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POLITICS AND POLICY

Files Detail Roberts's Reagan Years

By JESS BRAVIN and JEANNE CUMMINGS
Staff Reporters of THE WALL STREET JOURNAL
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WASHINGTON -- As a lawyer in the Reagan White House, Supreme Court nominee John G. Roberts Jr. criticized a 1985 ruling striking down an Alabama school prayer law...

Both stances were included among more than 5,000 pages of files released in connection with President Bush's nomination of Judge Roberts...



John Roberts

The newly released files, from Judge Roberts's time as an associate White House counsel, concerned issues ranging from abortion to the Geneva Conventions...

Senate confirmation hearings are slated to begin after Labor Day, and the Bush administration has pledged to release by Aug. 22 more than 50,000 pages of Judge Roberts's records...

The correspondence on school prayer involved an Alabama law requiring a one-minute silent period in classrooms for "meditation or voluntary prayer."

Besides offering "no objection" to the Reagan administration's support for a constitutional amendment on school prayer, Judge Roberts wrote that the Justice Department had wrongly concluded Congress had no power to strip the Supreme Court of jurisdiction over school-prayer cases.

In a memorandum to his boss, White House Counsel Fred Fielding, Judge Roberts wrote that the court's conclusion that the Constitution bars "a moment of silent reflection -- or even silent 'prayer' -- seems indefensible."

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reasonable "accommodation" of religion.

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[See documents](#) relating to John G. Roberts at the National Archives.



In a February 1983 memo, Judge Roberts dismissed as "a terrible idea" Chief Justice Warren Burger's proposal to lighten the Supreme Court's workload by creating a new

court between the justices and the circuit courts. Instead, he suggested the Supreme Court grant fewer petitions by criminal defendants, in particular by narrowing the scope of the Fourth Amendment's prohibition of unreasonable searches and seizures and rejecting appeals by condemned inmates.

"So long as the court views itself as ultimately responsible for governing all aspects of our society, it will, understandably, be overworked," he wrote.

Elsewhere, Judge Roberts criticized the concept of "comparable worth," which sought to raise pay for jobs predominately held by women but historically lower-paying than male-dominated jobs. Women plaintiffs recently had won a district court opinion that, under the 1964 Civil Rights Act, required equalization of pay between a company's truck drivers and laundry workers.

"It is difficult to exaggerate the perniciousness of the 'comparable worth' theory. It mandates nothing less than central planning of the economy by judges," he wrote in a February 1984 memo to Mr. Fielding. He later dismissed a letter supporting the plaintiffs from three women Republican lawmakers -- including Olympia Snowe, now a senator from Maine. "Their slogan may as well be 'From each according to his ability, to each according to her gender,'" he wrote.

Judge Roberts also signaled his deference to the military. In a May 1985 memorandum, Judge Roberts wrote that the Defense Department's "military concerns" should prevail "over the diplomatic objectives" of the State Department, and thus opposed the 1977 protocols that would update the 1949 Geneva Conventions. The "main objection," he wrote, is that the protocols "would treat many terrorist organizations as if they were countries engaged in war, legitimizing their activities and offering them protections and courtesies that should not be extended to common criminals."

While the documents provide glimpses of Judge Roberts's views, they tend to focus on details rather than larger social and political questions. Judge Roberts's habit of withholding his own opinions, a pattern that has blunted Democratic attacks today, may well be tied to a 1985 nomination clash with Congress that revolved around lawmakers' access to White House records.

That year, two Reagan nominees were blocked after Senate Democrats obtained internal memos. Warning of the "pernicious effect" of a statute that enabled access to White House records, Judge Robert concluded, "by 2001, Hill staffers need only go to the Reagan Library to see any internal White House deliberative document they want" -- precisely what is happening in Judge Roberts's nomination. In 2001, President Bush signed an executive order that significantly tightened White House control over archival documents.

Judge Roberts also weighed in on a matter of continuing public interest: Michael Jackson. In memos issued under Mr. Fielding's signature, Judge Roberts urged Mr. Reagan to ignore the pop star's invitation to his Washington concert. Even sending a congratulatory letter could offend fans of other performers, he cautioned: "Why, for example, was no letter sent to Mr. Bruce Springsteen, whose patriotic tour recently visited the area?"

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