

# Who is Judge Roberts?

By Barry Grey  
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In naming Judge John Roberts to fill the Supreme Court vacancy left by retiring Justice Sandra Day O'Connor, President Bush has selected a Washington insider and trusted advocate of corporate interests who can be counted on to move the high court further to the right.

Roberts' record as an official in the Reagan White House and Justice Department, as deputy solicitor general in the administration of the elder George Bush, as a corporate lawyer and partner in the blue-chip Washington firm of Hogan & Hartson, and, for the past two years, as a judge on the US District Court of Appeals for the District of Columbia defines him as a figure with high-level connections in both the state apparatus and the corporate world.

That Roberts is a man of considerable legal ability and political substance is further underscored by his earlier history. He graduated with honors from Harvard Law School, where he was managing editor of the *Harvard Law Review*, and quickly began his ascent within both Republican and judicial circles by serving as a clerk for then-Supreme Court Associate Justice William Rehnquist.

While he argued before the Supreme Court, as a lawyer for the senior Bush administration, that the landmark 1973 *Roe v. Wade* ruling legalizing abortion should be overturned, his brand of right-wing politics is more focused on expanding the police powers of the federal government, curtailing civil liberties, and limiting the powers of the federal government to regulate business and enforce social protections than on the "hot-button" issues of abortion and school prayer so dear to the Christian right.

He has carefully refrained from making strident public statements on these, or any other controversial issues—thereby solidifying his standing with big corporate interests while evoking less opposition from the Democratic Party than other Bush judicial nominees. In May of 2003, the Senate confirmed him for the DC Court of Appeals by a unanimous voice vote.

Near-term political calculations undoubtedly played a role in both the timing of Bush's announcement and the individual whom he ultimately nominated. The White House moved up the announcement—administration officials had been telling reporters it would come in the last week of July—in an effort to push the crisis surrounding Karl Rove, Lewis Libby and possibly other top administration officials involved in leaking the identity of a CIA agent out of the news headlines.

That affair is itself a product of the failure of the Bush administration's policy in Iraq, which has thrown the government and the entire political establishment into deep crisis. In choosing Roberts, the White House made a calculated decision to avoid a confrontation with the Democrats, who are more than willing to help bolster the Bush administration and prevent the current crisis from snowballing out of control. Whatever their differences on so-called "cultural" questions such as abortion, the two parties find common ground on major strategic issues such as the war in Iraq.

There is, moreover, increasing support within the Democratic Party apparatus—which itself rests on privileged social layers and sections of the corporate elite—to the agenda epitomized by Roberts of undermining the ability of ordinary people to seek redress of grievances and challenge corporate power through the courts.

Leading Democrats responded to the nomination by signaling their readiness to ensure a relatively smooth confirmation process and likely approval of Roberts before the beginning of the next Supreme Court term in October. Democratic Senator Joseph Lieberman of Connecticut, one of the so-called "Gang of 14" senators who brokered a bipartisan deal last May to head off a Republican threat to abolish judicial filibusters, told Bush last week that Roberts was one of three likely nominees who would not provoke a filibuster.

There was no hint of a filibuster in the remarks of any Senate Democrat. Indeed, Senate Minority Leader Harry Reid of Nevada had cautioned Democrats in advance of Bush's announcement to tone down their response, regardless of whom Bush picked. "As a result," the *New York Times* reported, "an afternoon news conference where [New York Democratic Senator Charles] Schumer and others were to question the administration's approach was cancelled."

From the other side of the aisle, Republican Mississippi Senator Trent Lott indicated that a general agreement had been reached to facilitate the confirmation process. He said, "I think the atmosphere has changed around here. Even though the outside groups are dying for a bloodbath, because they make money off of it, I don't think the Senate wants that right now."

*BusinessWeek online* hailed the choice of Roberts ("business is cheering") and noted: "So cautious were the Democrats after the prime-time July 19 announcement that Senator Charles Schumer (D-NY) felt compelled to praise Bush's nominee for

having ‘outstanding legal credentials and an appropriate temperament and demeanor’... Those aren’t fighting words...

“Unless this nominee self-destructs in his confirmation hearing, or liberals unearth some skeletons among the pinstripes in his closet, the Supreme Court could soon be making a big right turn.”

Prominent Democrats such as John Kerry, Hillary Clinton and Patrick Leahy, the ranking Democratic on the Senate Judiciary Committee, spoke “on message” to the effect that they would withhold judgment until Roberts’ confirmation hearing, suggesting they did not have a clear idea of his attitude on questions such as abortion and civil liberties.

This, however, is a combination of hypocrisy and deceit. Just last Friday, Roberts joined a unanimous decision by a three-judge panel of the DC Court of Appeals overturning a lower court ruling in order to uphold the Bush administration’s use of military commissions to try alleged terrorists being held at the Guantánamo Bay prison camp. In this ruling, Roberts and his cohorts implied that the president has a right to declare any individual, including a US citizen, an “enemy combatant” and thereby deprive him of the due-process rights provided by the US Constitution as well as the protections stipulated in international treaties such as the Geneva Conventions.

This is only the most ominous and overtly anti-democratic of a number of decisions handed down by Roberts in the course of his brief tenure on the DC Court of Appeals. Roberts upheld a lower court decision that the arrest, search, handcuffing and detention of a 12-year-old girl for eating a single French fry in a Washington subway station did not violate her Fourth and Fifth Amendment rights.

In another case, Roberts joined in a ruling upholding police car trunk searches even when officers did not assert evidence of a crime. Roberts also issued a dissenting opinion in an Endangered Species Act case in a manner that showed he was inclined to hold an array of environmental laws and other federal protections to be unconstitutional.

This ruling is indicative of an ideological posture that has the most far-reaching implications. According to *Forbes.com*, “Roberts has also written in favor of a more aggressive reading of the Constitution’s Contract Clause that would prevent government from imposing new obligations on businesses in their dealings with employees. The last time the Supreme Court took such a stand was in the early 1930s when it struck down elements of President Franklin Roosevelt’s New Deal.”

Roberts’ role on the appeals court is a continuation of his record as a Justice Department lawyer in the Reagan and Bush administrations. As deputy solicitor general in the senior Bush administration, while serving under then-Solicitor General Kenneth Starr, he argued before the Supreme Court in opposition to abortion rights, in support of religious observances on school grounds, and in favor of criminalizing flag-burning as a form of political protest.

There is another item in Roberts’ resumé that points to the

anti-democratic content of his political and juridical outlook and his role as a partisan of the Republican right. The *Washington Post* noted: “Roberts’ name did not appear on any of the briefs during the Florida presidential recount [in 2000], but he gave critical advice on how the Florida legislature could name George W. Bush the winner at a time when [a recount of disputed votes might] force a different choice.”

In other words, Roberts supported the threat of the Republican-controlled Florida legislature to override the vote of the citizenry in order to install Bush in the White House. In the event, this was made unnecessary by the intervention of the US Supreme Court, which issued the infamous 5-4 decision in *Bush v. Gore* that shut down the vote count and handed the White House to the Republican candidate.

It is a measure of the ongoing shift to the right by the Democratic Party, the increasingly marginal policy differences between it and the Republicans, and the politically incestuous relations within the Washington establishment that David Boies, the Democratic lawyer who represented former Vice President Al Gore in the 2000 election, has enthusiastically supported Roberts’ nomination. Speaking Tuesday night on MSNBC’s right-wing talk show “Scarborough Country,” Boies said, “Judge Roberts is a brilliant lawyer, a brilliant judge.”

The Supreme Court is one of the key state institutions of the American ruling elite. Consisting of unelected appointees chosen by the president to serve life terms, its central function is not, despite the rhetoric of the politicians and the media, to protect the democratic rights of the people, but rather to safeguard the basic interests of the capitalist class. For the bulk of its history, the high court has served openly as a bulwark of corporate privilege and social reaction. The choice of a Supreme Court justice is a matter of great concern to the ruling elite, all the more so in times of social and political crisis.

The nomination of Roberts must serve as a warning to the working class that the ongoing assault on its social conditions and democratic rights will be intensified, and the response of the Democrats must be understood as a confirmation of the inability of any section of the political establishment to defend these rights.

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