

A Closer Look: Judicial Selection

An examination of recent nomination battles highlights the interplay of party, race, gender, ideology, and judicial philosophy in the process of selecting and confirming a Supreme Court justice.

The Bork Battle

When Justice Lewis F. Powell, Jr., who cast the pivotal vote on such critical issues as affirmative action and abortion, announced his retirement as he neared 80 years of age at the end of the term in July 1987, President Reagan quickly nominated Judge Robert Bork, a member of the Court of Appeals for the District of Columbia and a noted jurist and legal scholar. Despite Bork's controversial writings on many current constitutional issues, his scholarly and legal qualifications made it appear initially that he would be confirmed. However, his nomination so offended women's and black organizations that they organized a campaign to block Bork's confirmation. After almost four months of national debate, 12 days of acrimonious questioning by the members of the Senate Judiciary Committee, and 23 hours of debate on the Senate floor, the Senate voted 58 to 42 against Bork's confirmation.



The Souter Solution

The political bruises resulting from the Bork confirmation proceedings were traumatic. Political pundits speculated that in the future, presidents would seek noncontroversial candidates for the Supreme Court. This prediction came true in 1990 with George Bush's nominee to replace William J. Brennan, Jr., leader of the liberal bloc on the Supreme Court. President Bush chose David Souter, a member of the New Hampshire Supreme Court. Educated at Harvard and Oxford, he had written no law articles, made practically no speeches, and lived the secluded life of a sitting judge. When he appeared before the Judiciary Committee, Souter steadfastly refused to answer any questions that might reveal his orientation on abortion and privacy issues, to the frustration of the Senate Democrats. He was confirmed by an overwhelming vote. He became one of the more liberal judges.



The Thomas Tangle

When Justice Thurgood Marshall retired in 1991, President Bush sent to the Senate the name of a controversial jurist, Judge Clarence Thomas, then sitting on the Court of Appeals for the District of Columbia. Thomas is a conservative African American. Prior to his brief service on the Court of Appeals, he had served as chair of the Equal Employment Opportunity Commission (EEOC) and in the Office of Civil Rights. During five days of grueling questions about his constitutional views, Judge Thomas, as had his predecessor, refused to respond. The Senate Judiciary Committee narrowly recommended his confirmation.



Two days before the Senate was due to vote on his confirmation, documents leaked to the press revealed that a former associate of Judge Thomas, Anita Hill, had accused him of sexually harassing her when she worked for him in the Department of Education and the EEOC. Women's and liberal groups exploded in outrage. There followed three days of dramatic and emotion-charged hearings telecast to the

nation in which Judge Thomas categorically denied the charges presented by his accuser. Panels of witnesses pro and con came forward to testify. Thomas was confirmed by the Senate 52 to 48, one of the closest confirmation votes for a Supreme Court justice.

The Clinton Choices

Almost as soon as President Bill Clinton took office, Justice Byron White announced he would leave the Court at the end of its 1992-93 term. It was clear that with this appointment, Clinton could arrest the Court's conservative drift and fulfill his campaign pledge to appoint justices committed to protect the right of privacy-that is, to preserve a woman's freedom to choose an abortion.

After several months of deliberation, including the embarrassingly public consideration of other candidates, President Clinton nominated Ruth Bader Ginsburg. Judge Ginsburg was a 13-year veteran of the Court of Appeals for the District of Columbia, to which President Carter had appointed her. On the Court of Appeals she had earned a reputation for fairness and moderation. She was readily confirmed by the Senate and took her seat for the opening of the 1993-94 term.



Clinton had a second opportunity when Harry A. Blackmun, at age 85, announced his intention to leave the Court during the spring of 1994. Blackmun, best known for writing the opinion in *Roe v Wade*, was thought at first to be a judicial conservative, but by the time of his retirement, he had become the most liberal member of the Court. President Clinton nominated Stephen G. Breyer, chief judge of the First Circuit, a noncontroversial judicial moderate. Justice Breyer, a graduate of Stanford University, Oxford, and Harvard Law School, served as Supreme Court law clerk for Justice Arthur Goldberg and was a member of the faculty at Harvard Law School before being appointed by President Carter as a federal appeals court judge. After a cordial hearing before the Senate Judiciary Committee in July 1994, Breyer was easily confirmed by the Senate.

