

The Attempt to Derail John Roberts

by William Donohue

(7-29-05)

Attempts by some Democrats to derail John Roberts' nomination to the U.S. Supreme Court by dwelling on his religion will backfire: the nation has had enough of attempts to impose a veiled litmus test on Catholic nominees to the federal bench.

When Ruth Bader Ginsburg and Steven Breyer were nominated by President Clinton for a seat on the high court, no one in the media or the congress asked them to explain how their Jewish heritage might impact their rulings. But from Barbara Walters on ABC to Lynn Neary on NPR, media pundits have wondered aloud whether Roberts' Catholicism might affect his decisions on the court. And, of course, Senator Dick Durbin—always one to pry about matters religious when Catholics are nominated—has already announced that he will grill Roberts about his faith when he gets a chance.

Indeed, within 24 hours of Roberts' nomination, leftist writer Adele M. Stan was opining in *The American Prospect* that President Bush was "Playing the Catholic card" by nominating Roberts; on her blog, she commented, "Rome must be smiling." Now it is inconceivable that anyone would say of Ginsburg or Breyer that Clinton was "Playing the Jewish card," or that "Israel must be smiling."

There is nothing wrong with offering a biographical portrait of a Supreme Court nominee that mentions his or her religious affiliation. But there is a monumental difference between a descriptive article and one that posits a cause-and-effect relationship between one's religious beliefs and one's likely rulings from the bench. The former is good journalism; the

latter is yellow journalism. Everyone recognizes what the code words “fervent personal beliefs” mean.

It is even worse when senators start questioning a nominee about his religion. When Senator Chuck Schumer questioned circuit-court nominee Bill Pryor about his “fervent personal beliefs on Roe v. Wade,” he crossed the line. Why? Because everyone knew that Schumer’s words were code for “fervent religious beliefs.” Indeed, the record shows that in the very next breath Schumer gratuitously observed that he is friends with the bishop in his community. Bully for him! But his real point was lost on no one.

It is morally offensive and constitutionally inappropriate to pursue such a line of inquiry. All a prospective judge should be asked in this regard is whether he holds to any convictions so strongly that he could not faithfully execute his duties to interpret the Constitution in a fair manner. The source of those convictions should be a moot issue.

It is important to acknowledge that while a religiously informed conscience may play a legitimate role for a lawmaker, it has no legitimate role to play for a judge. Those who legislate have every right to seek insight from the teachings of their respective religions: their goal is to service the common good, thus they may feel it is wise to consult the fund of knowledge that their religious ancestors have bequeathed. But a judge is there for one reason and one reason only: to interpret the Constitution as it was meant to be interpreted by those who wrote it. Ergo, whatever religious, or secular, beliefs he personally holds should be irrelevant.

On August 14, I will proudly join with evangelicals and Jews in Justice Sunday II (I participated in the first event in April). We may be of different faiths, but it is not our theological differences that matter: we are united on the same side of the culture war against those who would like to censor the public expression of religion and drive people of faith

out of the public square. Radical secularists want us to sit back and relax and leave the driving to them. But I have news for them: we will be disobedient. Moreover, we fully intend to take control of the wheel. (Lucky for them, we believe in something they don't—tolerance. Which is why we won't run them over.)

Finally, when Ruth Bader Ginsburg was asked what her position was on gay rights and capital punishment, she declined to answer. Similarly, Roberts should decline to answer if pressed how he would vote on abortion. Indeed, it is up to all fair-minded senators to interject themselves on his behalf if one of their colleagues seeks to violate this understanding.