Christian Coalition of Washington
Educating and Activating Christians for Social, Political, and Spiritual Action

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Is she or isn't she?

Dwell on the past and you'll lose an eye; forget the past and you'll lose both eyes.
--Old Russian Proverb

Tral arguments pertaining to Oregon's so-called "Death with Dignity Act" were heard yesterday in the U.S. Supreme Court. Similar in theory to physician-assisted suicide in the Netherlands, the world's only other official suicide colony, the Oregon law permits doctors to administer death potions to willing patients diagnosed with life-ending illnesses. The high potentates of our court system, however, have not been asked to rule against the Beaver State because it is morally repugnant to help people kill themselves, but because it is presumably illegal for a state to do so with a federally controlled substance.

One of the especially troubling aspects of the Oregon law, aside from the 208 people who have thus far exercised the new medical "opt-out" plan, is the unknown—the gulf between theory and reality. Due to soaring death rates in Dutch hospitals, there is every reason to suspect that Holland has aggressively transitioned from "assisted" suicide to euthanasia. If it is to discourage less urgent medical care, it is working. Many frail and elderly Europeans who are in no hurry to die have become suspicious and even terrified of both hospitals and doctors. So why would circumstances differ in Oregon?

Elsewhere this week, President Bush nominated Harriet Ellan Miers, his legal advisor and close confident, to replace retiring Supreme Court Associate Justice Sandra Day O'Connor. If confirmed, it is possible Ms. Miers could cast a tie-breaking vote in the physician-assisted suicide case. But no one knows how she would vote.

During his opening remarks, the President said, "In our great democracy, the Supreme Court is the guardian of our constitutional freedoms and the protector of our founding promise of equal justice under the law…A Justice must be a person of accomplishment and sound legal judgment. A Justice must be a person of fairness and unparalleled integrity. And a Justice must strictly apply the Constitution and laws of the United States, and not legislate from the bench." President Bush assures us that Harriet Miers meets these qualifications. But no one knows how she would vote.

Although little is known about Harriet Miers at this point, leading newspapers report that in 1979, she experienced a "religious conversion." *The New York Times* caption this morning, reads: "In Mid-career a Turn to Faith to Fill a Void." Gossip "reporter" Matt Drudge quipped: *Miers found Christ, turned Republican*. But while Republicans are looking to the President for assurances that the conversion experience was genuine and will impact her judicial thinking, Democrats want from Miers, her personal assurance it will not. Both sides say it is important for a Supreme Court justice to protect and defend the Constitution.

Joseph Sobran, writing for the *Schwarz Report,*[1] contends that we live in post-Constitutional America. Although everyone professes to respect it, he thinks the Constitution serves the same function as the British royal family: it offers a comforting symbol of tradition and continuity but poses no serious threat to our form of government.

Sobran laments that our constitutional illiteracy cuts us off from our own national heritage. He says, "One of the great goals of education is to initiate the young into the conversation of their ancestors; to enable them to understand the language of that conversation, in all its subtlety, and maybe even, in their maturity, to add to it some wisdom of their own."

The writer is convinced that the modern American educational system no longer teaches us the political language of our ancestors. "In fact," he argues, "our schooling helps widen the gulf of time between our ancestors and ourselves, because much of what we are taught in the name of civics, political science, or American history is really modern liberal propaganda…Our ancestral voices have come to sound alien to us, and therefore our own moral and political language is impoverished. It's as if the people of England could no longer understand Shakespeare, or Germans couldn't comprehend Mozart and Beethoven."

Although most people believe that the Constitution was the instrument by which the American people granted, or delegated, specific powers to the federal government, many are less clear in their understanding that any power not delegated was withheld, or reserved. Yet, foreigners in earlier times understood and even marveled at the unique workings of our "federalism." In 1836, Alexis de Tocqueville wrote to his countrymen that "the government of the states remained the rule, and that of the federal government the exception."

Unfortunately, the tables have turned.

Arguably, Washington, Jefferson, Madison, and Hamilton would be horrified that the federal government now routinely assumes thousands of powers—powers never *granted*, never *delegated*, never *enumerated*. Not that the framers expected the Constitution to remain frozen in time or that they failed to provide a mechanism for change when needed. Indeed, new powers have been granted to the federal government since 1790, but remarkably, only 17 times. The rest have been "assumed." Such sweeping and non-enumerated assignments in the name of regulation, education, medication and incarceration, would surely strike our founders as a gross usurpation of power.

And who would have dreamed that the Court—the instrument designed to check the excesses of the executive and legislative branches of the federal government—would itself become a check against "the people?"

If confirmed this fall, Harriet Miers will opine whether the people of Oregon have the right under the Constitution and the laws of the United States to help kill sick people. If a strict constructionist or "originalist" as President Bush infers, she must decide if the states have delegated to the federal government, power to regulate controlled substances. (Hint: See Amendments 18 and 21—and our newsletter, *Morality Can't Be Legislated—Right?* 8/2001)

But, Ms. Miers would do well to first consult the SUPREME LAW that provided guidance to our forefathers—a body of truths, said they—which are "self-evident." Assuming she agrees that we are endowed by our Creator with <u>certain</u> unalienable rights, she will have only to determine if those <u>certain</u> rights include the right to murder or the right to commit suicide.

We may know little about Harriet, but we'll soon know volumes about her "conversion."

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[1] Sobran, Joseph, <u>God, Man and Law</u>, *The Schwarz Report*, Vol. 45, No. 8, August 2005