



Are We Hiring A Justice Or Playing Politics?

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"He should pick a woman!" "Yeah, but it should be a woman of color!" "No, we've never had a Hispanic on the court — it's our turn!" "He better not pick anyone born before 1950, 'cause Bush's appointees would outlive her!" "He shouldn't pick another white guy with an Ivy League education who's been sitting on a circuit court on the East Coast — we got enough of those."

Has anyone else thought that all the unsolicited advice for President Obama — mostly from progressive Democrats — would be treated very differently if it were being given to a hiring manager for a publicly traded corporation? And if it were OK for that private sector hiring manager to actually rely on such factors, imagine the honest rejection letter to a 58-year old white male applicant:

"I'm sorry you didn't get the job, but we really felt it was important to select a [pick a protected category], since we've never had one of them in this position before. And we wanted someone younger than you, who would likely be around for more years than we expect you to be, so they could move up our corporate ladder".

In my world, that's known as "smoking gun evidence," and the inevitable age and reverse discrimination lawsuit would be so smokin' hot that it would never see the inside of a courtroom.

The president has explained in very general terms the type of person he's looking for. But no one who knows or can talk really knows how he intends to prioritize the various factors that seem likely to drive a selection. Even after the nominee is identified, we'll all have to speculate on which factors were considered and how, because no one really believes the president or any of his spokespeople are going to reveal the real factors that were considered in the selection process. They'll simply say, like President Bush did with Harriet Miers, "We chose the best person for the job."

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