

SUPREME SLANTED

HOW THE NEW YORK TIMES POUNDS CONSERVATIVES AND CODDLES
LIBERALS WHEN NOMINATED TO THE SUPREME COURT



A Special Report from the Media Research Center

Supremely Slanted

How the *New York Times* Pounds Conservatives and Coddles Liberals When Nominated for the Supreme Court

EXECUTIVE SUMMARY

As liberal Justice Elena Kagan takes her place on the Supreme Court, she could thank the *New York Times* for making her confirmation process smoother. Ever since Ronald Reagan nominated Robert Bork and he was rejected by the Senate in 1987 for his views and not his character or qualifications, confirmation battles for liberals have become less like judicial seminars and more like political campaigns. For almost 20 years, in this new era of activist groups and activist reporters, the *New York Times* has covered Supreme Court fights with a heavy finger on the scales of justice, tipping the balance. They have painted conservatives as highly controversial and dangerously ideological, while liberal nominees were presented as “brilliant” moderates who were only newsworthy in that they were often laudably “historic” choices, or, in Kagan’s case, she was not only “brilliant,” but “very funny, warm and witty.”

The Media Research Center’s *TimesWatch* project analyzed the arc of coverage over the last two decades and the last seven Supreme Court justices, from Clarence Thomas’s nomination in 1991 to Elena Kagan’s confirmation in 2010, and found stark differences in how the *Times* reported on the four Justices nominated by Democrats versus the three nominated by Republicans.

TimesWatch examined every *New York Times* news story devoted to each nomination, starting with the official presidential announcement and ending with the Senate vote confirming the nominee to the Supreme Court. Among the findings:

A stark pro-Democratic double standard in labeling:

- The *Times* demonstrated a **10-1 disparity** in labeling “conservative” justices nominated by Republicans compared to “liberal” ones nominated by Democrats.
- In all, the three Republican-nominated justices were labeled “conservative” **105** times, while the four justices nominated by Democrats were labeled liberal on just **14** occasions.
- Two dueling headlines demonstrate the *Times*’ slanted reporting in a nutshell. On June

27, 1993, the *New York Times* greeted Democrat Bill Clinton's nominee, the liberal Ruth Bader Ginsburg, former chief litigator of the ACLU's women's rights project and a strong defender of unrestricted abortion rights, as a moderate: "Balanced Jurist at Home in the Middle." On July 28, 2005, the *Times* welcomed Republican George W. Bush's nomination of John Roberts, a former associate counsel to President Ronald Reagan, by summing up his judicial philosophy: "An Advocate for the Right."

A vast difference in intensity of coverage:

Besides the slant in labeling, there was a vast difference in the volume and intensity of coverage of conservative nominees compared to those on the left. While conservative nominations are cast as feverish battles over ideology and the future trend of the court, the *Times* withholds the drama and controversy when it comes to Democrats. The paper has done its best to drain the drama from Democratic nomination fights, pushing them as foregone conclusions.

- Republican nominees received intense coverage. Clarence Thomas was the subject of **81** stories through his initial hearings – not including the massive coverage after law professor Anita Hill made her unsubstantiated sexual harassment allegations. John Roberts was the subject of **107** stories, Samuel Alito **92**.
- Democratic nominees received far less coverage. Ruth Bader Ginsburg's nomination was featured in a flimsy **22** *Times* stories, while Clinton's other pick Stephen Breyer was dealt with in a mere **20** stories. Obama nominee Sonia Sotomayor was a partial exception to the rule with **85** stories, but many of those keyed on the fact Sotomayor was a hometown pick. Elena Kagan also failed to excite interest, featuring in only **43** stories.
- Even taking into account that fewer stories for Democratic nominees should on average result in fewer ideological labels, the disparity was still sharp. While Democratic nominees were labeled liberal an average of once every 12 stories, Republican nominees were tagged conservative once every 2.66 stories. For instance, while Clarence Thomas was tagged conservative at an average rate of roughly once in every two stories (44 labels out of 81 stories), Sonia Sotomayor received a liberal label just once in every 17 stories (5 labels out of 85 stories).

The study concludes that a crucial part of the "confirmation process" is the journalism that is committed (or omitted) by national newspapers like the *Times*. Newspaper reporters and editors aren't writing the first draft of history. They're trying to make history happen with a happy ending for liberals.

Supremely Slanted

How the *New York Times* Pounds Conservatives and Coddles Liberals When Nominated for the Supreme Court

BY CLAY WATERS
DIRECTOR OF MRC'S *TIMESWATCH*

The story goes that when William O. Douglas, President Franklin Roosevelt's close friend and nominee to the Supreme Court, grew tired of waiting outside the Senate Judiciary Committee room, he sent a note inside asking if the panel had any questions for him. They had none, and he was swiftly confirmed.

As liberal Justice Elena Kagan takes her place on the Supreme Court, she could thank the *New York Times* for making her confirmation process smoother. Ever since Ronald Reagan nominated Robert Bork and he was rejected by the Senate in 1987 for his views and not his character or qualifications, confirmation battles for liberals have become less like judicial seminars and more like political campaigns. Nominees from both parties are coached to avoid controversy, making the hearings less a hashing out of constitutional philosophies and more stylized theatre, with the parties nurturing their respective bases.

For almost 20 years, in this new era of activist groups and activist reporters, the *New York Times* has covered Supreme Court fights with a heavy finger on the scales of justice, tipping the balance. They have painted conservatives as highly controversial and dangerously ideological, while liberal nominees were presented as "brilliant" moderates who were only newsworthy in that they were often laudably "historic" choices, or, in Kagan's case, she was not only "brilliant," but "very funny, warm and witty."

From the *Times'* perspective, the last two decades have shown timid Democrats hesitant to nominate strong liberal, instead choosing "moderates" like Ruth Bader Ginsburg and Elena Kagan instead. By contrast, Republicans shamelessly nominate fierce conservatives, pushing the court still further to the right, encapsulated by this excerpt from an online chat by retired Supreme Court reporter Linda Greenhouse participated from July 14, 2008:

“[Supreme Court] nominations get in trouble when the President tries to use them to push beyond the boundaries of the existing political consensus. That was the Bork nomination problem. It was also the first Bush administration’s problem with the Clarence Thomas nomination – which of course succeeded, unlike the Bork nomination, but succeeded only barely and after a rough fight. By contrast, President Clinton played to the center, not the left, in selecting Ruth Bader Ginsburg and Stephen G. Breyer.”

This study follows the arc of coverage of the last seven Supreme Court justices, starting with Clarence Thomas and ending with Elena Kagan. It follows the reporting from the initial speculation about the pick, through the nomination by the president, through the confirmation hearings before the Senate Judiciary Committee up to the nominee’s eventual confirmation by the full Senate.

TimesWatch’s study includes every *New York Times* news story devoted to the nomination under review, starting with the official White House announcement and ending with the Senate vote confirming the nominee to the Supreme Court, omitting brief articles on procedural matters like hearing schedules. Brief mentions in unrelated articles were also skipped.

Columns and editorials were omitted as well, though these clearly favored Democratic nominees and disfavored Republicans. The *Times* editorial page advised against the confirmation of Clarence Thomas in general terms on September 22, 1991, saying “If the Thomas nomination is to be judged on the merits, it fails.” The paper specifically editorialized for the rejection of Samuel Alito with a January 26, 2006 editorial calling the prospect of Alito becoming a justice “frightening,” as well as John Roberts, in a September 18, 2005 editorial headlined “Too Much of a Mystery.” By contrast, the *Times* editorialized for the confirmation of Ginsburg, Sotomayor, and Kagan. Democrat nominee Breyer was a surprise exception, as the *Times* recommended his rejection, although that was based on conflict of interest grounds, not his judicial philosophy, which the editorial page described as moderate.

The verdict from *TimesWatch* research was clear: The *Times* covers court fights with a sharp liberal slant.

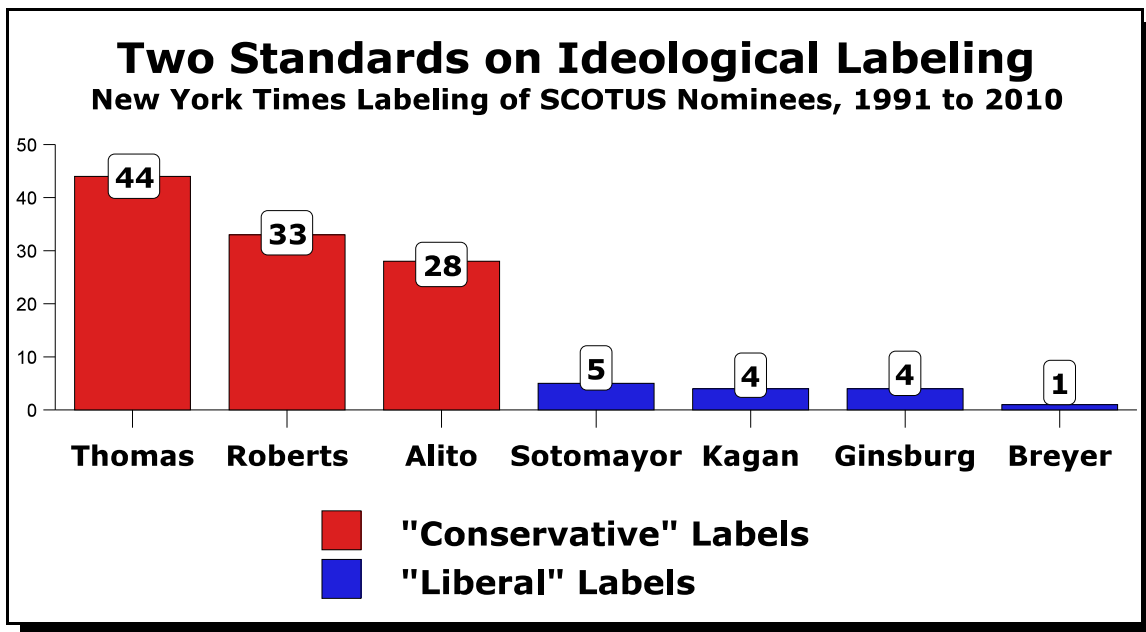
Pinning an ideological label onto a jurist is an easy shorthand to portray them as out of the mainstream. The *Times* demonstrated a **10-1 disparity** in labeling “conservative” justices nominated by Republicans (Thomas, Roberts, Alito) compared to “liberal” ones nominated by Democrats (Ginsburg, Breyer, Sotomayor, Kagan). In all, the three Republican-nominated justices were labeled “conservative” **105** times (an average of **35** labels per nominee), while the four Democrat-nominated justices were labeled liberal on just **14** occasions (**3.5** labels per nominee).

Republican nominees also received far more coverage. Clarence Thomas was the subject of 81 stories through his initial hearings, not even including the wall-to-wall coverage after law professor Anita Hill made her sexual harassment allegations. John Roberts was the subject of 107 stories, Samuel Alito 92.

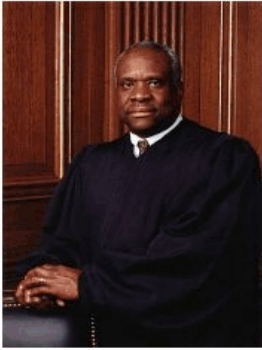
Yet the 1993 battle over Ruth Bader Ginsburg was featured in a flimsy 22 *Times* stories, while Clinton's other pick Stephen Breyer was dealt with in a mere 20 stories in 1994. Obama nominee Sonia Sotomayor was a partial exception to the rule with 85 stories, but many of those keyed on the fact Sotomayor was a hometown pick and contained more NYC self-congratulation than legal analysis. Despite an aggressive push by the G.O.P., Elena Kagan failed to excite much interest, as she featured in only 43 stories.

Even taking into account that fewer stories for Democratic nominees should on average result in fewer ideological labels, the disparity was still sharp. While Democratic nominees were labeled liberal an average of once every 12 stories, Republican nominees were tagged conservative once every 2.66 stories. For instance, while Clarence Thomas was tagged conservative at an average rate of roughly once in every two stories (44 labels out of 81 stories), Sonia Sotomayor received a liberal label just once in every 17 stories (5 labels out of 85 stories).

Below are the findings for each Justice:



Clarence Thomas



Clarence Thomas, Republican nominee. Former head of the Equal Employment Opportunity Commission under Ronald Reagan. Served on the U.S. Court of Appeals for the D.C. Circuit.

Nominated July 1, 1991 by George H.W. Bush to replace Justice Thurgood Marshall. Confirmed October 15, 1991 by a 52-48 vote.

Subject of 81 stories (before the Anita Hill revelations). Conservative labels: 44

"[Several black lawyers] expressed fears that Judge Thomas is so malleable and estranged from his roots that he could be manipulated by right-wing Justices eager to make their own anti-civil rights, anti-affirmative action agendas more respectable." – David Margolick, August 12, 1991.

The nomination by President George H.W. Bush of black conservative Clarence Thomas flummoxed the Democratic Party (and the media). Civil rights groups, after initial puzzlement, lined up almost unanimously against the Thomas nomination, and liberal interest groups soon followed. Still, Thomas seemed to be on his way to confirmation at the conclusion of his hearings.

Then came the allegations of sexual harassment. from law professor and former Thomas colleague Anita Hill. Supporters of Thomas considered the leaking of last-minute charges by Thomas opponents the sleaziest kind of gutter politics, and the logical outcome of a 100-day search for any "dirt" that would deny him the nomination. Hill's accusations first appeared in the October 7, 1991 *Times*, after which the *Times* ran many more stories of a more political tone. Maureen Dowd, then a reporter and now a "witty" liberal columnist for the *Times*, provided particularly partisan coverage of the Anita Hill-Clarence Thomas fight on Capitol Hill.

In those 81 stories that ran between July 1, 1991 and the day Anita Hill's charges reached the *Times*, reporters used the terms "conservative" or "conservatism" to refer specifically to Clarence Thomas, his ideology or stand on issues (as opposed to that of individuals or groups backing him) on 44 occasions. That number in fact understates the case, as the *Times* was more willing to talk to people, pro and con, who would characterize Thomas in ideological terms, so the coverage is crammed with "conservative" labels, whether in quoted material or in summarizing what other people were saying about Thomas.

Reporter Neil Lewis, in his July 2, 1991 profile "From Poverty to the Bench," provided the paper's initial profile of Thomas after his selection by Bush. Lewis limited Thomas's inspiring personal history to six paragraphs, far from the wall-to-wall treatment that would be afforded to a later nominee who also overcame a challenging childhood, Democrat Sonia Sotomayor. Lewis's lead even suggested Thomas was pushing his past hardships for political gain: "Judge Clarence Thomas, President Bush's choice to succeed Thurgood Marshall on the Supreme

Court, has always been quick to tell his friends and colleagues about the grinding poverty into which he was born in coastal Georgia.”

Veteran Supreme Court reporter Linda Greenhouse hinted Thomas was hypocritical on affirmative action on July 8 when she pondered “the apparent contradiction between his life story and his life’s work.”

One of the few high point of the Thomas coverage was Peter Applebome’s July 13 story “Black ‘Conservatives’ United Only by Frustration,” which took a respectful look at that phenomenon so puzzling to liberals: “But polls consistently show that on numerous social issues like crime, abortion and prayer in schools, blacks hold largely conservative views.”

A patronizing anti-Thomas story by David Margolick appeared August 12 under the headline: “Less Pride Than Pain by Black Lawyers on Thomas.” “[Several black lawyers] expressed fears that Judge Thomas is so malleable and estranged from his roots that he could be manipulated by right-wing Justices eager to make their own anti-civil rights, anti-affirmative action agendas more respectable.”

The hostility toward Thomas continued as Senate hearings began September 10. Setting the scene that day, Neil Lewis called Thomas “an unabashed, even angry conservative.” That same day Adam Clymer summarized the results of a question in a *Times* poll that asked respondents to agree or disagree with this charming assertion: “By being more conservative than most blacks, Mr. Thomas ‘was turning his back on his own people.’”

Television critic Walter Goodman commented on the grilling Thomas faced in his hearings and had backhanded praise September 11 for Thomas’s mild television demeanor: “Gone were the angry language and tough attitudes that had given him a reputation as a conservative hardliner.”

David Margolick on September 15 described Thomas’s views as “fervently conservative,” while Neil Lewis on September 21 complained that Thomas, in his testimony, had “disavowed his many speeches and writings that had taken a hard-edged conservative approach.”

Nonetheless, Thomas’s nomination looked like it would squeak through despite Democratic grumbling. “Support for Thomas Inches Toward Approval in Senate” was the headline on Friday, October 4, before a partisan smear unleashed by Democrats changed the nature of American politics permanently.

Law professor and former Thomas colleague Anita Hill’s charges of sexual harassment surfaced on October 7, abruptly shifting the scene from ideology to politics. Then-White House correspondent Maureen Dowd clearly took Hill’s side in the controversy, faulting Republican meanness and mudslinging and Democratic timidity, as hinted in the headline

over her October 10 story: "Facing Issue of Harassment, Washington Slings the Mud." Dowd wrote: "The White House, for its part, is hunkered down, preparing to make a heavy assault against Professor Hill. It has been noted with some surprise by political operatives watching the White House and Congress that no one in the Republican camp seems to take the anger among women in Washington this week as a warning that its party's candidates, including President Bush, might suffer in 1992."

On October 13 Dowd accused the G.O.P. of abandoning the quest for truth: "It was a day when several Republican Senators seemed to give up any pretense of digging out the truth in the two starkly opposite stories, and began aggressively attacking Professor Hill."

Dowd's anti-Thomas digs culminated in a ferocious front-page account on October 15, after Thomas appeared to have survived the assault, accompanied by a headline that left no room for argument: "Republicans Gain in Battle By Getting Nasty Quickly." (See box) Ignoring the possibility that Hill had a weak case and Thomas a convincing defense, Dowd loaded her story with outraged feminists — Ann Lewis, Rep. Nancy Pelosi, Pat Schroeder, reporter Susan Milligan, Rep. Barbara Boxer, Judith Lichtman, law professors Katherine Bartlett and Susan Deller Ross.

Horrified by "Nasty" GOP Tactics

"The Democrats made a pass at figuring out what had happened in the case. The Republicans tried to win. While the Democrats were pronouncing themselves flummoxed by two diametrically opposed stories, the Republicans had already launched a scorched-earth strategy against Professor Hill....Just as they did in the 1988 campaign, the Republicans battered the other side by going ugly early with nasty, personal attacks, by successfully linking the Democrats with liberal advocacy groups and by using volatile images of race."

— Maureen Dowd, "Republicans Gain in Battle By Getting Nasty Quickly," October 15, 1991.

Ruth Bader Ginsburg



Ruth Bader Ginsburg, Democratic nominee. Former ACLU lawyer. Served on the U.S. Court of Appeals for the D.C. Circuit.

Nominated June 14, 1993 by Bill Clinton to replace Justice Byron White. Confirmed August 3, 1993 by a 96-3 vote.

Subject of 22 stories. Liberal labels: 4. Centrist labels: 4

"Judge Ginsburg...was chosen by President Clinton for her resolutely centrist stands as much as anything else." -- Neil Lewis, July 20, 1993.

After what the *Times* described as a "messy, semi-public search," the Clinton White House was relieved to settle on a third choice, Judge Ruth Bader Ginsburg. The *Times'* initial main

concern (the same it would later show with nominees Steven Breyer and Elena Kagan) was a political one.

But the *Times* wasn't concerned that Ginsburg, an ACLU lawyer and pioneering feminist litigator, was too liberal. Instead, reporters wondered if she was aggressively liberal enough to go toe to toe intellectually with conservative Justice Antonin Scalia. The *Times'* sparse coverage of Ginsburg featured a grand total of 4 liberal labels applied to the judge, and even those were tempered. In fact there were just as many centrist labels (4) for Ginsburg as well as many quoted statements suggesting she wasn't a liberal.

The *Times* made the most of occasional jabs from the pro-choice left about Ginsburg's criticism of *Roe v. Wade* on tactical grounds (Ginsburg thought equality would have been stronger ground for the decision than the right to privacy) to display her as some kind of judicial centrist, her past activism notwithstanding.

Neil Lewis penned a profile upon the announcement on June 15, 1993 suggesting Ginsburg was not vociferously liberal enough, while Richard Berke placed her at the "unpredictable center" on the U.S. Court of Appeals for the D.C. Circuit in another June 15 story. The same day, then-reporter Thomas Friedman set Ginsburg's thinking as "firmly in the centrist philosophical terrain chartered by Clinton in his campaign." A June 25 story by David Margolick borrowed a golf metaphor from a Ginsburg friend, characterizing the judge as being a moderate through force of will, "aiming left, swinging right and hitting down the middle."

This shifting of the ideological spectrum met its zenith in a June 27 headline by the reliable Neil Lewis under the headline: "Balanced Jurist at Home in the Middle," in which Lewis praised Ginsburg's "resolutely centrist judicial style." Lewis boasted that one of her decisions "provided a neat example of how elusive is her place on the philosophical spectrum of the Federal courts." Lewis did call her a "Pioneering liberal litigator on women's rights" but immediately added that she had "practiced judicial restraint since President Jimmy Carter named her to the bench in 1980."

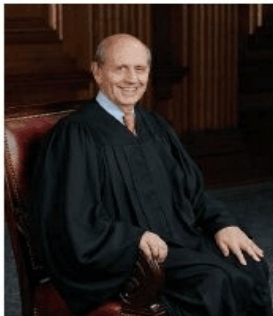
On July 20, the day her Senate Judiciary Committee hearings began, Lewis emphasized: "Judge Ginsburg...was chosen by President Clinton for her resolutely centrist stands as much as anything else," and of "inhabiting the ideological middle of an important court..." Lewis described Ginsburg's burden, "if it can be called that, is that she is a centrist," unlike failed nominee Robert Bork, who "had the burden of an image that he was far to the right of the legal mainstream." The headline promised: "High Court Nominee Faces Easy Road Through Senate." The *Times* did its best to provide one.

Even when reporters admitted Ginsburg was a political liberal, the admissions were qualified with adjectives. Linda Greenhouse on July 22 called the judge "a judicial-restraint

liberal” but implied she would not be a judicial activist but instead had, as the story headline stated, “A Sense of Judicial Limits.” Summing up the insipid hearings three days later, Greenhouse admitted the nominee “came across as a liberal,” but qualified that by asserting “Judge Ginsburg’s liberalism is tempered by her belief in a restrained and cautious role for judges.” Thomas certainly wasn’t bolstered by those kind of reassurances in the *Times*, though he made similar denials of judicial advocacy at his hearings (which the *Times* did not take at face value).

The hagiography increased upon Ginsburg’s confirmation, as shown by the August 2 headline “Ginsburg’s Spirit Is Echoed by Other Pioneers.” Greenhouse ended her August 4 story on Ginsburg’s confirmation (by a healthy 96-3 margin) by quoting the question of another reporter at the ceremony, who asked Ginsburg: “You’ve been called a liberal, you’ve been called a conservative, you’ve been called a moderate. What are you?” The *Times* feigned confusion on the very same matter as Ginsburg coasted to easy confirmation.

Stephen Breyer



Stephen Breyer, Democratic nominee. Served as chief justice on the U.S. Court of Appeals for the First Circuit in Boston.

Nominated May 13, 1994 by Bill Clinton to replace Justice Harry Blackmun. Confirmed July 29, 1994 by a 87-9 vote.

Subject of 20 stories. Liberal labels: 1 Moderate and centrist labels: 3

“...it is apparent that Stephen G. Breyer is a judge of moderate leanings, a self described pragmatist interested more in solutions than in theories.” – Linda Greenhouse, July 14, 1994.

The paper’s flimsy coverage of Ginsburg was followed a year later by even slimmer coverage of Clinton’s next nominee, Stephen Breyer, the subject of a mere 20 stories. Breyer had been in the running for the court before but had not hit it off with Clinton at their first meeting. But he made the cut the second time around, upon the retirement of Justice Harry Blackmun.

The *Times* editorial page (under future Executive Editor/ogre-in-chief Howell Raines) was surprisingly tough on Breyer. An editorial on July 26 advised against his nomination based on Breyer’s failure of recusal in a controversy involving Breyer’s personal wealth and his investment in an insurance syndicate with Lloyd’s of London.

Although Breyer suffered some bumps on the editorial page, *Times* news reporters cleared a smooth path. The coverage was dutiful, sparse, and designed not to raise ideological hackles. Breyer was labeled a liberal precisely once, by Linda Greenhouse, and even that reference was tempered: "Own political leanings are quite liberal, nonetheless reject the classic liberal constitutional view..."

The initial profile of the nominee from David Margolick on May 14, 1994, under the headline "Scholarly Consensus Builder," included an even more flattering subhead: "Raw Brain Power." Margolick emphasized "The labels most often used to describe him are "centrist" and "technocrat." While noting "There are those who find him snippy and snooty, caustic or condescending," Margolick balanced that criticism with flattery: "Judge Breyer is a man of great range."

A compare-and-contrast exercise by Linda Greenhouse on May 22, 1994, seemed designed to make Clinton's two nominees look superior to Bush pick Clarence Thomas. She noted Breyer's nomination "appears to be a waltz to near-unanimous confirmation," especially after the trouble caused by the Thomas nomination, specifically Bush's claim that Thomas was the most qualified for the job. In Greenhouse's telling, such hyperbole caused "deep cynicism" that was only healed somewhat by Ginsburg's "tranquil 96-3 confirmation."

The *Times* occasionally jabbed Breyer from the left, relaying in a July 12, 1994 story liberal Sen. Howard Metzenbaum's allegations about Breyer's alleged conflict of interest in refusing to recuse himself from pollution cases that might have indirectly affected his investment in a Lloyd's of London insurance syndicate. (The *Times* editorial against Breyer on the matter appeared two weeks later.)

Still, Greenhouse showed her confidence on July 13: "There is no doubt that Judge Breyer will be confirmed as a Supreme Court Justice..." The next day, under the headline "Portrait of a Pragmatist; Confirmation Hearing for Breyer Elicits His Emphasis on Rulings' Lasting Effects," she described Breyer as "a judge of moderate leanings, a self-described pragmatist." Greenhouse was also responsible for the paper's single admission of Breyer's liberal views, July 17: "Both Justice Ginsburg and Judge Breyer are highly respected judges who, while their own political leanings are quite liberal, nonetheless reject the classic liberal constitutional view..." In contrast, Clarence Thomas was bluntly termed "a committed conservative."

(It's a demonstration of the sharpness of the paper's long-term liberal slant that veteran Supreme Court reporter Linda Greenhouse, who marched for *Roe v. Wade* and made a commencement speech at Harvard in 2006 lamenting "the sustained assault on women's reproductive freedom and the hijacking of public policy by religious fundamentalism," actually comes off as one of the paper's more balanced reporters.)

John Roberts



John Roberts, Republican nominee. Served on the U.S. Court of Appeals for the D.C. Circuit. Worked under Ronald Reagan and George H. W. Bush.

Nominated July 19, 2005 by George W. Bush to replace Sandra Day O'Connor. Later renominated to replace Chief Justice William Rehnquist upon his death. Confirmed September 29, 2005 by a 78-22 vote.

Subject of 107 stories. Conservative labels: 33

"On almost every issue he dealt with where there were basically two sides, one more conservative than the other...[Roberts] advocated the more conservative course. Sometimes, he took positions even more conservative than those of his prominent superiors." -- David Rosenbaum, July 28, 2005 in "An Advocate for the Right."

Judge John Roberts served under Ronald Reagan in the White House counsel's office, and the first President Bush as deputy solicitor general in the Justice Department. Yet he had a non-dogmatic reputation on the bench, and a stellar intellect that impressed even *Times* reporters.

Still, the newspaper dwelt heavily on his membership in the conservative network of lawyers, The Federalist Society, which certainly got more intense coverage than Ruth Bader Ginsburg's history of activism for the ACLU. The death of Chief Justice William Rehnquist in early September resulted in President Bush re-nominating Roberts to take the place of Rehnquist as Chief Justice, instead of replacing O'Connor as an Associate Justice.

The *Times'* coverage of Roberts contained a total of **33** conservative labels, a figure which actually understates the tone of coverage, leaving off many instances in which Roberts' conservative supporters or his alliance with the conservative movement was discussed, or his membership in the "conservative legal group" The Federalist Society, or liberal fears that he would tilt the court in a more conservative direction.

Roberts was identified as conservative from the start, in a friendly "Man in the News" profile by Neil Lewis on July 20, saying Roberts "has helped strengthen the conservative hold on the federal judiciary." The same day, Linda Greenhouse found that Roberts had a "firm identification on the conservative side of the legal spectrum," while Todd Purdum introduced Roberts as a judge with "a distinguished resume and a conservative but enigmatic record." On July 24 Elisabeth Bumiller damned Roberts with faint praise as a "nondogmatic conservative."

Quite slanted was David Rosenbaum's contribution on July 28, 2005, "An Advocate for the Right," running down Roberts' super-duper conservative positions:

On almost every issue he dealt with where there were basically two sides, one more conservative than the other, the documents from the National Archives and the Ronald Reagan Presidential Library show that Judge Roberts, now of the United States Court of Appeals for the District of Columbia Circuit, advocated the more conservative course. Sometimes, he took positions even more conservative than those of his prominent superiors.

As noted before, the headline to that story, “An Advocate for the Right” was in stark contrast to the one that greeted Ruth Bader Ginsburg’s nomination on June 27, 1993: “Balanced Jurist at Home in the Middle.”

Adam Liptak and Todd Purdum admired Roberts as an “affable, ambitious and frankly conservative intellectual” in a July 31, 2005 profile, noting his memos were “terse, lucid and even elegant.” One huge hiccup in the paper’s relatively benign coverage of the Roberts nomination was uncovered at the Drudge Report on August 4, 2005, which blared a scoop that *Times* reporters had been snooping around the adoption records of Roberts’ four- and five-year-old children. According to an August 5 report by Brit Hume of Fox News:

The *New York Times* has been asking lawyers who specialize in adoption cases for advice on how to get into the sealed court records on Supreme Court nominee John Roberts’ (search) two adopted children. There is no indication the *Times* had any evidence there was anything improper in the family’s adoption of five-year-old Josie and four-year-old Jack, both born in Latin America. Sources familiar with the matter told Fox News that at least one lawyer turned the *Times* down flat, saying that any effort to pry into adoption case records, which are always sealed, would be reprehensible. A *Times* spokesman said the paper was simply asking questions, and that only initial inquiries had been made.

While the *Times* found nothing but smooth sailing for Clinton nominees Ginsburg and Breyer, the *Times* played up possible roadblocks to Roberts’ nomination after the release of documents detailing his work in the Reagan administration. On August 17, David Kirkpatrick foresaw “a possible turning point” in the nomination fight, with Democratic Sen. Pat Leahy called Judge Roberts “far right wing” and Sen. Ted Kennedy said Roberts was “on or beyond the outer fringe of that extreme group” of Republicans.

On August 19, Todd Purdum and John Broder characterized the nominee as a “faithful foot soldier in the conservative revolution that Ronald Reagan brought to Washington.” But *Times* reporters were also charmed by the Reagan papers, as shown in this August 20 headline: “As a Man of Letters, Roberts Showed Practicality and Humor.” Anne Kornblut examined his Reagan-era memos and concluded August 29 that the nominee boasted “an exceptional vocabulary and command of literature.”

Upon the death September 3 of Chief Justice William Rehnquist, Bush named Roberts as his choice to replace Rehnquist as Chief Justice, instead of replacing Justice O'Connor as an Associate Justice. Bush could have instead replaced Rehnquist with a sitting conservative justice like Antonin Scalia, and his decision was seen as releasing some of the partisan pressure at the time, since Roberts' ascension to replace the conservative Rehnquist would not drastically alter the balance of the court (that would wait for Bush's next nominee, Samuel Alito).

On the eve of the Roberts hearings (which began on September 12, 2005) Washington reporter Sheryl Gay Stolberg provided a stark slant in her capsule profiles of the members of the Senate Judiciary Committee who would hear the judge's testimony. While liberal, pro-abortion Republican Sen. Arlen Specter was a "maverick" "reviled by the right," Sen. Sam Brownback of Kansas was a "darling of conservatives," Sen. Tom Coburn of Oklahoma "conservative," and Sen. Jon Kyl of Arizona a "pro-business conservative." Meanwhile, across the aisle, Sen. Ted Kennedy of Massachusetts was not a liberal but merely a "Democratic elder statesman."

Roberts made a very impressive performance in the hearings, leading Sheryl Gay Stolberg and David Kirkpatrick to praise "Judge Roberts' intellect and impeccable resume," on September 18, as the *Times* ran an editorial urging the Senate to vote no on his nomination.

Samuel Alito



Samuel Alito, Republican nominee. Served on the U.S. Court of Appeals for the Third Circuit.

Nominated October 31, 2005 by George W. Bush to replace Sandra Day O'Connor. Confirmed January 31, 2006, by a 58-42 vote.

Subject of 92 stories. Conservative labels: 28

"While Judge Alito, 55, has built a reputation for decency, he has also compiled a conservative record....Like Justice Scalia, Judge Alito is an Italian-American from Trenton, whose jurisprudence is indisputably conservative....a staunch conservative."— Neil Lewis and Scott Shane, November 1, 2005.

After President Bush bungled by initially nominating White House counsel Harriet Miers to replace Sandra Day O'Connor, he found firmer footing among conservatives with his choice of Samuel Alito, who served on the U.S. Court of Appeals for the Third Circuit, based in Philadelphia. The *Times* questioned if Bush could get another conservative nominee through, weakened as he was by Hurricane Katrina, the indictment of top Cheney aide Lewis Libby in the Valerie Plame leak probe, and a war going poorly in Iraq.

Samuel Alito's nomination set off the fierce lobbying war that had been absent from the Roberts hearings, as the *Times* and the left realized replacing O'Connor with Alito could mean a Supreme Court shift to the right. Even before his nomination by Bush on October 29, 2005, David Kirkpatrick and Elisabeth Bumiller wrote "Judge Alito is a favorite of conservatives and a likely target of liberal attacks."

The first profile of Alito, on November 1, 2005, by Neil Lewis and Scott Shane was respectful but left no doubt of Alito's "conservative" ideology. "He has cloaked his formidable intellect in modesty....While Judge Alito, 55, has built a reputation for decency, he has also compiled a conservative record...Judge Alito's jurisprudence has been methodical, cautious, respectful of precedent and solidly conservative, legal scholars said....Like Justice Scalia, Judge Alito is an Italian-American from Trenton, whose jurisprudence is indisputably conservative....staunch conservative."

The lead story that day by Elisabeth Bumiller and Carl Hulse opened: "Ivy league-educated appeals court judge with a conservative record on abortion," also calling Alito "a methodical and cautious jurist" while continuing to emphasize his "bona fide conservative credentials." A same-day story by Todd Purdum, "Potentially, the First Shot in All-Out Ideological War," emphasized Alito's "clear-cut conservative views," particularly abortion, and brought up the fact that a Democratic filibuster of the nomination was "very much on the table." A November 4, 2005 story by Scott Shane mentioned Alito's "staunchly conservative views."

A November 15 story David Kirkpatrick tried to raise a fuss over a 1985 job application Alito submitted during the Reagan administration, and giving space for Sen. Patrick Leahy to slam Alito as being of the "party's extreme right wing." The next day, Kirkpatrick and Sheryl Gay Stolberg announced that "the document...could complicate Judge Alito's nomination."

It failed, but another memo surfaced which let the *Times'* David Kirkpatrick make hay in a December 1 story headlined: "Alito File Shows Strategy To Curb Abortion Ruling." Democrats quickly pounced, as Sheryl Gay Stolberg reported December 3 that Alito was "Seeking to tamp down a furor over his views on abortion rights...."

Having never shown the slightest concern about Ruth Bader Ginsburg's pro-abortion absolutism, the *Times* devoted much energy to Alito's 1985 statement on an application that "the Constitution does not protect a right to an abortion."

On January 9, 2006, Kirkpatrick made ideology explicit, reporting that for Alito's former colleagues, his ascension "would be the high point of a conservative revolution in the legal establishment: an effort over several decades to seed the federal courts with jurists holding a narrower interpretation of the Constitution's application to abortion rights, civil rights, the rights of criminal defendants and the scope of federal power."

As hearings finally began, Richard Stevenson and Neil Lewis predicted tough sledding for Alito in a January 10 lead story: “Mr. Bush has been weakened by the failed nomination of Harriet E. Miers to the Supreme Court, the continued bloodshed in Iraq and the corruption inquiries that have ensnared Republican lobbyists and members of Congress.” However, reporters Adam Liptak and Adam Nagourney gave Alito a fair shake in a January 11 story after Alito’s first day of testimony: “But he came across as far less ideological than Democrats have suggested, undercutting their efforts to stir public opposition by portraying his writing as outside the American mainstream.”

The *Times* was puzzled that liberal criticism of Alito wasn’t penetrating. On January 15, after Alito had successfully navigated his confirmation hearings, Nagourney, Stevenson, and Lewis wondered along with the Democrats how “a nominee with such clear conservative views – in particular a written record of opposition to abortion rights – appeared to be stirring little opposition. David Kirkpatrick wrote on February 1 that Alito’s confirmation, by a close 58-42 vote, was “expected to tilt the balance of the court to the right on matters like abortion, affirmative action, and the death penalty.”



The court fight cooled off after Alito, with no openings on the Supreme Court for three years. One speculative piece stands out from that interregnum: Neil Lewis’s amazingly slanted May 28, 2008 piece comparing Republican John McCain’s potential Supreme Court nominations with Obama’s.

Lewis threw tons of “conservative” labels (18 in all in a 1,400-word story) on the McCain camp but there was not a single “liberal” to be found to describe Obama’s potential picks. Lewis implied that Republicans were ignorant of the nuances of the law, puppets of conservative lawyers, as opposed to Obama, who had a “long and deep interest in the courts and the law,” a charge he backed up by quoting unlabeled liberal law professor and Obama adviser Cass Sunstein.

Sonia Sotomayor



Sonia Sotomayor, Democrat nominee. Served on the U.S. Court of Appeals for the Second Circuit (New York).

Nominated May 27, 2009 by Barack Obama to replace David Souter. Confirmed August 6, 2009 by a 68-31 vote.

Subject of 85 stories. Liberal labels: 5, loaded with caveats.

"What they say is that she has kind of a common touch, you know, she's the kind of person who goes out of her way to talk to the janitors, you know, in the cafeteria, she'll not only speak to the cafeteria workers but she'll speak to them in Spanish, if they're Spanish speakers." -- Reporter Jodi Kantor in a May 28, 2009 podcast for the Times.

Liberal Justice David Souter held off his retirement until a Democratic president, Barack Obama, could name his replacement. That ended up being Judge Sonia Sotomayor of New York. The *Times* couldn't get enough of Sotomayor's New York City credentials (she was born in the Bronx) and treated her as a favorite daughter. While both Sotomayor and Judge Clarence Thomas both had compelling life stories, only Sotomayor's story was celebrated as such by the *Times*.

Sotomayor showed every sign of being an activist liberal. At the start of her law career she filed a formal complaint about a law firm staffer who asked if she had benefitted from affirmative action, yet later called herself an "affirmative action baby" on a panel of female judges discussing women in the judiciary. She served on the leftist-nationalist Puerto Rican Legal Defense and Education Fund and was not shy about opining on the superiority of "wise Latinas" over old white men.

The *Times* plumped for Sotomayor even before Obama made his official announcement, shown by the headline over a May 15, 2009 story by Neil Lewis: "A Resume Including 'Baseball Savior.'" Lewis didn't bring up Sotomayor's liberal background or decision-making.

That same day, legal reporter Charlie Savage did bring up Sotomayor's "wise Latina woman" comment, made in 2001 at a lecture on cultural diversity: "I would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn't lived that life." However, the quote was buried under a bland headline: "A Judge's View of Judging Is on the Record."

On May 17 Savage returned with "Conservatives Map Strategies On Court Fight," which suffered from labeling overload. with the "conservative" label applied 14 times in non-quoted material in the first 600 words. (By contrast, the conjunction "and" appears only 13 times using the same parameters!)

The headline of the first profile on Sotomayor after her May 27 nomination was “A Trailblazer And a Dreamer.” While Sotomayor referred to herself as a liberal (“No matter how liberal I am, I’m still outraged by crimes of violence”) reporter Sheryl Gay Stolberg wouldn’t do so directly. Behold this thicket of hedging: “Judge Sotomayor has had several rulings that indicate a generally more liberal judicial philosophy than a majority of justices on the current Supreme Court....”

While the paper heralded her several times as baseball’s “savior” — she issued a preliminary injunction against owners and in favor of players that averted a Major League Baseball strike in 1995 — the paper’s initial coverage did also sporadically raise controversial issues around the nomination, although the *Times*’ tone remained overwhelmingly supportive.

Under the May 27 headline “A Careful Pen With No Broad Strokes,” Supreme Court reporter Adam Liptak brought up Sotomayor’s terse, controversial vote as a federal appeals judge declining to hear the case of a white New Haven firefighter who claimed to have been denied a promotion on account of his race. That same day Neil Lewis admired Sotomayor’s “rich personal story....the journey from humble beginnings,” while Linda Greenhouse cited her “stirring life story and impressive resume.” The next day, Adam Nagourney and Peter Baker also found it a “compelling life story.”

The *Times* even cautioned Republicans against trying to stop Sotomayor’s ascent. A headline over a May 28 piece by Adam Nagourney read “For Republicans, Court Fight Risks Losing Hispanics to Win Conservatives.” Nagourney wrote “President Obama’s selection of Judge Sonia Sotomayor for a seat on the Supreme Court has put the Republican Party in a bind, forcing it to weigh the cost of aggressively opposing the first Hispanic named to the court against its struggle to appeal to Hispanic voters.”

That same day, reporter Jodi Kantor gushed about Sotomayor on a “Political Points” podcast at nytimes.com: “What they say is that she has kind of a common touch, you know, she’s the kind of person who goes out of her way to talk to the janitors, you know, in the cafeteria, she’ll not only speak to the cafeteria workers but she’ll speak to them in Spanish, if they’re Spanish speakers.”

On May 31, religion reporter Laurie Goodstein weighed in with more purported doubt about Sotomayor’s ideology: “Sotomayor Would Be Sixth Catholic Justice, but the Pigeonholing Ends There.” Yet she ferreted out the fact that the four Catholics on the court who attend Mass regularly made up a “solid conservative bloc.”

A June 20 article by Charlie Savage denied Sotomayor was a liberal, insisting there was “Uncertain Evidence for ‘Activist’ Label on Sotomayor.” David Kirkpatrick stuck to that line in his report two days later, insisting “Judge Sotomayor is studiously narrow” in her opinions, which were “tailored to the facts of each dispute.” Benjamin Weiser chimed in on the same

note July 2 with “Sotomayor’s History of Recusals Suggests a Deep Commitment to Impartiality.”

The *Times* rarely put a label on Sotomayor’s race-influenced political views. The paper labeled Sotomayor a liberal a mere five times throughout its massive coverage. Even those mentions were couched in caveats (“her rulings are more liberal than not,” “liberal but not particularly ideological”) unlike the straightforward assertion of the “staunch conservatism” of Republican nominees Thomas, Roberts, and Alito. Even while former colleagues were calling her “very liberal and a Democrat,” the *Times* couldn’t bring itself to make the same obvious declaration.

As her confirmation hearings loomed, the *Times*’ eyes shifted to local color. An epic front-page story July 10 invited us to swoon along with Sotomayor, “daughter of the Bronx,” in self-congratulatory New York City-style. The paper even provided a map of the five boroughs, spotlighting how Sotomayor owned the town, spotlighting her first apartment, her favorite Brooklyn pizza joint, and of course Yankee Stadium, home to her “beloved Yankees.” The 2,300-word story left no room to describe her personal politics or theory of the law. A July 16 story portrayed her as a local idol: “At a Bronx School, Pupils Wonder: Did Judge Sotomayor Sit at My Desk?”

Showing impressive imagination, Sheryl Gay Stolberg extracted a flattering metaphor out of Sotomayor’s management of her own diabetes, writing July 10 that it mirrored her “no-nonsense attitude, combined with the attention to detail that characterizes her legal opinions.” The story’s headline was “Court Nominee Manages Diabetes with Discipline.”

Charlie Savage celebrated her confirmation by the U.S. Senate on August 7, with Sotomayor “completing an extraordinary narrative arc that began in a Bronx housing project where the Puerto Rican girl was raised by her widowed mother.”

That same day, Metro reporter Mireya Navarro wrapped up the coverage arc in puzzling fashion by returning to Sotomayor’s infamous “wise Latina” phrase, “Claiming A Loaded Phrase.” Pointing out it had been “mocked by conservative talk show hosts,” Navarro said such criticism could backfire, making the odd argument that the Republican Party “may want ‘Wise Latina’ quickly forgotten if it reminds voters of criticism by some senators that was deemed unfair.” Really?

Elena Kagan



Elena Kagan, Democrat nominee. Served in Clinton White House, as dean of Harvard Law School, and as solicitor general for Barack Obama.

Nominated May 10, 2010 by Barack Obama to replace John Paul Stevens. Confirmed August 5 by a 63-37 vote.

Subject of 43 stories. Liberal labels: 4

"Let's not forget that Elena Kagan has been an academic. She is a brilliant woman. She's somebody who is also very funny and warm and witty, and I think Americans will see that when they -- when she comes before the Senate today." -- Reporter Sheryl Gay Stolberg in a June 28, 2010 podcast for the Times.

The *Times* also denied the clear liberal background and world-view of Obama's next Supreme Court appointee. Elena Kagan served in the Clinton White House and was Dean of Harvard Law School before joining the Obama administration as Solicitor General. A former clerk for liberal Justice Thurgood Marshall, she was the first non-judge to be appointed to the high court since 1972.

Kagan worked for two Democratic administrations (Clinton and Obama) in similar fashion to John Roberts (Reagan and the first President Bush), and banned the military from recruiting at Harvard Law School in reaction to the ban on openly gay soldiers – ironically, a policy brought about by the same Clinton administration Kagan helped sell policy for. Yet the *Times* didn't find her liberal Democratic background as interesting or controversial as it did Roberts' conservatism.

Kagan first showed up on the media radar a year before, during the speculation over Obama's first pick, which turned out to be Sonia Sotomayor. The first concerns raised by the *Times* were that Kagan, might be too bipartisan. In a story outside the Kagan study period, reporter Eric Lichtblau speculated on May 17, 2009, before Obama picked Sotomayor: "Potential Justice's Appeal May Be Too Bipartisan." The text box emphasized: "Some admirers on the left worry about all those admirers on the right." It's safe to say the *Times* never concerned itself that Republican nominees might have too much appeal for Democrats; over the years the *Times* has practically demanded that Republicans pick non-conservative nominees with bipartisan appeal.

The *Times* labeled Kagan a liberal on a mere four occasions, and even those were hedged. Sheryl Gay Stolberg admitted a "recurrent theme" in Kagan's work as a law clerk for Justice Marshall was "a generally liberal approach to law-enforcement issues," and there were two mentions of Kagan being a product of the "liberal Upper West Side."

Three days before her nomination, reporter Katharine Seelye set the tone on Kagan's alleged moderate views, calling the military-banning Kagan a "pragmatist." On the morning of her nomination, May 10, Peter Baker and Jeff Zeleny made the same argument: "Liberals dislike her support for strong executive power and outreach to conservatives while running the law school."

After Obama officially put forward her name, the *Times* ran "Pragmatic New Yorker Chose a Careful Path to Washington" May 11. Interestingly, the lead sentence pronounced Kagan "a product of Manhattan's liberal, intellectual Upper West Side," but that was the closest thing to an ideological label the *Times* gave Kagan in the entire 4,200-word profile introducing her to Americans.

Peter Baker's accompanying story, "Liberal, in Moderation" hedged on its labeling, admitting Kagan was liberal only in comparison to conservatives ("too liberal for conservatives") while insisting Kagan "does not fit the profile sought by the left" to balance aggressive conservative Justice Scalia. Sure enough, a May 14 story by Seelye suggested Kagan was not left-wing enough on race matters, since she was accused by some of "not creating enough racial diversity at Harvard."

Though Republican opposition to Kagan became stronger as time passed, the *Times* found little exciting on Kagan's heavily vetted path to confirmation, ignoring concerns about her college-age revulsion of Ronald Reagan, and seeing nothing particularly ideological about her activism against military recruitment.

Sheryl Gay Stolberg gushed over Kagan on a June 28 podcast at nytimes.com, on the eve of the hearings, in the same manner reporter Jodi Kantor had for Sotomayor a year before: "Let's not forget that Elena Kagan has been an academic. She is a brilliant woman. She's somebody who is also very funny and warm and witty, and I think Americans will see that when they – when she comes before the Senate today."

Conclusion

As dramatically as the "confirmation process" has been shifted by liberal activists since the days that William Douglas passed muster without a single question, a crucial part of the "confirmation process" is the journalism that is committed (or omitted) by national newspapers like the *Times*. Newspaper reporters and editors aren't writing the first draft of history. They're trying to make history happen with a happy ending for liberals.

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