

The Sunday Gazette
15 January 2006

**"Bush should appoint Muslim to the bench:
Alito vacancy could be opportunity to use soft power."**

by Thomas J. Raleigh

SCHENECTADY, NEW YORK George W. Bush has an opportunity to be the first U.S. president to use a judicial nomination to generate soft power. He would do so by being the first president to appoint a Muslim to a federal bench.

The leap from judicial appointments to soft power is not as great as it might at first seem. Our National Security Strategy states, "Today, the distinction between domestic and foreign affairs is diminishing. In a globalized world, events beyond America's borders have a greater impact inside them."

Intuitively, the inverse is also true; events and policy debates within America's borders have a greater impact overseas now than was the case ten or twenty years ago. Whether domestic affairs have a positive or negative effect on U.S. interest abroad – whether people will pour onto foreign streets to carry American flags or to burn them – depends of course on the event, or the substance - and tone - of the policy debate.

Take for example the issue of torture. It would be difficult to disprove the following suggestion; that the mere discussion of adopting measures that would permit U.S. personnel to torture detainees casts doubt on the commitment of the United States to human rights, and therefore adversely impacts the reputation of the U.S. not only in Arab-Muslims regions, but indeed worldwide.

On the other hand, domestic policy-decisions or events which would be viewed in a positive manner overseas might constitute soft power; defined by Harvard's Joseph S. Nye, Jr. as "the ability to attract others by the legitimacy of U.S. policies and the values that underlie them." These values include those enumerated in our National Security Strategy; the nonnegotiable demands of human dignity: the rule of law; free speech; freedom of worship; equal justice; respect for women; religious and ethnic tolerance. Nye, and others (to include those who teach at our National Defense College) assert that soft power can be projected and brought to bear along with the more traditional and established elements of national power - diplomatic, economic and military - in pursuit of U.S. objectives abroad; objectives that might include the marginalization and destruction of terrorist groups.

This brings us back to the proposal, or suggestion, that President Bush nominate a Muslim to serve on a federal bench.

Competence and excellence in the law are the sine qua non of judicial appointments. However, on at least two occasions, when looking to fill vacancies on the Supreme Court, U.S. presidents went to extraordinary lengths to find a qualified candidate whose appointment would serve an equally important symbolic purpose. In 1967, during the civil rights era, Lyndon Johnson appointed Thurgood Marshall to serve as the first Afro-American Supreme Court Justice. And one might say that the equal rights era came to a close in 1981 when Ronald Reagan chose Sandra Day O'Connor to serve as the first woman on the high court.

Given America's abysmal standing in the Arab-Muslim world, it may be time to make another symbolic judicial appointment; one that would put a Muslim, for the first time, on a federal bench.

The United States is reeling from repeated public relations setbacks that have damaged her credibility and undermined her moral authority abroad. These setbacks include allegations of torture and mistreatment of detainees at Abu Ghraib, GITMO, and detention centers in Eastern Europe. Overcoming the ill will that these things created, and continue to generate, will require more than a public relations offensive. For sure, sending Karen Hughes to the Middle East to make the case for democracy, lecture Muslims on tolerance, and extol the virtues of having a drivers license, is not going to cut it.

Symbols are important. The historic appointment of a Muslim to a federal bench would be a bold stroke; one that would send a powerful and positive message to moderate Muslims in the Middle East, Persian Gulf, and worldwide. It would also serve to undercut anti-American propaganda generated by Islamic terrorist organizations.

But it should be clear that, as was the case with Justices Marshall and O'Connor, such an appointment would be more than just symbolic. And it also needs to be clear that the virtues of appointing a Muslim as a federal judge extend beyond the cultivation of good will on distant shores; that there are reasons for doing so that are closer to home.

The federal judiciary should reflect the diversity of the nation. This nation more perfectly achieves the principles of equal protection and equal treatment under the law with a federal judiciary that reflects the racial, ethnic, gender and religious diversity of the American people. President Johnson understood this; so too did President Reagan; so might President Bush.

President Bush should direct his judicial search team to find and vet Muslim attorneys – legal scholars, litigators, state judges - as candidates for future federal court vacancies, to include one that stands to emerge on the 3rd U.S. Circuit Court of Appeals should the Senate confirm the appointment of Samuel A. Alito Jr. to the U.S. Supreme Court. (The jurisdiction of the 3rd Circuit includes New Jersey; a state that has a significant Muslim community.)

The Office of the White House Legal Counsel, and the Senate Judiciary Committee, should each compile a short list of qualified candidates. It is time - indeed it is an opportune time - to appoint a Muslim to a federal bench.

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