

What's Behind Bush's Frenzy Over The Supreme Court Nomination?

by Debra Hanania-Freeman

When President Bush nominated Judge John G. Roberts of the U.S. Court of Appeals for the District of Columbia Circuit to fill the vacancy on the Supreme Court, in highly unusual live prime-time remarks on July 19, it brought to a close what is being called one of the most bizarre days in the recent history of the nation's capital.

Just 24 hours earlier, at a joint press conference with Prime Minister Manmohan Singh of India, the President indicated that he still had more interviews to conduct with potential candidates for the Court. Later that afternoon, Administration officials indicated that no announcement was likely until the end of the last week of July.

But, by Tuesday, July 19, rumors were flying that the President was indeed closer to making a decision than his statements the day before had indicated. Administration sources leaked that Judge Edith Brown Clement of the U.S. Court of Appeals for the Fifth Circuit, based in New Orleans, would be named within the next few days. The rumors were so widespread, that when Bush appeared at a joint news conference with Australian Prime Minister John Howard in the East Room that day, the press hammered him with questions about Clement. Bush giggled and said that he didn't have anything profound to say.

A short time later, at 12:35 p.m., White House sources reported that the President interrupted a White House luncheon for Prime Minister Howard, and appeared to be "manic and excited." The sources said that the President jumped up and said that he had to make an important phone call and would be back. Apparently, the call was to Judge Roberts, who immediately accepted. Bush stepped back into the luncheon and, according to his press secretary, Scott McClellan, made Mr. Howard and his wife Janette the first to know of his decision. There was a flurry of activity to secure air time for 9:00 p.m. that night. Apparently, it was not until 7:30 p.m. that Bush informed a small group of important members of the Senate that he had made a choice. They included Bill Frist (R-Tenn.), the Majority Leader; Arlen Specter, the Pennsylvania Republican who chairs the Senate Judiciary Committee; Patrick Leahy (Vt.), the ranking Democrat on the Committee; and Harry Reid (Nev.), the Democratic Mi-

nority Leader. Until then, wire services across the nation were still reporting that Clement was the person whom Bush would name.

In the wake of the announcement, both Democrats and Republicans were commenting that the President's bizarre behavior, and the speeded-up timing, were designed to push the continuing headlines about Karl Rove and the Federal investigation into who leaked the name of CIA officer Valerie Plame Wilson to the press, off the front pages, at least for a time. One Washington pundit referred to it as "Wag the Judge."

The President's Bizarre Behavior

Certainly, the media's focus did shift to the nomination, especially as special interest groups on the left and the right spun into action. But, is it indeed the case that Bush's increasingly bizarre behavior is attributable to his desire to deflect attention away from criminal actions by members of his Administration during the build-up to the Iraq War? Is the



White House/Carolyn Drake

President Bush was in such a manic fit about appointing a Supreme Court Justice, that he broke off a meeting with Australian Prime Minister Howard to make the phone call.

President cracking under the mounting pressure? Perhaps. But there is another very important element to the story that especially the Washington, D.C. press has failed to cover.

The hyperactive, near psychotic behavior that Bush exhibited on July 19 had, in fact, been building for a full week. The previous Tuesday, Bush was forced to at least give the appearance of succumbing to the Constitutional mandate for “advice and consent” with the Senate regarding, among other things, Executive nominations.

On that day, the President, joined by Vice President Dick Cheney and White House Chief of Staff Andrew Card, sat down with Frist, Specter, Leahy, and Reid, nominally to discuss the process of filling the vacancy created by Justice Sandra Day O’Connor’s impending retirement. Reports of that meeting described Bush as being distracted, inattentive, and at times, dissociated. Apparently, the meeting was purely perfunctory and very little of substance regarding potential candidates for the post was discussed. When Bush was pressed to disclose his thoughts, one source reported that the President giggled, and said he wanted to surprise everyone. Despite promises of further discussions, it was very apparent that Bush had absolutely no intention of engaging in any substantive consultation with the bipartisan group of Senators.

Initiative by Four Senators

Largely in recognition of this reality, and out of deep concern for the potential paralysis of the nation’s highest court at a time of great crisis, a bipartisan group of female Senators disclosed that they had written a letter to Sandra Day O’Connor on July 14, urging her to reconsider her retirement.

In the letter, Republicans Olympia Snowe and Susan Collins of Maine, and Democrats Mary Landrieu of Louisiana and Barbara Boxer of California, asked O’Connor to consider staying on the high court if the increasingly ailing Chief Justice William Rehnquist steps down. “We urge you to reconsider your resignation and return to the Supreme Court to serve as Chief Justice, should there be a vacancy,” the four Senators wrote.

The bipartisan group said they would make “a strong recommendation” to the President. “We believe such a history-making nomination by the President would demonstrate leadership that united Americans around the shared values of liberty, the rule of law and the preservations of our constitutional freedoms,” they said.

Within hours of the letter being made public, Senate Judiciary Committee Chairman Arlen Specter and top Judiciary Democrat Patrick Leahy publicly endorsed the proposal. Leading Senators from both sides of the aisle soon followed.

Apparently, the proposal sent Bush into a frenzy. He was enraged that the Senate would be so presumptuous as to carry out their Constitutionally mandated responsibility.



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Associate Supreme Court Justice Sandra Day O’Connor was asked to stay on the court by a bipartisan group of female Senators. The request sent the White House ballistic.

As the day wore on, speculation grew that the entire move was an orchestrated response by the Senate to Bush’s refusal to engage in any serious consultation about potential candidates. It seemed that a bipartisan group was attempting to “box the President in.” The additional aggravating factor was the naming of Sandra Day O’Connor, a moderate who, if she were not sitting on the Supreme bench today, would *never* be nominated by this Administration under any circumstances, since she fails Bush’s well-known “litmus test.”

Immediately after his discharge from a hospital stay, a weakened Chief Justice Rehnquist was carted out to address the press, claiming that he “wasn’t going anywhere,” and that all talk of replacing him was premature. Rehnquist insisted that he would stay in his post “as long as [his] health permitted.” When one reporter pointed out that the Chief Justice’s failing health had already caused him to miss the great majority of the high court’s last session, the press conference was closed down.

That weekend, President Bush did not go, as is his usual weekend routine, to Camp David, stating through his spokesman that he wanted to interview more potential nominees, none of whom were ever discussed with the relevant members of the Senate.

As the Senate begins its confirmation process of Bush’s pick prior to the scheduled August recess, the question of Judge Roberts’s qualifications is much less of an issue than the increasingly obvious fact that his nomination was a product of a Presidential temper tantrum against the Senate, by a President whose overall behavior seems to grow more bizarre and more indicative of clinical mental incapacity with each passing day.