lose Congress next year, as he would have lost his bid for reelection last year. Bush carried Ohio with 51.25% of the vote. The Ohio defense of marriage amendment (which brought out hundreds of thousands of evangelical voters) passed by over 64%. If Bush hadn't carried the Buckeye state, Kerry would be filling Supreme Court vacancies.

The conservative movement needs to declare its independence from George Bush. W will reside in the White House for another three years. Conservatives need to plan for a future well beyond that (which is why lifetime appointments to the Supreme Court are crucial).

I am not suggesting that conservatives become a bunch of knee-jerk Bush-bashers -- rather, that we cease being blonde cheerleaders for whatever dumb move the president makes. Here are a few guidelines:

1. Never assume the president has our interests at heart.
2. Remind Bush who elected him to the presidency twice. (Hint: It wasn't Charles Schumer or any of the other lefties currently urging Bush not to cave in to his right-wing base. At this point, a massive cave-in is advisable.)
3. Present the president with copies of the 2000 and 2004 Republican National Platforms. Suggest he study them closely.
4. With the next Supreme Court nomination, take nothing for granted.
5. Insist the president *finally* keep his campaign pledge to nominate a Thomas or a Scalia -- not someone he thinks is a Thomas or a Scalia, not someone he tells us is a Thomas or a Scalia, but someone we immediately recognize as an intellectual clone of those distinguished jurists. (Hello, Janice Rogers Brown!)

Bush '41 had a problem with "the vision thing." It's about time W. got the conservative thing.