

OBAMA'S MALIGN NEGLECT OF FEDERAL JUDICIARY REDUX



Right about this time last exactly one week ago, in relation to predictions of Ruth Bader

Ginsburg's retirement, I was describing the derelict judicial policy regarding nominations and confirmations that has characterized the White House of Barack Obama since he took office:

One of the other hallmarks of Obama's Presidency is also, save for his two Supreme nominees Sotomayor and Kagan, dereliction of duty and attention to judicial policy and nominee confirmations. The state of rot and decay ongoing in the liberal federal judiciary is shocking, and Obama literally has abandoned the cause.

The all too predictable response to any such suggestion from the blindered Obama apologybots was "but but but Republican obstruction". However said predictable refrain from Obamabots and party hacks belies the obvious fact that Republican obstruction has nothing to do with the lack of attention to nominations by Obama. As I said many times, here in June of 2011:

...it is hard for an administration to get a confirmation if it does not make nominations. Take federal judges for instance, for most of the past two years

there have been around a hundred vacancies on the Circuit and District courts; Mr. Obama has rarely had nominees for more than half of them. This is simply federal administrative incompetence, and it takes a heavy toll in the hallways and dockets of justice.

Friday Joan Biskupic, in her first major piece at her new perch as head legal editor for Reuters, laid out a scorching case against the feckless and derelict policy by Obama on nominations by focusing on the most important Circuit Court of Appeal, the DC Circuit:

Obama's failure to put anyone on the 11-judge D.C. Circuit, where three vacancies now exist, reflects both rising partisanship and Obama's early priorities.

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"That would leave the second most important court in the land without the kind of balance he might have achieved," Gerhardt added.

Of the eight active judges on the D.C. Circuit, five are appointees of Republican presidents, three of Democratic presidents. Although the court has 11 members, it routinely hears cases in three-judge panels, assigned randomly to cases, as do other federal appeals courts throughout the country.

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Two of the three openings on the D.C. Circuit have existed since Obama took office. Obama nominated Caitlin Halligan, a former New York state solicitor general who is now general counsel for the Manhattan District Attorney's office, in September 2010.

The DC Circuit is the most important circuit court because it hears the appeals on all the most important cases emanating from the seat of

our federal government. If it involves Executive Branch decisions, federal agency decisions, decisions on foreign entanglements of the US government and, notably over the last decade plus, all Guantanamo detention cases. The entire set of federal Habeas Corpus law appears to lay in the hands of the DC Circuit and Obama, through derelict neglect, has put it in the destructive hands of Janice Rogers Brown.

There were two openings on the most critical Circuit court in the country when Barack Obama took office, and he did not bother to even make a single nomination for nearly two years and, instead, waited until his huge senate majority was effectively down the crapper with the 2010 Congressional election disaster. Since that time, another seat has gone vacant on the DC Circuit, and Obama barely lifted a finger to support his sole nominee, Caitlin Halligan, whose nomination went down in flames in December.

As Biskupic reports, the Administration swears they will be making nominations any time now, but fat chance of getting any movement in an election year, and especially after pulling the nuclear recess appointment stunt for the CFPB and NLRB slots. The White House PR blather about coming DC Circuit nominations is nothing but feel good pablum for the naive at this point.

Compare and contrast the reckless malign neglect of Obama with the dogged determination and followthrough effort and success of Bush and Cheney. When Bush nominated Miguel Estrada in 2001, he had a lot smaller numbers in the Senate behind him than Obama has had at any point. The Democrats blocked Estrada. But the Bush White House and their supporters did not put their tail between their legs and hide, they made an unholy racket across the political spectrum that directly led to the confirmation of four other judges to the DC Circuit, including Janice Rogers Brown, Brett Kavanaugh and the now Chief Justice, John Roberts.

The noise and effort resulted in heavy

conservative salting of the DC Circuit, and in Miguel Estrada being made a martyr for the ages that still carries powerful connotation for conservatives. But such true grit, determination and attention to judicial policy is not the stuff of Barack Obama. Liberal judicial policy will be paying the disastrous consequences for decades because of the malign neglect today. Hey, you never know, if Obama had filled the three seats on the DC Circuit, we might still have effective Habeas Corpus today.