Judge John G. Roberts
Circuit Judge, D.C. Circuit
3832 E. Barrett Prettyman United States Courthouse
333 Constitution Avenue, N.W.
Washington, D.C. 20001-2866

1. PERSONAL BACKGROUND

Biographical Information

- John Glover Roberts, Jr.
- Born: January 27, 1955, Buffalo, New York
- Married to Jane Marie Sullivan, July 27, 1996. Jane Sullivan Roberts is currently a partner at Shaw Pittman in Washington, D.C.
- Two children, both adopted
- Religion: Catholic

Education

- Harvard College, A.B., summa cum laude, 1976;
- Harvard Law School, J.D., magna cum laude, 1979.

Health

- Reported as "excellent" in March, 2001 (Judge Roberts will be 50 years old in January 2005).

Finances

- Roberts's financial statement published during his confirmation hearing indicated a net worth of $3,782,275. The only liability listed is the mortgage on his home, $270,272. Assets are cash, securities, and real estate.

2. PROFESSIONAL CAREER

- **Clerkships**: Law Clerk, Hon. Henry Friendly, United States Court of Appeals for the Second Circuit, 1979-1980; Law Clerk, Associate Justice William Rehnquist, Supreme Court of the United States, 1980-1981.

- **Private Practice**: Hogan & Hartson, Washington, D.C., 1986-1989, 1993-2003.

- **Government Positions**: Special Assistant to the Attorney General William French Smith, United States Department of Justice, 1981-1982; Associate Counsel to the President, White House Counsel's Office, 1982-1986; Principal Deputy Solicitor General, United States Department of Justice, 1989-1993; United States Court of Appeals for the District of Columbia, 2003-present (confirmed May 8, 2003; sworn in June 2, 2003).

- **Professional Associations**: District of Columbia Bar; American Law Institute; American Academy of Appellate Lawyers; Edward Coke Appellate Inn of Court; Supreme Court Historical Society.

3. RECORD

The most pertinent aspects of Judge Roberts's record essentially fit into three categories: (1) service in the Office of Solicitor General; (2) private practice at Hogan & Hartson; and (3) service as a Circuit Judge on the United States Court of Appeals for the District of Columbia.

The most notable materials concerning Roberts's service in the Office of Solicitor General were: (1) the government's brief in the *Rust v. Sullivan* abortion case (see below), co-written by Roberts, which argued not only that regulations prohibiting Title X funding recipients from counseling patients on abortion did not violate Title X or the First or Fifth Amendments, but also that *Roe v. Wade* was wrongly decided, and (2) the government's briefs in *Lujan* (see below), upon which Robert's was attacked during his circuit court confirmation hearings.

While in private practice at Hogan & Hartson, Roberts, for the most part, avoided any highly politically sensitive cases. However, Roberts tended to represent large corporate interests and oftentimes those corporate interests clashed with positions taken by labor organizations. However, it is during this period of his career that Roberts appears to have made himself well-liked by people on both sides of the aisle. Roberts also authored articles which necessarily contain some editorializing and his personal opinions.

During his brief tenure on the D.C. Circuit, Roberts's written opinions evidence a strong acceptance of principles of judicial restraint. Roberts's two dissents from the denials of en ban review have attracted more attention than any of his written opinions. Roberts dissented from denial of en banc review in the Rancho Viejo case -- a case upholding the Department of the Interior's suppression of real estate development to protect an endangered species -- the southwestern arroyo toad. Roberts's dissent focused on judicially conservative principles of Commerce Clause jurisprudence (but in the context of a case involving politically sensitive environmental regulation). Roberts's also dissented from the denial of en banc review in the Administration's Energy Task Force case, which provoked claims that Roberts unduly supported Administration secrecy. Nonetheless, Roberts appears to have kept a relatively low profile while on the bench and has maintained a consistent proponent of judicial restraint.

4. LIKELY GROUNDS OF ATTACK

Roberts's D.C. Circuit confirmation hearings provide the most obvious roadmap for opponents' attack strategies. The criticisms brought by liberal groups and echoed in the Senate hearings, along with the best responses to those criticisms, updated to include references to Roberts's recent D.C. Circuit Court opinions where relevant, are summarized below.

During his relatively short tenure on the D.C. Circuit, Roberts's judicial opinions, not surprisingly, concern principally technical administrative law issues and have not yet touched on many hot-button social or political issues. Consequently, his decisions to date are not particularly revealing. They nonetheless appear consistent with his reputation as a moderate to strong conservative who favors judicial restraint and respects the separation of powers embodied in the Constitution, as someone who is impartial in his application of the law, and as one who exercises appropriate judicial temperament, rarely, if ever, resorting to strident or inflammatory rhetoric or argument. It is a strong record that speaks of stellar legal qualifications, is consistently restraintist in bent, leaves a relatively small target for opponents, but also leaves some room for doubt as to how conservative Roberts really is on certain issues.

Particular areas of potential criticism that might be difficult to rebut are: (1) that Roberts is a conservative who will align with Scalia and Thomas and (2) that Roberts is weak on civil rights and substantive due process "rights."

SUMMARY OF ATTACKS RAISED DURING PREVIOUS CONFIRMATION PROCESS AND BEST RESPONSES (INCLUDING REFERENCES TO RELEVANT D.C. CIRCUIT OPINIONS):

Attack: Roberts is pro-life.

Opponents will undoubtedly argue that Roberts is hostile to abortion rights because (a) the brief in *Rust v. Sullivan*, co-written by Roberts during his tenure with the Solicitor General's office, argued not only that regulations prohibiting Title X funding recipients from counseling patients on abortion did not violate Title X or the First or Fifth Amendments, but also that *Roe v. Wade* was wrongly decided; (b) Roberts co-authored the government's amicus brief in *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263 (1993), a private suit brought against Operation Rescue, which argued that Operation Rescue was not engaged in a conspiracy to deprive women of equal protection rights; and (c) he's a practicing Catholic and therefore predisposed to advancing the social policies of the Catholic Church through judicial opinions.

Response: The appropriate approach is the one adopted by Roberts during his confirmation process -- point out that in writing the brief in *Rust*, Roberts was representing his client, the Dept. of Health and Human Services and the United States, and adopt Justice Ginsberg's response during her confirmation hearing of declining to answer questions on topics likely to come before the Court. None of Roberts's D.C. Circuit Court cases have concerned abortion.

Attack: Roberts is anti-environment.

Opponents will again state that Roberts's successful argument on behalf of the government in *Lujan v. Defenders of Wildlife*, 112 S. Ct. 2130 (1992), indicates a callous disregard for the environment. They will cite as support his recent decision, writing for a unanimous panel, which included Judges Henderson and, significantly, Tatel, in *Sierra Club v. EPA*, 353 F.3d 976 (D.C. Cir. 2004), holding that the EPA's actions in using particulate matter as a substitute for hazardous air pollutants in regulating emissions from copper smelters were reasonable, despite being arguably different than regulations applied to a different industry.

Response: First, Roberts's consistent refrain regarding *Lujan* has been that, far from being the wholesale revision to the law its opponents claim, it upheld precedential standing doctrines by requiring plaintiffs to demonstrate an injury-in-fact that was not apparent in the record before the Court. Second, in private practice Roberts successfully represented environmentalists fighting development around Lake Tahoe in *Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency*, in which the Court adopted Roberts's position against those of the developers and property owners, over the dissent of Rehnquist, Scalia, and Thomas. This case cuts both ways, however. It can be used to defend Roberts from charges that he would be too aligned with Scalia and Thomas, but it could also be used to dampen support for him by indicating he's hostile to property rights. The case should stand for the proposition that Roberts zealously represents the interests of his client, regardless of his personal belief in the policy position – a trait that one wants in a Supreme Court Justice.

Attack: Roberts is hostile to civil rights and affirmative actions.

During his confirmation to the D.C. Circuit, left-wing activist groups accused Roberts of being hostile to civil rights and affirmative action, citing the following cases in which Roberts co-authored briefs while in the Solicitor General's office: (a) *Oklahoma City Public Schools v. Dowell*, 498 U.S. 237 (1991) (this brief, according to the Alliance for Justice, "sought to weaken the standard and limit the timeline for court-enforced desegregation decrees in the nation's schools"), and (b) *Freeman v. Pitts*, 503 U.S. 467 (1992) (according to the Alliance for Justice, this brief successfully argued "to lower the bar for the proof that school systems that had previously engaged in *de jure* discrimination had to show in order to obtain the court's revocation of a desegregation decree."). Opponents may also cite: (a) Roberts's opinion (for a unanimous panel of Roberts, Henderson and, again, Tatel) in *Sioux Valley Rural Television, Inc. v. FCC*, 349 F.3d 667 (D.C. Cir. 2003), in which the court rejected petitioners' claim that the FCC's new bidding rules revoking minority and women-owned business credits while at the same time extending credits for all successful small businesses did not have a discriminatory intent and were not arbitrary and capricious when applied retroactively; (b) Roberts's opinion (panel included Henderson and Williams) in *Hedgepeth v. Washington Metropolitan Area Transit Authority*, 2004 WL 2381320 (Oct. 26, 2004), in which he held that a 12 year old girl's arrest for eating a french fry in a rail transit station

did not violate her civil rights under the Equal Protection Clause or the Fourth Amendment; and (c) Roberts's decision (for a unanimous panel including Roberts, Randolph, and Williams) in Stewart v. Evans, 351 F.3d 1239 (D.C. Cir. 2003), holding that a female employee did not have a reasonable expectation of privacy with respect to certain personal notes she had taken regarding a male co-worker's inappropriate behavior because she turned them over to a FOIA representative with the understanding that they might be further disclosed, even though the FOIA rep agreed not to reveal them within the Department and maintained them in a locked safe.

Response: (a) Roberts was on the government's brief in U.S. v. Mabus, 1991 WL 527603, arguing that Mississippi continued to propagate a "dual system" of racially segregated public universities in violation of the Equal Protection Clause and the 1964 Civil Rights Act; (b) *Hedgepeth* affirmed a decision by Judge Sullivan in the district court, was decided squarely on the basis of existing precedent finding that age-based laws are subject only to rational basis review, and deference to the officers making the arrest where the underlying policy did not permit discretion. This case appropriately demonstrates how the courts should refrain and allow the legislative branch to correct its own mistakes, which the D.C. Council ultimately did. The case is also replete with references to the fact that the judges thought the enforcement of the zero-tolerance rule heavy-handed and wrong, but that they were obliged not to impose their personal preference on an otherwise valid law.

Attack: Roberts is hostile to the rights of criminal defendants.

In his confirmation hearings, opponents argued that Roberts's participation on behalf on the government in two amicus briefs indicates a desire to limit the rights of criminal defendants. *See Denton v. Hernandez*, 504 U.S. 25 (1992) (amicus brief arguing that the Ninth Circuit test to permit a court to dismiss an *in forma pauperis* complaint only if it could take judicial notice that the facts alleged did not occur was too stringent); Burns v. U.S., 501 U.S. 129 (1991) (amicus brief arguing that no advance notice to defendant was required for an upward departure from sentencing guidelines). In further support of this attack, opponents might note two D.C. Circuit decisions authored by Roberts for a unanimous panel: (a) U.S. v. Holmes, 385 F.3d 786 (D.C. Cir. 2004), holding that the search of a passenger compartment of defendant's car did not exceed the scope of search incident to his arrest for assaulting an officer; and (b) U.S. v. Tucker, 2004 WL 2381324 (D.C. Cir., Oct. 26, 2004), holding that the lower court's substantial downward departure from sentencing guidelines was not justified for the reason stated by the lower court, namely, that the sentencing guidelines are unjust. (*Tucker*, of course, involved a tirade by Judge Jackson who indicated that because he thought the guidelines-mandated sentence too harsh, he would grant a downward departure without making the necessary findings and admittedly invite appellate reversal. The D.C. Circuit scolded Jackson, and reversed and remanded to give the district court an opportunity to make appropriate factual findings for the departure.)

Response: (a) Roberts wrote for a unanimous panel (Randolph, Williams, Roberts) in Warren v. District of Columbia, 353 F.3d 36 (D.C. Cir. 2004), holding that a *pro se*

prisoner had stated a § 1983 claim for relief, based in large part on the fact that "pro se prisoner complaints should be 'liberally construed'"; (b) Roberts represented many criminal defendants on a *pro bono* basis while at Hogan & Hartson; (c) in the case Roberts cited first on his list of the ten most important he has been part of in his response to the D.C. Circuit confirmation questionnaire, *U.S. v. Halper*, 490 U.S. 435 (1989), Roberts represented a previously *pro se* appellant on a *pro bono* basis, arguing successfully that the Double Jeopardy Clause barred imposition of civil penalties under federal law against an individual who had already been convicted and punished under federal criminal law for the same conduct. This was clearly a strong victory for the rights of convicted criminal defendants, though applied in a subsequent civil context.

Attack: Roberts is hostile to the First Amendment's Establishment and Freedom of Speech Clauses.

Opponents have argued that Roberts supports an expanded role of religion in schools, citing two briefs he co-authored while with the Solicitor General's office: *Lee v. Weisman*, 505 U.S. 577 (1992) (arguing that public high schools should be allowed to conduct religious ceremonies as part of a graduation program); *Mergens v. Westside Community School District*, 496 U.S. 226 (1990) (arguing that barring a religious group from meeting on school grounds violates the Equal Access Act, while granting access does not violate the Establishment Clause). In addition, opponents have cited Roberts's brief in *U.S. v. Eichman, U.S. v. Haggerty*, 496 U.S. 310 (1990), arguing that the 1989 Flag Act, which prohibited burning the U.S. flag, did not violate the First Amendment. The Court subsequently held 5-4 that the Flag Act was unconstitutional.

Response: Again, Roberts's briefs in the SG's office should not be used against him as he is taking his client's position.

Attack: Roberts is an "extremist" in the mold of Scalia and Thomas.

This is likely to be the most pervasive attack against Roberts, along with his religion, and is the underlying political subtext for all issue-based attacks (*see, e.g.*, Statement of Senator Edward Kennedy on Confirmation of John G. Roberts, Wednesday, April 30, 2003). Support for this allegation will be found in every decision or writing that can reasonably be construed as restraintist or strict constructionist in flavor, or that has Roberts agreeing with Scalia or Thomas, regardless of the reasoning.

Response: See discussion of *Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency* above, where the Court adopted Roberts's client's position against the rights of property owners and over the dissent by Scalia, Rehnquist and Thomas. In addition, many of Roberts's briefs written while in private practice appear to defend federal preemption (*see, e.g.*, *State of California et al. v. Dillingham Construction, Inc. et al.*, 1996 WL 335322 (arguing in favor of federal ERISA preemption); *Medtronic Inc. v. Lora Lohr and Michael Lohr*, 1996 WL 109618 (arguing in favor of broad federal preemption of states' product liability laws). *But see Jefferson v. City of Tarrant,*

Alabama, 1997 WL 401190 (arguing against federal common law replacing state law on remedies for deceased or survivors in wrongful death cases).

Attack: Roberts unduly favors big corporations and dislikes labor unions.

Opponents may focus on Roberts's private practice client base, which had him representing many large corporations in various matters, often against labor unions.

Response: Roberts has represented all manner of clients, including environmental groups (see *Tahoe-Sierra* case cited above), criminal defendants (on a pro bono basis), and the government.

Attack: Roberts supports the Bush Administration's unparalleled secrecy.

Roberts voted in favor of the D.C. Circuit's *en banc* review of the decision in *Sierra Club and Judicial Watch v. Cheney* – the National Energy Policy Development Group case where interest groups sought to obtain communications and internal deliberations of the Vice President's group that was constituted to advise the President on national energy policy. *En banc* review was denied and Sentelle, Randolph, and Roberts submitted a dissent to the denial. The *en banc* vote could also be used by interest groups to state that Roberts's is willing to protect the Administration's "secret' communications with energy companies over the public's "right to know" and environmental interests. (In addition, this case generated controversy regarding Justice Scalia's now-infamous hunting trip with the Vice President).

Response: In a 7-2 decision authored by Justice Kennedy, the Supreme Court granted review and vacated the district court's decision giving the interests groups access to the Vice President's records. The case was remanded for further proceedings in the D.C. Circuit. Therefore, Roberts's view in his *en banc* dissent was ultimately vindicated.

Attack from People for the American Way: Dissent from the denial of rehearing en banc in Rancho Viejo v. Norton.

The People for the American Way have leveled an attack on Roberts's dissent from the denial of rehearing en banc in Rancho Viejo, LLC v. Norton, 334 F.3d 1158 (D.C. Cir. 2003). In Rancho Viejo, a real estate development company challenged the Department of Interior's application of the Endangered Species Act to stop a project that "was likely to jeopardize the continued existence of the arroyo southwestern toad." The case principally involved an attack on Congress' power to regulate what appeared to be completely intra-state activity. The left's attack focuses on how Roberts's view of Commerce Clause jurisprudence would have prevented the arroyo southwestern toad's protection from these particular developers. (Judge Sentelle also authored a separate dissent to the denial of en banc review).

Response: Roberts's dissent is suggests that the circuit should attempt to resolve what appeared to be a circuit split given the opinions in *Rancho Viejo* and *National Assoc. of*

Home Builders v. Babbitt, 130 F.3d 1041 (D.C. Cir. 1997), another ESA case decided on Commerce Clause grounds but issued before the Supreme Court's decision in *Morrison v. Olson*. The decision should not be portrayed as anti-environment, but one that sought to reconcile seemingly conflicting circuit law in light of subsequent direction from the Supreme Court. Indeed, it is likely that there may be additional direction from the Supreme Court on the scope of the Commerce Clause as a result of the medical marijuana decision later this year.

Attack (from the right): Roberts may be too moderate, and could be another Souter.

Roberts's doesn't have a particularly activist resume one way or the other. A few news organizations picked up on a quote during his confirmation to the D.C. Circuit calling him "a politically well-connected moderate" and "more balanced than Estrada", though there is no real evidence in the materials reviewed to support such a label other than a record relatively devoid of extremism. It appears that this reputation arises more out of personal acquaintances rather than his legal work.

Response: While there is little in Roberts's extensive record that can ensure he is not moderate on certain issues, his decisions demonstrate that he is a fairly conservative judge committed to judicial restraint. Roberts has stated that the Rehnquist Court, which many consider to be conservative leaning, "cannot be considered conservative," a quote that many opponents focused on during his D.C. Circuit confirmation hearing, and which indicates Roberts might be more conservative than his current record indicates. Roberts is also a practicing Catholic.

5. D. C. CIRCUIT PANEL DECISIONS

In general, Roberts's written opinions reflect a pattern of judicial restraint and deference to agencies. The panel decisions in which Roberts participated but did not write the opinion were relatively non-controversial. The following cases are highlighted because they touch on issues of political interest:

Criminal Issues

- United States v. Stanfield, 360 F.3d 1346 (D.C. Cir. 2004). Roberts wrote for a unanimous panel (including Edwards and Garland), upholding various procedural rulings made by the district court in a criminal case. Specifically, the court held that (a) allowing counsel only nine minutes to review several inches worth of Jencks Act material was not an abuse of discretion; (b) limiting defendant's cross of the probation officer to 20 minutes (because that was the length of time on direct) did not violate the right to confront witness; and (c) certain hearsay statements were admissible because, although clearly hearsay, they were sufficiently reliable.

- United States v. Holmes, 385 F.3d 786 (Oct. 19, 2004). Roberts held for a unanimous panel that the search of a passenger compartment of defendant's car did not exceed scope of search incident to his arrest for assaulting an officer during the traffic stop, and affirmed the Judge Kennedy's decision below denying defendant's motion to suppress.

- United States v. Tucker, 2004 WL 2381324 (Oct. 26, 2004). Roberts, writing for a unanimous panel, held that the lower court's substantial downward departure from sentencing guidelines was not warranted on the basis provided by the lower court—that the sentencing guidelines were unjust—and vacated the sentencing decision and remanded the case. The court's position refused to adopt the results-oriented decision by judge Jackson in light of clear Supreme Court authority requiring specific findings for a downward departure.

- United States v. Thomas, 361 F.3d 653 (D.C. Cir. 2004). A unanimous panel (Ginsburg, Garland, Roberts) evaluated two issues regarding the Sentencing Guidelines. The Court held that: (a) escape constitutes a "crime of violence" under the Guidelines; and (b) it was "plain error" for the district court to rely on a defendant's arrest record in denying downward departures. (NOT WRITING)

Civil Issues

(1) Administrative Law

- Sierra Club v. Environmental Protection Agency, 353 F.3d 976 (D.C. Cir. 2004). Roberts wrote for a unanimous panel (including Henderson and Tatel) denying the Sierra Club's petition for review of EPA's regulations concerning certain pollutants released in the process of smelting copper. The opinion is fairly technical, but, in

short, the Court held that EPA's actions were "reasonable," notwithstanding the fact that the regulations were arguably different (and less stringent) than those applied to a different industry.

- Non-deferral cases. Roberts wrote for the panel in two agency cases in which the Court granted petitions for review on the ground that the agency had failed adequately to explain why its decision was consistent with its own precedent. See Lemoyne-Owen College v. NLRB, 357 F.3d 55 (D.C. Cir. 2004) and Ramaprakash v. Federal Aviation Administration, 346 F.3d 1121 (D.C. Cir. 2003).

- Independent Equipment Dealers Association v. EPA, 372 F.3d 420 (June 25, 2004). Roberts wrote for a unanimous panel that the EPA had not engaged in any reviewable action or create new policy when it sent a letter interpreting emissions regulations for nonroad engines. Although opponents could potentially use the decision to demonstrate that Roberts is willing to bow to the administration's wishes on environmental policy, the court appropriately did not frame the issue in terms of defending a new policy, but rather held that the EPA was merely reiterating long-standing policy and had engaged in reviewable final agency action.

- National Council of Resistance of Iran v. Department of State, 373 F.3d 152 (July 9, 2004). Roberts, writing for a unanimous panel, held that an organization's designation as a Foreign Terrorist Organization (FTO) based on determination that it was an alias of another organization designated as an FTO, had substantial support in the record and was consistent with the Anti-Terrorism and Effective Death Penalty Act of 1996.

- Williams Gas Processing – Gulf Coast Company, L.P. v. Federal Energy Regulatory Commission, 373 F.3d 1335 (July 13, 2004). Roberts wrote for a unanimous panel that a decision of FERC regarding gas gathering activities of pipeline company was arbitrary and capricious. Although the decision could be used to show that Roberts supports oil and gas companies over environmental interests, it actually stands for nothing more than the proposition that agencies should be consistent in their application of regulations and not arbitrary in deciding cases. See, e.g., Ramaprakash v. Federal Aviation Administration, 346 F.3d 1121 (Oct. 21, 2003) (Roberts finding that National Transportation Safety Board had failed to explain adequately its departures from its own established precedent in no fewer than three respects); Duchek v. National Transportation Safety Board and Federal Aviation Administration, 364 F.3d 311 (April 20, 2004) (Roberts holding that FAA could not revoke an airman's license based on his failure to respond to notice because a notice from a designated representative was not the equivalent of "direction by the employer"); but see Midwest ISO Transmission Owners v. FERC, 373 F.3d 1361 (July 16, 2004) (Roberts holding for unanimous panel that FERC's orders applying tariff were not arbitrary and capricious). Overall, these cases taken together demonstrate that Roberts expects administrative agencies to apply their own procedures and policies in a fair, reasonable, and consistent manner – a position consistent with a philosophy of judicial restraint.

- PDK Labs. Inc. v. United States Drug Enforcement Admin., 362 F.3d 786 (D.C. Cir. 2004) (concurring opinion). The concurrence here argues for judicial restraint. The majority held that the plaintiff had standing to seek review of DEA's suspension order and then went on to attempt to interpret or clarify the statute authorizing the DEA to forbid importation if "the chemical may be diverted to the clandestine manufacture of a controlled substance." *Id.* at 789 (citing 21 U.S.C. § 971(c)(1)). In his concurring opinion, Roberts chides the majority for going beyond what was necessary to remand the case. He argues that once the standing question was resolved, the case should have been vacated and remanded without further discussion, citing the "cardinal principle of judicial restraint -- if it is not necessary to decide more, it is necessary not to decide more." *Id.* at 799. He further noted that imposing its interpretation on the DEA violated the *Chevron* doctrine, because it did not give the DEA an opportunity to rule on the interpretation issue first.

- S.A. Storer & Sons Co. v. Sec. of Labor, 360 F.3d 1363 (D.C. Cir. 2004). Unanimous panel (Henderson, Tatel, Roberts) vacated and remanded decision by the Secretary of Labor that company had violated OSHA regulations concerning the safety of scaffolding. But, appears to be a "mixed" decision from the labor perspective, because although the Court held that one regulation had been improperly interpreted, the Court also held that the employer had not appropriately protected worker safety in another aspect. (NOT WRITING)

(2) Constitutional/Employment/Other

- Sioux Valley Rural Television, Inc. v. Fed. Communications Comm'n, 349 F.3d 667 (D.C. Cir. 2003). Roberts wrote for a unanimous panel (including Henderson and Tatel) in a reverse-race/sex discrimination case regarding FCC's bidding rules. Petitioners alleged that the FCC's decision to revoke minority- and women-owned business credits, while at the same time extending credits for all successful small businesses, was unfair to non-minority- and non-women-owned businesses. The court rejected the claim, noting that the FCC had no discriminatory intent in adopting the change, and that it was not arbitrary or capricious for the agency to make the new bidding rules retroactive.

- Hedgepeth v. Washington Metropolitan Area Transit Authority, 2004 WL 2381320 (Oct. 26, 2004). Roberts wrote for a unanimous panel, affirming the decision by Judge Sullivan below, that a young girl who was arrested for eating a french fry in rail transit station could not state a claim for violations of her Equal Protection or Fourth Amendment rights, and the court could not inquire into reasonableness of decision to arrest since the District of Columbia's Code specifically prohibited conduct in question and there was probable cause to arrest. While admitting that the result was harsh and acknowledging that the policy was subsequently changed, Roberts's decision reflected judicial restraint, deferring to the police.

- United States ex rel. Totten v. Bombardier Corporation, 380 F. 3d 488 (D. C. Cir. Aug. 27, 2004). This is the only opinion written by Roberts that resulted in a dissent.

The case involved a qui tam action against a contractor under the False Claims Act for allegedly submitting false claims to Amtrak in order to obtain payment for allegedly defective railroad cars. Roberts's panel decision with Judge Rogers determined that a payment to Amtrak was not a payment to the government subject to the False Claims Act. Judge Garland's dissent disagrees with Roberts's literal statutory interpretation. It does not appear that there is a significant basis to attack the opinion, although Sens. Grassley and Leahy may very well question him about it given their strong support for an expansive reading of the False Claims Act.

- Lohrenz v. Donnelly, 350 F.3d 1272 (D.C. Cir. 2003). Unanimous panel (Rogers, Silberman, Roberts) concluded that plaintiff, one of the first female combat pilots in the Navy, was a "public figure" for purposes of establishing defamation under *NYT v. Sullivan*, and that she had failed to prove "actual malice." This arguably could be characterized as an anti-female opinion, since the appellee was an interest group opposed to allowing women to serve in combat positions in the military. (NOT WRITING)

- Warren v. District of Columbia, 353 F.3d 36 (D.C. Cir. 2004). Unanimous panel (Randolph, Williams, Roberts) held that a *pro se* prisoner had stated a § 1983 claim for relief -- based in large part on the fact that "*pro se* prisoner complaints should be 'liberally construed.'" *Id.* at 37. (NOT WRITING)

- In Acree v. Republic of Iraq, Roberts wrote a concurring opinion that argued for the result (which was the dismissal of a case involving American POWs from the 1991 Gulf War who had sued the Republic of Iraq and its president) citing the plain meaning of the governing statute's language rather than a more extended argument adopted by the majority. See Acree v. Republic of Iraq, 370 F. 3d 41 (D. C. Cir. June 4, 2004, reh'g en banc denied Aug. 19, 2004). Roberts's opinion indicates that he has respect for Congress' authority and attempts to be faithful to the express language of a statute wherever possible. (NOT WRITING)

6. SUPREME COURT BRIEFS

- Rust v. Sullivan, 1990 WL 505725 (Sept. 7, 1990). The government's brief here, co-written by Roberts, arguably went beyond what was required by the case's merits to state the broader policy of the administration -- that *Roe v. Wade* was wrongly decided. The most controversial portion of the brief is the following quote:

> Petitioners argue that the Secretary's regulations impermissibly burden the qualified right discerned in *Roe v. Wade*, 410 U.S. 113 (1973), to choose to have an abortion. . . . We continue to believe that Roe was wrongly decided and should be overruled. As more fully explained in our briefs, filed as amicus curiae, in *Hodgson v. Minnesota*, 110 S. Ct. 2926 (1990); *Webster v. Reproductive Health Services*, 109 S. Ct. 3040 (1989); *Thornburgh v. American College of Obstetricians and Gynecologists*, 476 U.S. 747 (1986); and *City of Akron v. Akron Center for Reproductive Health*, 462 U.S. 416 (1983), the Court's conclusions in *Roe* that there is a fundamental right to an abortion and that government has no compelling interest in protecting prenatal human life throughout pregnancy find no support in the text, structure, or history of the Constitution. If *Roe* is overturned, petitioners' contention that the Title X regulations burden the right announced in *Roe* falls with it. But even under *Roe*'s strictures, the Title X regulations at issue do not violate due process. This Court has repeatedly recognized that 'the Due Process Clauses generally confer no affirmative right to governmental aid, even where such aid may be necessary to secure life, liberty, or property interests of which the government itself may not deprive the individual." (citations omitted). Thus, while under *Roe* the government may not prohibit a woman, during the first trimester, from choosing to have an abortion, the government is not obligated to provide the means to exercise any such right. . . . (citations omitted).

  This will be a significant, if not the primary, point of attack on Roberts. Although Roberts, as the principal deputy SG, was a co-author along with several others (Starr as Solicitor General, Gerson as Asst. Attorney General-Civil, and Jeffrey P. Minear, Assistant SG, and others), and did not direct policy for the Dept. of Justice under President George H. W. Bush, this was the focus of much of the opposition to Roberts's nomination to the D.C. Circuit, and will no doubt be the focus again.

- Lujan v. National Wildlife Federation et al., 1990 WL 505743 (April 6, 1990). While in the SG's office, Roberts co-authored the government's brief. As noted in his article defending *Lujan*, Roberts argues that the decision applied established standing jurisprudence—proof of an injury in fact. Roberts frames the issues as "whether a federal court may effectively supply the requisite proof of standing by 'presuming' facts that the parties did not—and perhaps cannot—allege on their own." This will undoubtedly be raised again, both because of its charged environmental background, and because Scalia wrote the opinion for the majority adopting Roberts's argument.

The media and Congressional opposition will likely cite this as an example of Roberts being "another Scalia" and will use it to show that he is somehow anti-environment.

- EEOC v. Arabian American Oil Co., 1990 WL 511330 (Nov. 15, 1990). Roberts's brief for the government argued the Title VII prohibits employment discrimination outside the United States by an American corporation against an American citizen working abroad. This brief might be useful in deflecting criticism of Roberts's record on civil rights claims.

- Burns v. United States, 1990 WL 505508 (Sept. 12, 1990). Roberts argued here that Due Process does not require a district court to notify a defendant in advance of its intent to depart upward in the sentence prescribed by the Sentencing Guidelines. This brief might be used in support of criticism of Roberts's civil rights record and perceived hostility to "due process." Because the case relates to procedural, rather than substantive, due process rights, however, the case should raise few problems.

- Houston Lawyers Ass'n v. The Attorney General of Texas v. League of United Latin American Citizens, 1991 WL 11007899 (March 4, 1991). Roberts argued in favor of applying the "results" test of the Voting Rights Act to the election of state court judges and to the election of offices that can be held by only one person. This case could potentially be used to show that Roberts's represented his government client in an expansive reading of the Voting Rights Act.

- United States v. Mabus, 1991 WL 527603. Roberts also represented the government, arguing that Mississippi continued to propagate a "dual system" of racially segregated public universities in violation of the Equal Protection Clause and the 1964 Civil Rights Act. As previously discussed, this brief can be used to rebut claims that he is anti-civil rights.

- Astoria Fed. Savings & Loan Ass'n v. Solimino, 1991 WL 11007849. Roberts was on the amicus brief filed on behalf of the U.S. and the E.E.O.C. The question presented was whether, in a federal court proceeding under the ADEA, state agency findings of fact that have not been judicially reviewed have preclusive effect. The brief argues that while state agency findings should be accorded substantial weight, they should not have preclusive effect.

- United States and FCC v. Edge Broadcasting Company, 1993 WL 289152. Respondent radio/licensee mounted an attack on Congress' power to regulate the advertisement of state lotteries over radio airwaves. The brief argued in support of Congress' power to regulate gambling and that there was no First Amendment violation with the regulation of this commercial speech.

- United States v. A Parcel of Land, Buildings, Appurtenances . . . 92 Buena Vista Ave., Rumson NJ, 1993 WL 445385. Brief argues in support of a tough approach to the enforcement of a civil forfeiture statute for property purchased with the proceeds from a drug transaction(s). The government's position was that even when a person

(here, a girlfriend) receives a gift of money derived from drug sales and purchases property with that gift, that person cannot assert a valid "innocent owner" defense.

- Jerome B. Grubardt, Inc. v. Great Lakes Dredge & Dock Company, 1994 WL 249174. Roberts represented the Respondent. This suit concerned the unique application of admiralty principles in federal court. It is unlikely that an admiralty dispute will be used by any person to support or challenge a nomination.

- First Options of Chicago, Inc. v. Kaplan, et al., 1995 WL 71517. Roberts represented Respondent Kaplan. Roberts argued that the question of whether parties agreed to arbitrate is a question for the courts, not arbitrators, under the Federal Arbitration Act. Generally, a pro-business approach is one that would argue for the arbitrators, not the courts, deciding the scope of the arbitration clause. Here, however, he was merely representing his particular client's interests.

- International Union, et al. v. Bagwell, Clinchfield Coal Co., et al., 1993 WL 417634 Roberts represented the Respondent coal companies against the unions -- seeking to uphold the state court's method for sanctioning the unions' violent activities against, among other arguments, due process clause considerations. There is a pattern of defending corporate interests against labor that opponents may seek to use against him. One would suspect, however, that if the unions had merely hired him, he would have argued the other way.

- Digital Equipment Corp. v. Desktop Direct, Inc., 1993 WL 657281. Roberts represented Petitioner in this case dealing with federal appellate jurisdiction. The arguments were confined to the scope of the "collateral order" doctrine for interlocutory appeals.

- Holly Farms, Tyson Foods, Inc. v. NLRB, 1995 WL 756167. Roberts represented Amicus Curiae National Broiler Council in supporting Petitioners. This brief merely argued statutory interpretation principles regarding the National Labor Relations Act in a way more favorable to the chicken industry.

- Brown v. Pro Football, Inc., d/b/a Washington Redskins, et al., 1996 WL 72349 (AMICUS). Roberts represented Amicus Curiae Associated General Contractors of America, Inc. supporting Respondents. This amicus brief supports not imposing antitrust liability on the multi-employer bargaining process in dealing with collective bargaining agreements. The amicus comments on the effect on industries, other than football, if the court accepted the labor position. This is one of many briefs taking a position in opposition to that advocated by Big Labor.

- Medtronic Inc. v. Lora Lohr and Michael Lohr, 1996 WL 109618 (AMICUS). Roberts represented Amicus Curiae Center for Patient Advocacy and the Calif. Health Care Institute in support of Petitioner-Cross Respondent. This amicus brief supported the position that the Medical Device Act, created by Congress to promote the development of medical devices, preempts state common law product liability claims

against manufacturers of FDA-cleared devices. Roberts argued in support of broad federal preemption, calling the state's product liability laws a "liability tax" imposing a "societal toll."

- State of California, et al v. Dillingham Construction, Inc. et al., 1996 WL 335322 (AMICUS). Roberts represented Amicus Curaie Associated General Contractors of America, San Diego Chapter, Inc. and other general contractor associations. The general contractors challenged excessive state regulation of their apprenticeship training programs. The amici essentially argued for federal preemption via ERISA.

- Glickman, Sec'ty of Agriculture v. Wileman Bros. & Elliot, Inc., 1996 WL 419702 (AMICUS). Roberts represented Amicus Curaie National Assoc. of State Depts. of Agriculture, The National Milk Producers Federation, and the National Cattlemen's Beef Assoc. in supporting the Petitioner. Glickman involved a First Amendment attack by certain fruit handlers against the marketing orders issued by the Sec. of Agriculture requiring the fruit handlers to pay a user fee for a government program designed to increase sales of several types of fruit. Roberts's brief added an argument in support of the Secretary that the speech at issue was "government speech" and not private speech at all.

- Adams et al. v. Robertson and Liberty National Life Insurance Company, 1996 WL 798905. Roberts represented Respondent Liberty National Life Insurance Co. Roberts argued against allowing every class member an absolute right to opt out of a state law class action and proceed with their own lawsuit. The case involved a pattern of company-wide misconduct by Liberty Life. Roberts argued for a strong concept of a class action in a manner that benefits and provides certainty to defendants. Roberts also argued that the Court lacked jurisdiction because at no point did the Alabama Supreme Court address any constitutional arguments made by the petitioners.

- Jefferson v. City of Tarrant, Alabama, 1997 WL 401190. Roberts represented the Respondent City of Tarrant, Alabama. This case concerned the interplay of Section 1983 and the Alabama Wrongful Death Act in determining the recovery by the decedent's estate. The brief argues against crafting some federal common law to replace state law on remedies for the deceased or the survivors. These arguments are entirely consistent with a federalism-based approach to tort law.

- National Credit Union Admin. and AT&T Family Credit Union et al. v. First National Bank and Trust Co, 1997 WL 245673. Roberts represented the Petitioners AT&T Family Credit Union and Credit Union National Association, Inc. This case concerned the application of the Administrative Procedure Act and the propriety of an agency decision.

- State of Alaska v. Native Village of Venetie Tribal Government et al., 1997 WL 523883. Roberts represented the Petitioner State of Alaska. This brief simply asks the Court to overturn an absurd decision by the Ninth Circuit, which held that some 1.8 million acres of land in North Central Alaska constituted "Indian Country."

- Feltner v. Columbia Pictures Television, Inc., 1997 WL 710933. Roberts represented the Petitioner Elvin Feltner. The brief argues for a jury trial in actions for statutory damages under the copyright infringement statute, 17 USC 504(c). Roberts also asserted an argument that the 7th Am. guaranteed the right to a jury trial. At the time, there was a circuit split on these issues, especially on a finding of "willful infringement" where the fine increases substantially. The positions argued and the method for reaching the desired result appear consistent with tenets of judicial restraint.

- Eastern Enterprises v. Appel, Commissioner of Social Security, 1998 WL 42890. Roberts represented Amicus Curaie, Ohio Valley Coal Company and Maple Creek Mining, Inc. in support of Respondent Commissioner of Social Security. Roberts's brief here raises arguments on behalf of medium and small-sized coal mining companies who supported the constitutionality of the "Coal Act." Roberts's clients entered into "me too" agreements that bound them to labor agreements cut by the larger coal mining companies. The Coal Act significantly reduced what these coal mining companies had to pay for retiree health benefits. He argued that the act survived rational basis review for regulation of commerce.

- NCAA v. Smith, 1998 WL 784591. Roberts represented the Petitioner NCAA. Roberts argued against extending Title IX to a private organization not receiving federal financial assistance itself but having member organizations that do receive federal funding (universities). This position is clearly conservative but subject to attack by women's' groups on policy grounds.

7. JOURNAL ARTICLES

- **"Article III Limits on Statutory Standing" (Response to Critics in Defense of *Lujan* Decision), 42 Duke Law Journal 1219 (April 1993).** As Principal Deputy Solicitor General, U.S. Dept. of Justice from 1989 – 1993, Roberts had acted as lead counsel for the United States in *Lujan v. National Wildlife Federation*, 497 U.S. 871 (1990). In this article, resulting from a symposium on *Lujan* at Duke Law School, Roberts offers a defense against Professors Nichol and Pierce and in support of Justice Scalia's decision for the majority in a sister case, *Lujan v. Defenders of Wildlife*, 112 S.Ct. 2130 (1992), in which the Court held that the plaintiffs in the case lacked standing to sue under the Endangered Species Act because they had failed to prove an injury in fact. Rather than being the "transformation of the law of standing" that its opponents describe, Roberts sees the *Defenders* decision as an "exercise of judicial restraint, soundly based on precedent." Environmental lobbies will undoubtedly argue that this decision was an attack on citizens' ability to protect the environment. The decision is easily defended, correctly, as an example of judicial restraint, and because of the weak case the plaintiffs brought in the case, the environmental issue is not likely to catch the public at large's attention. However, the overall political effect of Roberts's role in this decision combined with others is more likely to be a characterization of Roberts as a defender of Scalia and anti-environment.

- **"The 1992-93 Supreme Court" (Review of 1992-93 Term as part of Symposium: Do We Have a Conservative Supreme Court?), 1994 Public Interest Law Review 107 (1994).** Roberts reports on the decisions of the 1992-93 Supreme Court Term with a largely neutral tone, but does argue that the 1992-93 term, like its two preceding terms, "belied the popular myth that the current Court is politically conservative" or "pro-government." While most of the article simply states holdings in a reportorial tone, a couple of statements provide subjective commentary and could draw attention. First, in one passage, Roberts notes that many of the Court's decisions are "of scant interest to anyone beyond the parties," and cites examples including an esoteric question of tax law, a question of entitlement to post-petition interest, and whether a lake in Nebraska shared a priority date that would subject it to Bureau of Reclamation diversion and storage practices. He concludes the passage by stating, "Such is the daily grind of the Court, cases as to which, in Justice Brandeis's words, 'it is more important that the applicable rule of law be settled than that it be settled right.'" While the passage is both harmless and an astute observation, it could possibly be unfairly twisted by an opponent to support the view that Roberts either finds environmental issues not worth caring about, or that he is more concerned with certainty in the law than a case being decided correctly. Second, a few paragraphs later, Roberts cites Justice White, newly retired at the time of writing, as "plainly the strongest advocate of congressional power on the Court, the Justice least likely to find an impediment to upholding what he perceived to be the considered judgment of Congress. In this regard, at least, [Justice White] has been aptly characterized as one of the last of the New Deal liberals by commentators writing on his departure." This quote could be used to support the contention leveled at Roberts during his

confirmation to the D.C. Circuit that he has since law school held strong opinions that Congress' powers under the Commerce Clause should be curtailed. Again, this would put him squarely in line with Scalia's jurisprudence.

8. SELECTED PRESS

- Articles on Potential Supreme Court Nominees

  - New York Times, May 1, 2005. "The outsiders most frequently mentioned on Mr. Bush's short list for chief justice and associate justice are all federal appellate judges: Samuel Alito Jr. of New Jersey; Emilio Garza of Texas; J. Michael Luttig of Virginia; Michael McConnell of Colorado; John Roberts of Washington D.C.; and J. Harvie Wilkinson III, also of Virginia. All are as conservative as Justice Rehnquist, or slightly to his right. None would substantially alter the balance of the Court."

  - Legal Times, Feb. 22, 2005. "By contrast, Roberts, with 20 months on the D.C. Circuit, has few opinions or other writings that have attracted enemies. As a result, some conservatives have made unflattering comparisons between Roberts and Supreme Court Justice David Souter, whose short stint on the 1st Circuit before being appointed in 1990 by President George H.W. Bush failed to reveal Souter's moderate-to-liberal leanings on some issues. Yet those who know Roberts say he, unlike Souter, is a reliable conservative who can be counted on to undermine if not immediately overturn liberal landmarks like abortion rights and affirmative action. Indicators of his true stripes cited by friends include: clerking for Rehnquist, membership in the Federalist Society, laboring in the Ronald Reagan White House counsel's office and at the Justice Department into the Bush years, working with Kenneth Starr among others, and even his lunchtime conversations at Hogan & Hartson. "He is as conservative as you can get," one friend puts it. In short, Roberts may combine the stealth appeal of Souter with the unwavering ideology of Scalia and Thomas."

  - Opinion Journal, Nov. 15, 2004. "Two men mentioned for chief justice are J. Harvie Wilkinson and John Roberts. Both have the intellectual firepower, writing skills and temperament for the job; both are well-respected in liberal legal circles. 'They are to the right what Justice (Stephen) Breyer and Justice (Ruth Bader) Ginsburg are to the left,' says a source close to the White House. Judge Roberts was confirmed unanimously to the appeals bench last year."

  - Yahoo News, Jan. 20, 2005. "The third, Judge John Roberts Jr., 49, was confirmed in 2003 for the U.S. Court of Appeals for the D.C. Circuit. He is thought of as one of the best lawyers ever to argue before the Supreme Court, but less is known publicly about his views. Associates of Roberts, who clerked for Rehnquist, vow that he is a strong and principled conservative. But some acknowledge that the conservative base could be reluctant to support him enthusiastically because of promises made during the nomination of Justice David Souter."

- Nomination to D.C. Circuit, May 10, 2001. Upon nomination to the D.C. Circuit, coverage was generally very favorable, comparing Roberts to Miguel Estrada and

finding him to be, variously, "more balanced [than Estrada]", "a popular member of the bar," "a politically well-connected moderate," and "one of the two or three most effective lawyers [arguing before the Supreme Court]. See The Star Ledger, May 10, 2001; National Journal, May 19, 2001. Articles also noted that Roberts filed a brief opposing affirmative action in the Adarand case, and served on the National Legal Center for Public Interest's Legal Advisory Council with Kenneth Starr, C. Boyden Gray, and Eugene Meyer of the Federalist Society.

- Microsoft Litigation. There was significant coverage of Roberts's argument on behalf of 18 states against Microsoft in the antitrust litigation. Frequent references to his being "hammered" particularly hard by D.C. Circuit judges about his argument that District Judge Thomas Penfield Jackson's comments to the press did not constitute evidence of bias sufficient to throw out the district court's findings of fact. Also, one article referenced Roberts's argument that Microsoft's inclusion of Internet Explorer with the Windows operating system constituted an illegal tying arrangement.

- Several left-wing extremist groups objected to Roberts and will likely do so again. Objections came from NARAL based on his authorship of briefs in (a) Rust v. Sullivan, in which he stated that the Supreme Court's conclusion in Roe v. Wade that there is a fundamental right to abortion "finds no support in the text, structure, or history of the Constitution"; and (b) Bray v. Alexandria Women's Health Clinic, in which he argued (as amicus) that anti-abortion protestors' behavior did not constitute gender-based discrimination. Objections from labor groups came from Roberts' involvement in Toyota Motor Mfg. v. Williams, in which Roberts argued that an employee's carpal tunnel syndrome did not qualify her for protection under the ADA.

- Nomination to D.C. Circuit (during the 2002 session controlled by Democrats). The news stories here were principally editorials discussing the politics of stalling the President's nominees. One Washington Post editorial from April 2002 noted that Roberts had argued on behalf of environmentalists fighting development around Lake Tahoe. (Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency). The Supreme Court sided with Robert's client but Rehnquist, Scalia and Thomas dissented. (A conservative editorial in the National Law Journal attacked Roberts and the Bush Administration for siding with the environmentalist interest over the interest of the landowners -- a property rights v. regulatory rights situation) Stuart Taylor of the National Journal also wrote an excellent article lambasting Leahy's Senate Judiciary Committee for holding up Roberts's nomination. The article describes Roberts as well-liked on both sides of the aisle, especially by President Clinton's former solicitor general. Taylor went on to comment that "John Roberts seems a good bet to be the kind of judge we should all want to have - all of us, that is, who are looking less for congenial ideologues than for professionals committed to impartial application of the law."

- Nomination to D.C. Circuit (post-November 2002 elections). These articles can be broken down into: (a) immediate post-election analysis and (b) reporting on the

President's re-nomination of the stalled nominees. None of the articles focuses on Roberts other than mentioning him among the group of nominees that the Democrats had previously held up. One Washington Post article, dated November 7, 2002, mentioned Roberts and Estrada, describing them as "both conservative Washington lawyers." In a Washington Times article, the liberal group People for the American Way was quoted urging Democrats to use the filibuster to oppose the President's nominees. One Washington Post editorial and article argued that the DC Circuit no longer needed 12 judges given the diminished work load and that it may be that neither Roberts or Estrada should be confirmed on that basis. A January 2003 article in the Washington Post merely discusses the President's nomination of Roberts and others. Roberts nomination was one of the first considered at the Senate Judiciary Committee's first hearing of the year, along with Cook and Sutton for the Sixth Circuit. The Democrats applied much more scrutiny to Jeffrey Sutton than Roberts, although the article did provide that "many committee Democrats regard Roberts and Cook as conservatives who would tilt the courts too far to the right." (Wash. Post Jan. 30, 2003)

- Articles on Supreme Court arguments:

  - HMO Case. Several articles concern Roberts' oral argument in Rush Prudential v. Moran, in which Roberts argued (on preemption grounds) to overturn an Illinois law giving patients a right to appeal to an independent doctor when an HMO denies benefits.

  - Gonzaga University v. Doe. Roberts argued on behalf of the University in the Washington State Supreme Court. The school had disclosed to police the name and education records of an alleged stalker who was a student, and the student claimed a violation of the (federal) Family Educational Rights and Privacy Act. During the time frame of the articles, the U.S. Supreme Court had granted cert but had not heard the case.

  - ADA Case. In Toyota Motor Mfg. v. Williams, Roberts argued that an employee's carpal tunnel syndrome did not qualify her for protection under the ADA. Other press reports noted that this case was cited by Unions and other pro-labor organizations in connection with Roberts' nomination to the D.C. court.

  - Megan's Law: Roberts represented the State of Alaska in defending the constitutionality of Alaska's sex offender registry law. Roberts argued that the states should have considerable latitude in keeping the public at large informed of former sex offenders in their neighborhoods. The Bush Administration supported Alaska (and Connecticut in a similar consolidated case). Robert's was quoted as saying "It (the Megan's law) is different from the historic shaming penalties because of the purpose . . . The purpose is to inform." Scalia appeared to support Robert's position at oral argument.