

Judging Mr. Right

An inside look at a judge who walked a careful path to the top

By **NANCY GIBBS**

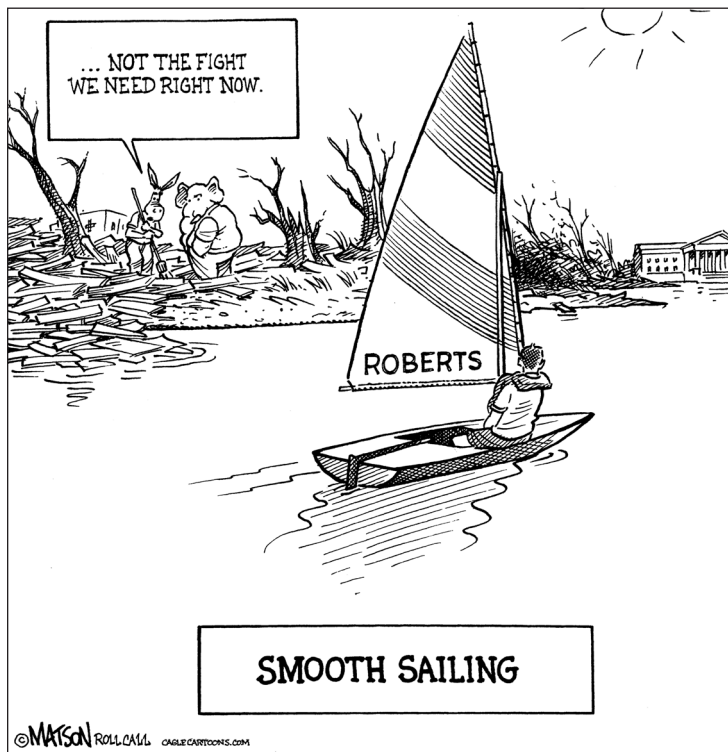
TO LISTEN TO PEOPLE WHO HAVE KNOWN him longest, what sets John Roberts apart is not so much his individual virtues but how they fit together: a great talker who listens well, a natural talent who works unnaturally hard, a regular guy who moonlights as a legal star. He was originally nominated to fill the vacancy created by the pending retirement of Justice Sandra Day O'Connor. But following the death of Chief Justice William Rehnquist, President Bush quickly named Roberts to take over the court's top spot. The Senate confirmed him as Chief Justice on September 29, in a 78-22 vote.

Roberts' resume reads so perfectly that it is easy to find the little flakes of destiny littered through his storybook life. Born in Buffalo, New York, he was raised in Long Beach, Indiana, a small town on the southeastern edge of Lake Michigan. He was the

kind of boy whose eighth-grade math teacher kept his birthday in her birthday book all these years, alone among her generations of students. "I like to think that was an omen for wonderful things to come," says Dorothea Liddell. He was way clever, she recalls, so much so that if he didn't get a concept she knew she had to teach it again, but "he never flaunted his intelligence over the other kids." For high school, Roberts applied to La Lumiere, a competitive Catholic boarding school about 12 miles away in La Porte, Indiana. "I won't be content to get a good job by getting a good education," he wrote at age 13 in an application letter. "I want to get the best job by getting the best education."

Roberts made it through Harvard in three years, summa cum laude, on his way to Harvard Law School. Cambridge in the mid-1970s was a less unruly place than it had been during the height of the war protests, and while Roberts was known for being personally conservative right down to his unvarying choice of chocolate-chip ice cream, he was never rigid or doctrinaire.

He rose to become the managing editor of the *Law Review*, sometimes sleeping overnight in the office. "There were a few people on the *Law Review* that were social conservatives, [with] very strong views about abortion and separation of church and state. John was not one of them," recalls classmate Steve Glover. "John's approach, as I recall it, was very lawyerly, in the sense that he was very much focused on case law and the precedent that courts had set before." That mind-set prepared him well for the apprenticeship that followed Harvard and that he cherished above all: his clerkship with Judge Henry Friendly, a Second Circuit judge known for his careful, almost handcrafted, opinions and for being mindful of what his legal forebears had laid out. In some ways



that training was even more informative than the clerkship that followed, with Justice William Rehnquist.

Those poring over the Roberts record will have a tough time finding an ideology. Law professors can afford to offer grand theories; practicing lawyers want to win. The very best players—and Roberts is unquestionably one—can argue all sides of any issue, because that is what they get paid to do. So all the selective readings of his case file obscured the point that he argued for and against affirmative action, for and against environmental regulations, argued that *Roe v. Wade* should be overturned when he was representing a Republican President and then described it as settled law when speaking as a nominee to become an appellate judge.

Roberts seemed on a fast track to judicial glory in 1992, when George H.W. Bush tapped him for the District of Columbia Circuit Court of Appeals at the age of 36. But he encountered his first setback when the bid died in the Senate with Bill Clinton's victory. Then George W. Bush tried in 2001 and finally succeeded in 2003. In the meantime, Roberts spent most of the 1990s biding his time, getting rich as a corporate lawyer at Hogan & Hartson, one of Washington's largest firms, where he quickly emerged as the supreme commander of Supreme Court battles. Between his government and corporate jobs, he argued 39 cases before the high court and won 25 of them.

At 50, Roberts is by far the youngest member of the court. Only Clarence Thomas, 57, is close, while all the rest are over 65, and John Paul Stevens is 85. The burning question now, with O'Connor and Rehnquist gone, is, How will the court rebalance?

When Roberts spoke during the confirmation process of the lump in his throat whenever he climbed the marble stairs of the Supreme Court building, it rang true to anyone who had ever watched him in action. And it would match the history and mystery of the court if it turned out that Roberts ultimately alienates conservatives and not those who fear any Republican appointee. Roberts may agree in spirit with those who see the past 50 years of jurisprudence as too expansive and too intrusive but respect too much the way

ALITO SWORN IN AS 110TH SUPREME COURT JUSTICE

Samuel Alito was sworn in as the nation's 110th Supreme Court justice on January 31 after being confirmed by the Senate by a vote of 58–42. The vote was the closest confirmation for a nominee since Justice Clarence Thomas was confirmed 52–48 in 1991. Alito, 55, replaces retiring Justice Sandra Day O'Connor, a moderate swing vote and the first woman appointed to the high court.

The confirmation vote came a day after an attempt by some Democratic senators to filibuster his nomination fizzled. In the end, only 24 of the chamber's 44 Democrats went along with the filibuster, a maneuver allowed under Senate rules to block a vote by extending debate indefinitely. Sixty votes are needed to pass a motion to end debate, called a *cloture motion*; the Senate voted 72–25 to cut off debate, thereby killing the filibuster.

Arguing against cutting off debate, Sen. John Kerry—who spearheaded the filibuster effort with his fellow Massachusetts Democrat, Sen. Ted Kennedy—said Alito's record during his 15 years on the 3rd U.S. Circuit Court of Appeals has given “the extreme right wing unbelievable public cause for celebration. That just about tells you what you need to know,” Kerry said. “The vote today is whether or not we will take a stand against ideological court packing.”

But Senate Majority Leader Bill Frist said the move to cut off debate fulfilled a “very straightforward principle—a nominee with the support of a majority of senators deserves a fair up-or-down vote.”

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the law is shaped to ride in and blowtorch it. He may just prove willing to conserve even opinions he faults. If that is so, then it will not be the liberals who come to wonder at George Bush's choice. ■

Questions

1. For what judges has John Roberts clerked?
2. Why is Roberts' ideology hard to pin down?