

Manuel Miranda: A Right Wing Folk Hero

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Ultraconservative activists routinely beatify political insiders, from Oliver North to Katherine Harris, who are willing to exploit their positions and engage in unethical and/or illegal behavior in order to advance the right-wing agenda.

Even after being found guilty of lying to Congress, Oliver North's supporters nearly succeeded in propelling him to a seat in the US Senate. Despite the loss, North continues to enjoy a lucrative career as a right-wing columnist, pundit and public speaker. As for Harris, her biased behavior before, during, and after the contested 2000 presidential election in Florida made her a "a national hero" in the eyes of Tom DeLay and the rest of the Right Wing and she rode that notoriety straight into Congress in 2002.

And now the Right is busy producing a hagiography of its newest scandal-plagued hero: Manuel Miranda, a man who flagrantly abused his position on the Senate Judiciary Committee staff in order to obtain, read and disseminate private Democratic documents pertaining to the confirmation of judicial nominees. And though he resigned in disgrace and faces possible criminal charges, Miranda has no regrets and offers no apologies. For this obstinacy, he is regarded as a martyr and an "American hero" by the activist groups who support President Bush's attempts to pack the federal judiciary with ultra-conservative ideologues.

Background

In November 2003, Republicans staged a 40-hour "reverse filibuster" on the Senate floor in order to decry what they called the Democrats "obstructionist" treatment of President Bush's judicial nominees. Orchestrated by Senator Rick Santorum, the "Justice for Judges" marathon lumbered on for nearly two consecutive days, giving Republicans an opportunity to take to the floor and vent about the Democrats' filibusters of a handful of President Bush's extremist nominees. Even before Republicans and their allies were publicly decrying the filibusters as "unprecedented," "unconstitutional" and a "complete debasement" of the confirmation process, some of their staffers were privately reading internal Democratic staff memos taken from a server used by the Judiciary Committee.

The very day the talk-a-thon ended, excerpts from five internal Democratic memos showed up in the pages of the *Wall Street Journal*. The following day, the *Washington Times* reported that it had obtained 14 internal memos and just days later these memos showed up on the website of the right-wing Coalition for a Fair Judiciary.

The spin put on these memos by the right-wing groups was that they demonstrated how "liberal interest groups" were controlling Senate Democrats. As the *Wall Street Journal*

stated when they first published them, “Their real bosses are the liberal interest groups that more or less tell the Senators when to sit, speak and roll over.” Right-wing columnist Byron York chimed in that “The memos reveal the Democrats and the interest groups to be partners ... with the Democrats serving as the junior partners.” Senator Santorum also parroted this point, claiming that “it’s pretty clear that they get their marching orders from these special interest groups.”

The fact that senators and the right-wing media would feign outrage over this so-called “collusion” does not pass the laugh test. The right of citizens and organizations to petition the government is enshrined in the Constitution; it should come as no surprise that when they exercise this right, Hill staffers write memos summarizing their views and ideas. More importantly, every member of the Senate is extremely independent and, as such, they’re the ones who must weigh the evidence, make the important decisions, and cast their votes accordingly.

Even so, that Santorum would allege that Democrats were taking their “marching orders” from outside organizations is more than a little ironic considering that the opening of the “Justice for Judges” marathon was orchestrated to benefit one of the Republican Party’s most powerful media allies: Fox News. A memo from Manuel Miranda, who worked for Senate Majority Leader Bill Frist, showed the senators were, quite literally, taking their “marching orders” from Fox:

It is important to double efforts to get your boss to S-230 on time ... Fox News Channel is really excited about this marathon and Brit Hume at 6 would love to open with all our 51 senators walking onto the floor -- the producer wants to know will we walk in exactly at 6:02 when the show starts so they get it live to open Brit Hume's show? Or if not, can we give them an exact time for the walk-in start?

The irony of this is only enhanced by the fact that it was a memo written by Manuel Miranda that revealed this type of collusion.

Memogate

Immediately after the stolen memos first appeared in the pages of the *Journal* and the *Times*, Senators Durbin, Leahy and Kennedy called on Senate Sergeant-at-Arms Bill Pickle to begin an investigation into just how the memos had been obtained and leaked to the media and Senator Hatch, chairman of the Senate Judiciary Committee, agreed to the probe. Not long thereafter, once Pickle had seized several computers and servers, Hatch announced that he was placing a member of his staff on leave for an “improper, unethical and simply unacceptable breach of confidential files.” Hatch also noted that the evidence suggested that a former staff member might have also been involved. That staff member turned out to be Manuel Miranda, who had, months earlier, transferred to the office of Senate Majority Leader Bill Frist where one of his key responsibilities was to coordinate the Senate Republican’s strategy on judicial nominations.

While the young Hatch staffer, Jason Lundell, resigned in order to attend graduate school, Miranda maintained his silence for a while before resigning from Frist's office and going on the offensive. Miranda attacked by alleging that Senator Leahy's staff had been alerted to the fact that their documents were unprotected and took no steps to protect them. Thus, Miranda "determined for [himself] that no unlawful, unauthorized hacking was involved in reading these unprotected documents" and continued to download and read them. In his view, the Democrats had "virtually placed" the documents on their desks. Though he admitted reading the documents, he denied leaking them to the press and claimed that the investigation was "ridiculous and a great waste of government resources."

The idea that Democrats more or less turned over their own documents to Miranda and others is ludicrous. Their internal documents were vulnerable because an inexperienced system administrator had failed to properly restrict access and had the Democrats been aware of this flaw, they obviously would have sought to address it. Arguing that it is okay to read opposition documents when they are not adequately protected is, as Senator Durbin pointed out, akin to "arguing that a homeowner invites burglary because he has windows that allow prospective crooks to see the valuables inside."

The right wing's reaction to all of this was to try to draw attention away from this breach by defending Miranda, decrying the investigation, and attacking Hatch. From the very beginning, right-wing senators and their political allies tried to spin the story and refocus it on the content of the purloined documents rather than how they were obtained. In an op-ed published shortly after it first ran excerpts from the documents, *the Wall Street Journal's* associate editorial page editor Melanie Kilpatrick claimed that the real story was that the "staff memos document the extraordinary influence of liberal special-interest groups on Democratic members of Judiciary." Kilpatrick alleged that since the documents were unprotected due to Democratic carelessness, the leaks were, in essence, "Leahy leaks" and wanted to know why the press was hounding one "hapless staffer" instead of "reporting the much bigger story of the memos?"

Even as the investigation was unfolding and it was learned that the spying was far more extensive than previously suspected, organizations like the Committee for Justice continued to assert that it was the memos, not how they were obtained, that "raise serious ethical questions" and blamed Democrats for essentially "disclos[ing] their own documents." Kay Daly, the president of the Coalition for a Fair Judiciary, the organization that first published the documents in their entirety, claimed that Miranda was "the victim of a witch hunt" and warned that if the investigation continued, the reaction among right-wing activists would be "dangerously close to thermonuclear."

Many accused Hatch of "scapegoating" Miranda by eagerly "cooperating with this vindictive little inquisition" against one of his own former employees. The Free Congress Foundation's Paul Weyrich placed the blame squarely on Hatch, contending that Hatch "prefers to be loved by the Democrats rather than respected by everyone." "Nothing surprises me any more with Hatch," said Weyrich, "I just expect nothing from him, and that's what I get. I don't ever expect him to do what's right, and I'm not disappointed."

Writing in the *National Review*, Timothy Carney of the *Evans-Novak Political Report* took up the crusade against Hatch, complaining that his handling of the situation had been “acutely damaging to the struggle to get conservative judges onto the federal bench” and comparing him to Neville Chamberlain.

And in a situation already rife with irony, right-wing columnist Robert Novak saw fit to condemn Senators Hatch and Frist for their handling of the leak investigation. Novak is perhaps best known for blowing the cover of a covert CIA operative whose husband had discredited certain aspects of the Bush administration’s rationale for war in Iraq. Her name had been leaked to Novak by two senior administration officials and the publication of her identity last July led to the appointment of a special prosecutor and an ongoing investigation in which several high-ranking White House staffers have been required to appear before a grand jury. So it is no surprise that Novak, at the center of his own leak-related controversy, would see fit to call Miranda a “man of principle” who, “by a stroke of luck” just happened to acquire the Democratic memos. Novak went on to criticize Hatch and Frist for their “willingness to throw [Miranda] overboard” in the hopes of “maintaining an artificial comity with their Democratic colleagues.” It is also not surprising that Novak would defend Miranda, considering that, in February 2003, he wrote a column on judicial nominations that contained direct quotes from the same internal documents that nine months later showed up in the pages of the *Journal* and *Times*.

As the investigation progressed and bits of information were made available to the media, Miranda grew more defensive and vitriolic. In interviews and press releases, Miranda continued to insist that “the wrongdoing was in writing the collusive memos, not in reading them.” And while he did not deny reading the memos, and even admitted that they provided “valuable information” as Republicans plotted their own strategy, he insisted that he “never distributed the memos to anyone.” None of that was the issue for Miranda, for in his view it was the Democrats who had “an obligation to protect their documents” while he “had an obligation to learn everything possible [he] could learn to defend my clients.” And that is exactly what he had tried to do.

Through it all, Miranda viewed himself as an ethical whistleblower and even went so far as to file an ethics complaint against the Democrats, alleging “public corruption by elected officials and staff of the United States Senate.” This strangely schizophrenic view of what constitutes ethical behavior continues to drive Miranda, allowing him, on one hand, to state that “[m]y parents never taught me not to read other people's mail” while simultaneously pledging that he will never release the content of some of the memos he accessed because doing so “would so damage the trust of the American people in their judicial system” that he simply cannot reveal them “no matter what the partisan advantage.”

Just days before Sergeant-at-Arms Pickle’s report was released, Miranda stuck to his story and predicted that the evidence in the case would leave

[S]ome Senators with egg on their face but it is not for lack of better counsel than that which they took. Democrat spinmeisters are proven today to be nothing more than rank liars for spinning tales of hacking to mask the gross negligence of their own technology staff. And the two or three news writers that soaked up the lies come out as fools and should be taken to task.

But when the actual report was released, it did reveal that certain “spinmeisters” could indeed be considered “rank liars,” only it was not the Democrats. In fact, it was Miranda who was left with egg on his face.

The Pickle Report

While right-wing pundits and activists were busy defending Miranda and disparaging the investigation before knowing all the facts, Sergeant-at-Arms Pickle plowed ahead. Over the course of three months, Pickle and his staff interviewed over 160 individuals and conducted detailed “forensics analysis of the Judiciary Committee servers, available backup tapes, and the desktops of relevant staff members.” In March, Pickle finally completed his investigation and presented his report to members of the Senate Judiciary Committee. Thanks to this report, we now know how the documents were obtained and who was responsible. We also know that nearly everything right-wing pundits said about the theft of the documents and the subsequent investigation was totally wrong.

As the report explains, in the fall of 2001 a Judiciary Committee Nomination Unit clerk, Jason Lundell, had learned how to access documents contained on Democratic computers by watching the System Administrator do some work on his computer and then duplicating the Administrator’s key strokes once he was alone. By doing so, he was able to gain access to the entire network and read, modify or delete Democratic documents because the newly hired and inexperienced system administrator had failed to restrict access to appropriate users.

Initially, Lundell downloaded between 100-200 pages of Democratic documents having to do with the nomination of Judge Charles Pickering and turned them over to two of his supervisors. Almost immediately both supervisors concluded that possessing such documents was improper and destroyed them and ordered Lundell to do the same and delete any files on his computer.

A short time later, Miranda joined the Committee staff as a counsel for the Nominations Unit. Not long after Miranda came on board, Lundell showed Miranda how to access the Democratic files but explained that he had been ordered not to use them. According to the Pickle Report, Miranda told Lundell not to listen to his supervisors and that there was nothing wrong or illegal about accessing Democratic files. Thus Miranda not only became the recipient of the Democratic documents, but a key figure in obtaining them, guiding Lundell about what information to look for and where to look.

From the fall of 2001 until January 2003, when Miranda left the Judiciary Committee to work for Senator Frist, he and Lundell downloaded several thousand internal Democratic documents and possibly shared them with other Republican staffers and the media. Miranda repeatedly requested files from Lundell even after he began working for Frist and thus no longer had access to the Judiciary Committee's server. At one point Miranda even asked Lundell to "undertake a discreet mission" to gather documents and provide them to Sean Rushton, Executive Director of the Committee for Justice, so that he could build up a relationship with the press. Lundell replied that he would be "happy to assist in this covert action" and subsequently e-mailed Rushton 169 documents. Lundell and others speculated that Miranda himself also turned over documents to Rushton and others but Miranda denies this and it is impossible to know the truth as the *Wall Street Journal*, the *Washington Times*, the Committee for Justice and the Coalition for a Fair Judiciary all refused to cooperate with Mr. Pickle's investigation. Despite this lack of cooperation, the Pickle Report does note that when the files showed up on the Coalition for a Fair Judiciary's website, one of the documents contained a directory path that forensic review determined came from "an e-mail from a web page that was viewed and printed by Mr. Miranda with Internet Explorer."

As for Miranda's allegations that Democratic staffers on the committee were made aware that their documents were vulnerable, this too is contradicted by the report. Common sense dictates, and the report notes, that "[t]he Democratic staff working on judicial nominations clearly did not know there was a vulnerability. If they had, presumably they would have protected their files." But beyond this, the allegation that the Democrats had been made aware of the problem seems to have come solely from Miranda himself. Miranda claims to have heard from Lundell that another staffer named Ryan Davis had informed the system administrator of the vulnerability. But Lundell denied ever telling Miranda this and Davis claimed that he did not recall ever having such a conversation with the administrator.

Furthermore, during the investigation, Miranda claimed to have kept printed versions of the documents that he considered the most valuable in a folder, which he asserted he had lost during his move to Frist's office. It was not until his final interview with investigators that Miranda got around to informing them that a friend had made a "backup disk" for him of relevant Democratic documents. But Miranda refused to provide the friend's name to investigators out of a stated desire not to prolong the investigation. As the Pickle Report concluded, the existence of the backup disk coupled with the claim that he "lost" his file containing Democratic documents "leaves open the possibility" that Miranda still "has Democratic documents in his possession."

The Pickle Report concluded by outlining the "criteria for possible referrals for disciplinary action and for criminal prosecution to the Department of Justice," noting that Miranda and others could potentially face prosecution for ethical violations, professional misconduct, violation of the Computer Fraud and Abuse Act, lying to investigators and violating various criminal statutes. **[See update below]**

Fallout

Despite the report's findings, right-wing groups have continued to glorify Miranda, as evidenced by an American Conservative Union action alert entitled "Manny Miranda: An American Hero." In it, they sought to portray Miranda as a "courageous American hero and whistle blower" who was the subject of a "bipartisan witch hunt." They demanded that the Judiciary Committee rehire Miranda and "publicly apologize to him for this miscarriage of justice."

Not surprisingly, in the days following the report's release, Miranda dismissed and disparaged its findings and continued to try to defend his clearly unethical behavior. In a piece authored by Miranda in the *National Review*, he explained that he was merely a "whistleblower" who had a duty to "expose corruption wherever [it is] discovered." He then demanded that the Democrats "stop carping" about the violation, explaining that "Most children come to understand shame at an early age [but] [r]ather than showing embarrassment, Senate Democrats seem fixated on taking down the names of everyone who might have seen them with their pants down." But Miranda did finally admit one small regret: "the only mistake Republican staffers made when discovering the judiciary documents was not making copies and holding a press conference."

Miranda and his lawyer then sent a letter to the Republican members of the Judiciary Committee offering what they considered was a point-by-point rebuttal of many of the Pickle Report's findings. Calling the report "seriously flawed," they set out a laundry list of report's supposed shortcomings and urged the senators not to refer the matter for a criminal investigation "not for fear that [Miranda] would not be fully vindicated, but for the sake of his family."

But it does not appear as if the members of the Judiciary Committee were convinced by Miranda's arguments or moved by his pleas judging by the fact that a majority of the Committee's members supported the idea of requesting the appointment of a special prosecutor to investigate and prosecute "all potential crimes related to the access and dissemination of Judiciary Committee staff files." Following their suggestion, Pickle turned the investigation over to the Justice Department for possible criminal prosecution. **[See update below]**

Conclusion

The key complaint coming from right-wing activist groups is that the media is focusing too much on Miranda's actions and not enough on the content of the stolen memos. In their view, the documents prove that Democrats on the Judiciary Committee were "colluding" with outside groups on the issue of judicial nominations.

But perhaps this is not getting much attention because it is not illegal for senators or the staff to meet with like-minded interest groups on issues of concern to them. In fact, the right-wing groups obsessed with exposing this alleged "collusion" are doing exactly the same thing.

Evidence that right-wing groups are working closely with Republican senators can be found in the Pickle Report itself, which reveals that Miranda allegedly passed along information to the head of the Committee for Justice so that they could get their message out and build a strong relationship with the press. But in fact, the relationship goes even deeper than that. A recent *Wall Street Journal* profile of C. Boyden Gray explains that CFJ was created at the behest of former Senate Majority Leader Trent Lott for the sole purpose of fighting for President Bush's nominees. Ultimately Gray, a man who had worked for the first Bush administration, was tapped to create this organization and in this capacity meets regularly with the President's top advisor, Karl Rove, as well as with Senators Frist and Hatch to discuss the issue. And yet the Republicans complain about Democratic "collusion."

For its part, the Coalition for a Fair Judiciary played a key role in the Memogate saga and the organization's president, Kay Daly, has been one of Miranda's staunchest defenders. Before becoming president of the Coalition for a Fair Judiciary, Daly had contacts with a wide array of right-wing organizations and worked for Senators Phil Gramm and Pete Wilson. She even received a citation for "Distinguished Service to the United States Senate" from Senator Santorum and, in January 2003, she was recognized for her work on behalf of President Bush's judicial nominees when she received the "Ronald Reagan Award" from the American Conservative Union. As mentioned above, many of the documents in question first appeared on the Coalition's website and one even contained data linking a document directly to Miranda. Thus it is probably no coincidence that, in the weeks before the documents were leaked, Miranda appeared on Daly's radio show or that Daly has subsequently led the charge to divert attention away from how the documents were obtained via a series of ads, letters and interviews.

It is probably also no coincidence that, after losing his job on the Hill, Miranda teamed up with Daly to launch a new group called the Ethics in Nominations Project. As the head of the organization, Miranda will continue to spearhead the Right Wing's strategy on judicial nominations; presumably he will now seek to highlight corruption in the confirmation process rather than actively encourage it.

The fact that Miranda would be tapped to head an organization dedicated to exposing corruption in the process is more than a little ironic, considering that the Justice Department launched an independent investigation into Miranda's behavior. David Kelly, US attorney for the Southern District of New York, is investigating whether Miranda and Lundell committed any federal crimes when they accessed Democratic memos. **[See update below]**

In the meantime, as Miranda gets his new organization off the ground, he has picked up work writing pieces for Right Wing media outlets on the issue of judicial nominations. In his new role as pundit, Miranda continues to excoriate Sen. Hatch claiming that the one thing he learned for this entire episode is that "one shouldn't play hardball with a limp-wristed team captain." He also appears to now consider himself something of an expert on ethics, claiming that the Pickle investigation was "both unethical and politically

biased” and proclaiming that “Republican staff owed no duty to Democrat senators.” In fact, it was Miranda who acted ethically by fulfilling his “duty to disclose evidence of corruption.” He even went so far as to challenge Senator Hatch to debate him publicly on the issue of ethics and political duty.

Miranda also reportedly plans on bringing together a group of ethicists to write up rules for how senators should handle the issue of judicial nominees. It is probably safe to assume that legal ethicist Jack Marshall will not be among them. Marshall claims that Miranda and his defenders are cynically using blatant and disturbing rationalizations to “defend[] ethically indefensible conduct ... The real bottom line here is that Miranda knew that the memos were not intended for him, and read them anyway. That's unethical”

Lawrence J. Fox, former chairman of the American Bar Association’s Standing Committee on Ethics and Professional Responsibility, made a similar argument, noting that Miranda did indeed commit “an extraordinary violation of [the] rules of professional conduct.”

It took Miranda’s “despicable conduct” to bring to light the depths to which the Right Wing will sink in its crusade to get rigid ideologues confirmed to the federal bench. But no matter how heated a political battle becomes, violations of ethics and trust such as this should never occur. It is a testament to just how nasty things have gotten that Fox was forced to remind Miranda and his allies of the simple facts that the ends do not justify the means and that “[e]ven lawyers in the Senate must be ethical.”

UPDATE: 6/2/2009

Miranda was never charged with a crime. As Miranda [states on his website](#):

If you are wondering what happened to the politically charged allegations made against me of legal and ethical wrongdoing in 2003 - one word: Nothing