

RiverOpinion

Somewhere, Over the Rainbow

Richard L. Hershatter
Contributing Columnist

*Somewhere, over the rainbow,
Skies are Blue,
And the teachings of Darwin
Really aren't seen as true.*

*Somewhere, over the rainbow,
Things are fine;
Schools there teach every student
All about intelligent design.*

(apologies to Y. Harburg, 1939)

Once upon a time, there was a little girl named Dorothy, who had a dog named Toto, and a cyclone lifted their house, whirled it around and around, and then deposited it on the ground in a place called Munchkinland.

Dorothy's first words, upon stepping out of the house, were: "Toto - I have a feeling we're not in Kansas anymore."

Flash forward sixty-six years to today, and it turns out that she really still ended up in Kansas, where the Board of Education has decreed that "intelligent design," which is a synonym for creationism, is to be taught in the schools, and Darwinism is to be treated as just another "theory."

Darwin, of course, was the scientist who postulated the concept of evolution of man, based on the observation that life first appeared on the planet more than two billion years ago, give or take a few weeks. This contrasted with man's earlier belief that the world was only 10,000 years old, and he had been created 5,000 years ago.

From the simplest of single-cell, water-borne life forms, creatures changed and developed over the eons, based on mutation and something Darwin called "natural selection," ranging all the way from fish to birds to chimpanzees, who could swing through the trees with the greatest of ease, without so much as a flying trapeze.

A century of research has supported Darwin's hypoth-

esis - not that man was descended from monkeys -but that man and monkeys and birds and fish all "descended" from one or more common ancestors.

Examination of fossil remains and genetic research using DNA have established the correctness of Darwin's theory, and biologists have been able to predict and later confirm changes in animal life, based on the theory.

As early man evolved and came out of the caves, there was much that was inexplicable - even frightening in the world surrounding him. Things like lightning, thunder, lunar eclipses and women were strange and beyond his simple comprehension.

It was easy to explain such mysteries by ascribing them to angry gods, or to fantasize that his female partner was fashioned from a superfluous rib.

As scientists, including Darwin, discovered facts explaining some of the earlier puzzles, the fairy tale aspects of many early views gave way to the advance of knowledge.

Have Darwin and his colleagues answered all life's questions? Of course not, but the actual response should be: "Not yet."

It may be that future science will remain unable to unlock all the mysteries of life as we know it, but ascribing unanswered questions to an unseen "intelligent designer" is a lazy man's answer.

Part of the popular resistance to Darwin's ideas is because they are labeled "theory," and the word carries a connotation of fantasy or uncertainty.

In Darwin's case, the theory is fact based, comprising propositions that are ultimately verifiable.



Would one call Einstein's Theory of Relativity nonsense, merely because there were no supporting data when it was initially propounded, and it was almost impossible for the average person to understand?

Following such negative reasoning to its logical conclusion means that atomic and hydrogen weapons of mass destruction do not exist: they are mere figments of someone's imagination.

Let's not get bogged down in useless controversy however. If the Wizard of Oz says that public schools should study the controversy between Darwinism and intelligent design, let us be fair and also introduce the study of astrology vs. astronomy, phrenology vs. psychiatry, Chinese fortune cookies vs. meteorology, the tooth fairy vs. dentistry and the Easter bunny vs. Chicken Little.

Working together, we can build a bridge - back to the 15th century.

Or, as Dorothy might sing to Toto:

*Somewhere, back in past history,
The world was flat,
And the moon was a mystery,
Made out of chicken fat.*

*Some day, the planet will spin
Around the sun;
No more original sin,
Living will just be fun.*

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Does Judicial Experience Really Matter?

Tom Burgum
Contributing Writer

On Monday, Oct. 3, the President stepped before the microphones and, to the surprise of all, nominated White House Counsel Harriet Miers to the United States Supreme Court. Reactions were swift and largely negative. The CNN report set the tone. "President Bush nominated White House counsel Harriet Miers on Monday to replace retiring Supreme Court Justice Sandra Day O'Connor. Miers, 60, was the first woman to head the State Bar of Texas." Then the reporter frowned slightly and said with some sadness, "She has never been a judge." The CNN report was repeated every half hour. It was factually correct but when the reporter intoned that "she has never been a judge," the facial expression and body language was suitable only for occasions where they are reporting that someone at a White House state dinner had opted to eat the mashed potatoes with his hands. CBS, NBC and FOX reports all properly emphasized that the reaction to the nomination was mixed, with republican loyalists mixing praise with appeals for fairness, and Bush's political opponents, in this case, some on the far right, questioning Miers' lack of judicial experience. The liberal wing of the Democratic Party has remained uncharacteristically silent thereby allowing various factions of the Republican Party to engage unimpeded in their customary internecine warfare. The dispute seems to be over whether Miers can be counted on to march in lock step with whatever policy each faction supports.

Anyone not familiar with the history of the Supreme Court could be forgiven for thinking George Bush broke new ground in appointing someone without judicial experience and, heaven forbid, a personal advisor at that. Not so, at least according to David Rosenbaum in the New York Times. "As recently as the early 1970s, prior judicial experience was not much of a factor in picking Supreme Court candidates. The early Warren court in the 1950s, for instance, included three former senators, two former attorneys general and Chief Justice Warren, a three-term governor of California."

It is true that in the last 30 years the custom has been

to draw from the pool of federal appeals court judges. Still, 40 of the 109 members of the Supreme Court have lacked any appreciable judicial experience. According to Rosenbaum, "In the last 30 years, almost all justices had served on United States Courts of Appeals, presumably because that gave the presidents who appointed them a way to assess how they might decide." So, it appears that certainty of result rather than competence has become the ruling factor.

The historical record of those lacking prior judicial experience is mixed. Several became influential jurists while some were only average, and at least two were serious disappointments, at least according to the President who appointed them.

Roosevelt Court

Roosevelt was the champion appointer of Justices without prior experience. He also was not reluctant to appoint cronies. Felix Frankfurter and William O. Douglas were both appointed in 1939 and both were personal advisors to the President. Douglas brought much to the court, not the least of which was his sense of humor. At a time when Nixon had become disenchanted with the Court, Douglas was told that there was a plan to hold for ransom a member of the Court in exchange for the release of federal prisoners. He responded, "Tell the FBI that the kidnappers should pick out a judge that Nixon wants back."

Roosevelt also selected Hugo L. Black even though he had no judicial experience unless you count serving as a police court judge in Alabama. Black had served in the U.S. Senate and his staunch support of the New Deal was the qualification most important to the President.



Roosevelt and the Senate managed to overlook Black's earlier membership in the Ku Klux Klan, a membership he had long renounced. Frankfurter, Black and Douglas all served with distinction for several decades despite the lack of judicial, or even extensive legal experience. James F. Byrnes and Robert Jackson were the other Roosevelt appointees who had to learn on the job. All told, Roosevelt made nine appointments to the Court - five were men with no judicial experience.

Truman Court

President Truman appointed four justices, Harold Burton, Fred M. Vinson, Tom C. Clark and Sherman Minton. Burton and Clark were the two appointed despite lack of judicial experience. Truman did not have a stellar record of Supreme Court appointments because none served with great distinction and Tom Clark was a disappointment, at least to the President. Once Truman was asked if he regretted any of the decisions he made as President, such as using the atomic bomb at the end of World War II. He is reputed to have said the only decision he regretted was appointing Tom Clark to the Supreme Court.

Eisenhower Court

President Eisenhower also made four appointments but only Earl Warren took his seat on the Court without the benefit of prior experience. Warren had served as Attorney General and three-time governor of California. It was as Attorney General that he was a leading proponent of imprisoning American citizens of Japanese descent at the beginning of World War II. Still, many believed Warren was one of the most important Chief Justices in the history of the Court. One biography states, "He joined the Court in the midst of one of its most important issues - racial segregation in public schools. As Chief, he proved an effective leader by bringing the Brethren from division to unanimity on the issue of racial equality. At the end of his service, Warren concluded that his greatest contribution to government was his opinion in the reapportionment cases. However, his contribution to racial equality

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