

Roberts Resisted Women's Rights 1982-86 Memos Detail Skepticism

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Supreme Court nominee John G. Roberts Jr. consistently opposed legal and legislative attempts to strengthen women's rights during his years as a legal adviser in the Reagan White House, disparaging what he called "the purported gender gap" and, at one point, questioning "whether encouraging homemakers to become lawyers contributes to the common good."

In internal memos, Roberts urged President Ronald Reagan to refrain from embracing any form of the proposed Equal Rights Amendment pending in Congress; he concluded that some state initiatives to curb workplace discrimination against women relied on legal tools that were "highly objectionable"; and he said that a controversial legal theory then in vogue — of directing employers to pay women the same as men for jobs of "comparable worth" — was "staggeringly pernicious" and "anti-capitalist."

Roberts's thoughts on what he called "perceived problems" of gender bias are contained in a vast batch of documents, released yesterday, that provide the clearest, most detailed mosaic so far of his political views on dozens of social and legal issues. Senators have said they plan to mine his past views on such topics, which could come before the high court, when his confirmation hearings begin the day after Labor Day.

Covering a period from 1982 to 1986 — during his tenure as associate counsel to Reagan — the memos, letters and other writings show that Roberts endorsed a speech attacking "four decades of misguided" Supreme Court decisions on the role of religion in public life, urged the president to hold off saying AIDS could not be transmitted through casual contact until more research was done, and argued that promotions and firings in the workplace should be based entirely on merit, not affirmative action programs.

In October 1983, Roberts said that he favored the creation of a national identity card to prove American citizenship, even though the White House counsel's office was officially opposed to the idea. He wrote that such measures were needed in response to the "real threat to our social fabric posed by uncontrolled immigration."

He also, the documents illustrate, played a bit role in the Reagan administration's efforts in Nicaragua to funnel assistance to CIA-supported "contras" who were trying overthrow the Marxist Sandinista government.

In one instance, Roberts had a direct disagreement with the senator who now wields great influence over his confirmation prospects, Senate Judiciary Committee Chairman Arlen Specter (R-Pa.). In a 1983 memo, Roberts was dismissive of a "white paper" on violent crime that had been drafted by one of Specter's aides. Noting that the paper proposed new expenditures of \$8 billion to \$10 billion a year, Roberts wrote: "The proposals are the epitome of the 'throw the money at the problem' approach repeatedly rejected by Administration spokesmen."

President Bush nominated Roberts, now a judge on the U.S. Court of Appeals for the District of Columbia Circuit, four weeks ago.

Yesterday's deluge of more than 38,000 pages of documents has particular political significance — because of their content and their timing. The papers, held in the Ronald Reagan Presidential Library in California, are likely to be the last major set of written material from Roberts's past to become public before his confirmation hearings.

Senate Democrats have been pressing the Bush administration to release Roberts's files from the highest-ranking position he has held in the executive branch, as the Justice Department's deputy solicitor general from 1989 to 1993 under President George H.W. Bush. But administration officials have asserted that those records should remain private on the grounds of attorney-client privilege.

Previously released documents, from slightly earlier in the Reagan era, when Roberts was a special assistant to Attorney General William French Smith, have established that the young lawyer was immersed in the civil rights issues of the time, including school desegregation, voting rights and bias in hiring and housing. The new batch provides the most extensive insight into Roberts's views of efforts to expand opportunity for women in the workplace and in higher education.

His remark on whether homemakers should become lawyers came in 1985 in reply to a suggestion from Linda Chavez, then the White House's director of public liaison. Chavez had proposed entering her deputy, Linda Arey, in a contest sponsored by the Clairol shampoo company to honor women who had changed their lives after age 30. Arey had been a schoolteacher who decided to change careers and went to law school.

In a July 31, 1985, memo, Roberts noted that, as an assistant dean at the University of Richmond law school before she joined the Reagan administration, Arey had "encouraged many former homemakers to enter law school and become lawyers." Roberts said in his memo that he saw no legal objection to her taking part in the Clairol contest. Then he added a personal aside: "Some might question whether encouraging homemakers to become lawyers contributes to the common good, but I suppose that is for the judges to decide."

After the White House, Arey went on to run for Congress, serve on presidential advisory committees, work as an attorney at a major law firm in the West, serve as vice president for congressional relations for a Washington lobbying firm, and was eventually appointed in 2002 as a senior associate commissioner of the Food and Drug Administration. She has retired.

Roberts's comment about homemakers startled women across the ideological spectrum. Phyllis Schlafly, the president of the conservative Eagle Forum who entered law school when she was 51, said, "It kind of sounds like a smart alecky comment." She noted that Roberts was "a young bachelor and hadn't seen a whole lot of life at that point."

Schlafly said, "I knew Lyn Arey. She is a fine woman." But she added, "I don't think that disqualifies him. I think he got married to a feminist; he's learned a lot."

Kim Gandy, president of the liberal National Organization for Women, which already has opposed Roberts, reacted more harshly. "Oh. Wow. Good heavens," she said. "I find it quite shocking that a young lawyer, as he was at the time, had such Neanderthal ideas about women's place."

For its part, the White House defended its nominee. "It's pretty clear from the more than 60,000 pages of documents that have been released that John Roberts has a great sense of humor," said Steve Schmidt, a spokesman for Bush. "In this memo, he offers a lawyer joke."

On other matters involving women's rights, Roberts in 1983 criticized a report that lauded strides by states to combat sex discrimination in the workplace, that had been endorsed by then-Transportation Secretary Elizabeth Dole. In a Jan. 17 memo to his boss, White House counsel Fred F. Fielding, Roberts wrote that "many of the reported proposals and efforts are themselves highly objectionable." Roberts singled out three ideas for particular criticism: what he characterized as a California requirement that employers take into account affirmative action, in addition to seniority, when laying off workers; another California proposal to require women to be paid the same as men for state jobs considered of comparable worth; and a Florida proposal to charge women lower tuition than men at state colleges because their earning power was less.

He wrote that it was "imperative that the report make clear . . . that the inventory is just that and that proposals appearing in it are not necessarily supported by the administration."

In a Sept. 30, 1983, memo, regarding an upcoming presidential interview with a newspaper, Spanish Today, Roberts suggested that the president, in answer to a potential question concerning illegal immigrants, note that proposed immigration reform legislation would allow some immigrants to be legalized.

"I think this audience would be pleased that we are trying to grant legal status to their illegal amigos," Roberts wrote.

In a January 1982 memo he wrote about legislation that he said would "heap benefits" on the Texas Band of Kickapoo Indians. Explaining their history, Roberts wrote, "The Kickapoos, originally from the Great Lakes area, did not stop running from their encounter with Europeans until they reached Mexico, where they now hold 17,000 acres of land" and "provide migrant labor in the U.S." Roberts said he had no legal objections to the bill, which he said was consistent with administration policy, but added that its "provisions seem overly generous — particularly in light of the fact that these are, generally speaking, Mexican Indians and not American Indians."

At one point in 1986, he railed against a draft review of a book by Harvard Law professor Laurence H. Tribe in George Washington University's law review. He said the review, by an associate law professor at the University of Toledo, was "trite, sophomoric pabulum" and contained "shallow and unconvincing" criticism of Chief Justice William H. Rehnquist — for whom Roberts had clerked — "calculated to endear the author to liberal academia."

In another instance in which he made his own political frame of reference clear, Roberts gave his advice on proposed rules that would prohibit recipients of federal grants or contracts from using that money for lobbying or other forms of political advocacy. Liberal groups that received such money were complaining that the rules were intended to harm them. Roberts, in a February 1983 memo, agreed that the proposals were too broad, but worried more about the hit that government contractors would take. "It is possible to 'defund the left' without alienating [defense contractors] TRW and Boeing, but the proposals, if enacted, would do both," Roberts opined.

In a memo to Fielding dated May 7, 1985, Roberts addressed the ethics of allowing a Falls Church Girl Scout to meet the president in the midst of the annual cookie drive. "Elizabeth . . . has sold some 10,000 boxes and would like to sell one to the President. The little huckster thinks the President would like the Samoas," he wrote, before concluding that he had no objection to deviating in this case from the White House's practice of avoiding "an implied endorsement" by the president.

On matters of religion, Roberts was sympathetic to an expansion of its role in public life. Roberts wrote in 1984 that he found "sound and in my view compelling arguments" in favor of "equal access" legislation to require schools to accord student religious groups the same rights of assembly as other organizations.

That same year, he was asked to review a draft speech to be given by then-Education Secretary William J. Bennett to the Knights of Columbus, a Catholic men's organization. Other White House officials had said the speech was too

divisive, as it criticized Supreme Court rulings that had blocked the posting of the Ten Commandments in public schools and prohibited public school teachers from giving remedial classes at parochial schools. "Bennett's point is that such decisions betray a hostility to religion not demanded by the constitution," Roberts said. "I have no quarrel with Bennett on the merits."