

CONCORD MONITOR

October 4, 2005

Local experts weigh in on nomination

By SARAH LIEBOWITZ

Monitor staff

As lawyers, activists and politicians across the country searched yesterday for any clue to how Harriet Miers might rule as a Supreme Court justice, New Hampshire attorney Jack Middleton felt assured that with Miers, the court would be in good hands. As secretary of the American Bar Association from 1999 to 2002, Middleton got to know Miers, who chaired an ABA committee, well. Yesterday, he described the Supreme Court nominee as a gifted attorney committed to weighing arguments.

"She's an excellent lawyer," Middleton said. "Very bright, very careful, very deliberate. At the same time, she's a very warm and caring human being." Her willingness to work long hours, Middleton said, testified to her commitment to understanding all sides of an issue. "I don't know that I've ever known anybody that works any harder, with the possible exception of Justice (David) Souter," Middleton said. Although Miers holds the highly political position of White House counsel, she would not "go into matters with a predetermined view," Middleton said. "I think that she will do very well in dispelling any ideas that she's an ideologue."

But if Middleton's personal interactions with Miers convinced him of her qualifications, other New Hampshire lawyers knew nothing about the nominee's judicial philosophy, much less her views on hot-button issues such as abortion and affirmative action.

"She may be wonderful; she may be the finest justice in history," said John Hutson, dean of the Franklin Pierce Law Center. "It's just that her public record is so thin that it'll be very difficult to know that before she actually begins to sit."

The record of Chief Justice John Roberts, who served two years on the D.C. circuit of the U.S. Court of Appeals before joining the Supreme Court, "is going to read like the Encyclopedia Britannica compared to hers," Hutson said.

Because Miers has been nominated to replace Sandra Day O'Connor - who traditionally acted a swing vote, voting in favor of issues such as abortion rights - lawyers predicted that she would face more scrutiny than Roberts in the confirmation process. Roberts replaced former Chief Justice William Rehnquist, a conservative leader of the court.

The fact that Miers is such an unknown will also heighten political scrutiny during her confirmation process. "I don't even know what she thinks the role of a judge is," said Ellen Musinsky, a professor at Franklin Pierce Law Center.

But "in the process of scrutinizing her, they won't find much," said Richard Uchida, president of the New Hampshire Bar Association. "That was probably a very deliberate part of the strategy." Because Miers has never been a judge or politician, it's unlikely that there's a paper trail of her views on contentious issues.

If a contentious brief does emerge from Miers's years as a practicing private lawyer, she will be able "to argue quite convincingly that all she was doing was representing clients," Hutson said.

The lack of Miers's public record led lawyers to draw their own conclusions from her resume yesterday.

In 1972, Miers became the first woman hired by the 400-member Texas law firm Locke, Purnell, Rain & Harrell, where she was later promoted to partner. When that firm merged with another to create Locke Liddell & Sapp in 1999, Miers was named co-managing partner. She became the first woman president of the Dallas Bar Association in 1985, and the first woman president of the Texas State Bar seven years later.

In recent years, Miers has turned her attention to President Bush. In 1994, she served as counsel to Bush's Texas gubernatorial campaign. Following the 2000 election, Bush named Miers his staff secretary. Two years later, she was promoted to deputy chief of staff for policy. She became White House counsel in 2005. Lucy Karl, an attorney with Shaheen & Gordon, worries that Miers's years of service to Bush might make her "a Bush crony."

"I think there had been a lot of discussion between key senators and the White House about selecting a nominee who would not be incredibly divisive," Karl said. "By the mere act of naming his own insider, I think he [Bush] has thumbed his nose at the process."

Others drew more positive conclusions from Miers's past. Her extraordinary success in male-dominated law firms shows her leadership skills, said Martin Honigberg an attorney with Sulloway & Hollis. "You don't get to a position like that without knowing how to deal with high-powered lawyers who think very highly of themselves," he said.

Miers's background as a lawyer, rather than a judge, might benefit the court, some said. "In my experience, some of the best judges out there are folks that came straight from private practice and did not have any prior judicial experience," said Alexander Walker, a partner at Devine Millimet. Because of her experience as a lawyer, Walker added, Miers would know about "the nuts and bolts" of the law.

"It adds a little breadth to the court," said former Attorney General Tom Rath, who served as an adviser to Bush during the New Hampshire primary. Miers "is fresh, as opposed to someone who's lived pretty much within the judiciary her whole life."

The fact that Miers is an unknown, Rath said, may bode well for her weighing each case on its merits. "She's not going to be immediately predictable."

Miers's lack of a public track record also has political benefits for Bush. "He will have done extraordinarily well with these two nominees," Rath said. "A lot of the fears of more extreme groups, especially on the left, will have been muted. And I think the conservatives will feel that he's served his conservative base."

He added: "I think he's threaded the needle quite well."



partners in public relations