

A Personal Look at the United States Supreme Court

By Spiros Tsimbinos

Introduction

About a year ago, I wrote an article entitled “A Personal Look at the New York Court of Appeals.” The article proved to be quite popular, and was reproduced in several journals. This year, because of several high-profile cases, the members of the United States Supreme Court were thrust into the public spotlight. I therefore thought that it would be interesting and informative to also take a personal look at the members who comprise the Court and who are behind the Court’s decisions. I begin with a look at the Chief Justice and continue with the eight Associate Justices of the Court listed in the order of seniority.

Chief Justice John G. Roberts, Jr.

Chief Justice Roberts was appointed to his present position by President George W. Bush and began his service on the Court on September 29, 2005. With the opening of the October 2012-2013 term he will be commencing his 7th year as Chief Justice. Chief Justice Roberts was born in Buffalo, New York on January 27, 1955 and is now 57 years of age. He is married and has two children. He is a graduate of Harvard College and Harvard Law School. He began his legal career as a law clerk for Judge Henry J. Friendly of the United States Court of Appeals for the Second Circuit and then served as a law clerk for Justice William H. Rehnquist in the United States Supreme Court. He also held numerous positions in the United States Justice Department, and engaged in the private practice of law in Washington, D.C. from 1993 to 2003. Prior to his appointment to the United States Supreme Court, he served in the United States Court of Appeals for the District of Columbia.

During his tenure as Chief Justice, Justice Roberts has made an effort to obtain a greater consensus among the Justices, but the Court has continued to split in a 5-4 manner in many major decisions. Justice Roberts has managed to be on the winning side in most of these 5-4 splits, and during the past term he was in the majority 92% of the time. The Chief Justice is basically considered to be part of the conservative wing of the Court, and he often votes in the same manner as Justice Alito. During the last term, he and Justice Alito voted together slightly more than 90% of the time. During the past term, however, he split off from the conservative group in the highly controversial Obama Healthcare case, as well as in some criminal law matters. Whether he will continue to move toward the position of the more liberal grouping or will return firmly to the conservative bloc is something to watch as the Court begins its new term. In a recent interview reported in *Parade Magazine* of September 30, 2012, Former Supreme Court Justice Sandra Day O’Connor commented upon Chief

Justice Robert’s tenure, and stated “I felt that he made a remarkable effort to try to keep the Court on course, carefully considering and deciding these major issues.” She also indicated that although the health care decision may have angered some conservatives, Justice Roberts’ vote could prove to be good for the Court’s reputation, since it shows that the Court is not acting on political instincts but is trying to resolve bona fide and tough legal issues.

Associate Justice Antonin Scalia

Justice Scalia was appointed to the Supreme Court by President Reagan and he took his seat on the Court on September 26, 1986. He is thus presently the Senior Associate Justice on the Court, having served for 26 years. Justice Scalia was born in Trenton, New Jersey, in 1936 and is now 76 years of age. He is married and has nine children. He is a graduate of Georgetown University and Harvard Law School. Justice Scalia has had a varied career, participating both in private practice, the academic world, and government service. He served as Professor of Law at the University of Virginia and the University of Chicago. His governmental positions include General Counsel of the Office of Telecommunications Policy and Assistant Attorney General for the Office of Legal Counsel. Prior to his appointment to the Supreme Court, he served as a Judge of the United States Court of Appeals for the District of Columbia. Justice Scalia is viewed as being a member of the conservative bloc of the Court, but on certain criminal law issues he has authored decisions which have been favorable to the defense. These include the *Apprendi* line of cases involving sentencing and the *Crawford* ruling involving the right of confrontation. He often votes together with Justice Thomas and they did so more than 90% of the time during the past term. Justice Scalia has written several books, and has been more forthcoming in granting interviews regarding the workings of the Court and his personal viewpoint than other members of the Court.

Associate Justice Anthony M. Kennedy

Justice Kennedy assumed his seat on the Court on February 18, 1988, pursuant to a nomination by President Reagan. He has now been on the Court for 24 years. Justice Kennedy was born in California in 1936, and is presently 76 years of age. He is married and has three children. He is a graduate of Stanford University and Harvard Law School. Prior to his elevation to the United States Supreme Court, he served for many years as a Judge in the United States Court of Appeals for the Ninth Circuit. During his legal career, he also was engaged in the private practice of the law for a period of time, and also served for several years as a Professor of Constitu-

tional Law at the McGeorge School of Law, University of the Pacific.

During the last several years, Justice Kennedy has assumed the role of the critical swing vote, and during the past term he was in the majority 93% of the time. With respect to criminal law matters, Justice Kennedy's critical vote has resulted in significant changes in juvenile sentencing, with the death penalty and mandatory life without parole for juvenile offenders being struck down by the Court as constituting cruel and unusual punishment under the Eighth Amendment. Although initially considered to be part of a conservative grouping, during the past term Justice Kennedy voted 25 times with the liberal wing of the Court, or as often as he did with the conservative group. During the past term, he also voted together with Justice Kagan 83% of the time. His middle position and his influence on the Court make him a key factor on any important case.

Associate Justice Clarence Thomas

Justice Thomas was nominated to serve on the Court by President George H. W. Bush, and he began serving on the Court on October 23, 1991. Thus at the present time he has 21 years of service on the Court. Justice Thomas was born in Georgia in 1948 and is presently 64 years of age. He is married and has one child. He attended Conception Seminary and received an A.B. cum laude from Holy Cross College, and a J.D. from Yale Law School. He served as an Attorney General of Missouri from 1974 to 1977 and as Legislative Assistant to Senator John Danforth from 1979 to 1981. He also served as Chairman of the U.S. Equal Employment Opportunity Commission from 1982 to 1990. Prior to his elevation to the United States Supreme Court, he served as a Judge of the U.S. Court of Appeals for the District of Columbia.

Justice Thomas is viewed as a strong member of the conservative group and often votes together with Justice Scalia. Unlike some of his colleagues, Justice Thomas does not engage in much questioning during oral argument, and prefers to allow the attorneys to make their presentation.

Associate Justice Ruth Bader Ginsburg

Justice Ginsburg was nominated to the Court by President Clinton and began serving on the Court on August 10, 1993. She was the second woman to serve on the Court following Justice Sandra Day O'Connor. Justice Ginsburg was born in Brooklyn, New York in 1933, and is presently 79 years of age. She is married and has two children. She is a graduate of Cornell University and Columbia Law School. She began her legal career by serving as a law clerk to the Honorable Edmund L. Palmieri, Judge of the United States District Court for the Southern District of New York. She also served as Associate Director of the Columbia Law School Project on International

Procedure and was a Professor of Law at both Rutgers University School of Law and Columbia Law School. In 1971, she was instrumental in launching the Women's Rights Project of the American Civil Liberties Union, and served as the ACLU's General Counsel from 1973 to 1980, and on the National Board of Directors from 1974 to 1980. Prior to her appointment to the Supreme Court, she served as a Judge of the United States Court of Appeals for the District of Columbia.

Justice Ginsburg is known as an aggressive questioner during oral argument, and as a leader of the liberal bloc. Although vigorously advancing her position, Justice Ginsburg has often found herself in the minority, and during the last term she was one of the Justices who were in the majority in the least number of cases. During recent years, Justice Ginsburg has experienced some health issues, and although she was able to vigorously return to her duties, there has been some speculation that she may be retiring in the near future.

Associate Justice Stephen G. Breyer

Justice Breyer was born in San Francisco, California in 1938 and is presently 74. He is married and has three children. He is a graduate of Stanford University and Harvard Law School. In the beginning of his legal career, he served as a law clerk to U.S. Supreme Court Justice Arthur Goldberg. He also served in several governmental positions, including the U.S. Attorney's Office, and Special Counsel of the U.S. Senate Judiciary Committee. For several years, he also lectured on legal subjects as a Professor at the Harvard University Kennedy School of Government, and as a Visiting Professor at the College of Law in Sydney, Australia. Before his elevation to the United States Supreme Court, he served for several years as Chief Judge of the United States Court of Appeals for the First Circuit. He was nominated to the Supreme Court by President Clinton, and took his seat on the Court on August 3, 1994. He has currently served on the Court for 18 years.

Justice Breyer is considered to be firmly entrenched in the so-called liberal bloc of the Court, and he often votes together with Justice Ginsburg. Along with Justice Ginsburg, he was in the majority in the least number of cases during the Court's past term.

Associate Justice Samuel Anthony Alito, Jr.

Justice Alito was born in Trenton, New Jersey, in 1950. He is married and has two children. Most of his legal career has been spent in government service, including serving as an Assistant U.S. Attorney in the District of New Jersey, Assistant to the Solicitor General and Deputy Assistant Attorney General in the U.S. Department of Justice. From 1987 to 1990, he served as the U.S. Attorney for the District of New Jersey. Prior to his elevation to the Supreme Court, he had served as a Judge of the United

States Court of Appeals for the Third Circuit. He was nominated to the United States Supreme Court by President George W. Bush, and assumed his seat on the Court on January 31, 2006, and has now served on the Court for six years.

Justice Alito has consistently voted with the conservative bloc of the Court, and is generally viewed as one of its most conservative members. He often votes together with Chief Justice Roberts, and did so over 90% of the time during the Court's last term.

Associate Justice Sonia Sotomayor

Justice Sotomayor was born in New York City, on June 25, 1954, and is now 58 years old. She is a graduate of Princeton University and Yale Law School, where she served as Editor of the *Yale Law Journal*. Early in her legal career, she served as an Assistant District Attorney in the New York County District Attorney's Office. From 1984 to 1992, she was engaged in the private practice of law, primarily dealing with international commercial matters. In 1991, she was appointed to the U.S. District Court for the Southern District of New York and she served on that Court from 1992 to 1998. She was elevated to the United States Court of Appeals for the Second Circuit in 1998, and served on that Court until 2009. In May of 2009, President Barack Obama nominated her as an Associate Justice of the Supreme Court, and she assumed her seat on the Court on August 8, 2009. She is now in her third year of service on the Court.

Although it was initially expected by some observers, due to her prosecutorial background and her record on the U.S. Court of Appeals, that Justice Sotomayor would occupy a middle position on the Court, somewhere between the conservative and liberal groupings, her voting record, since she has served on the Court, reveals that she is firmly included in the liberal voting bloc. She has basically sided with the defense on several major criminal law cases, and usually votes together with Justices Ginsburg and Breyer.

Associate Justice Elena Kagan

Justice Kagan, the newest member of the Court, was also born in New York City. She was born on April 28, 1960 and is presently 53 years of age. She is a graduate of Princeton University and Harvard Law School. At Harvard, she served as the Supervising Editor of the *Harvard Law Review*. Justice Kagan has also had an extensive career in government service. She served as a law clerk to Supreme Court Justice Thurgood Marshall, and from 1995 to 1999 she was Associate Counsel to President Clinton, and also served as the Deputy Assistant to the President for Domestic Policy and Deputy Director of the Domestic Policy Council. When President Obama was elected, he appointed her as Solicitor General of the United States,

and she served in that capacity until her elevation to the United States Supreme Court.

Justice Kagan also spent two years in the private practice of law as an associate in a Washington, D.C. law firm. She also has extensive teaching experience, having served as an Assistant Professor at the University of Chicago Law school and as a Professor of Law at Harvard Law School. She was nominated to serve on the U.S. Supreme Court by President Obama, and she joined the Court on April 7, 2010. She is now on her second year of service on the Court. Because of her service as Solicitor General, Justice Kagan had to recuse herself on many matters which were decided by the Court, and her number of written decisions has been somewhat limited. However, commentators place her within the liberal grouping of the Court and she has often voted together with Justices Ginsburg and Sotomayor. Interestingly, however, during the last term, she seemed to have formed an interesting alliance with Justice Kennedy and they voted together 83% of the time. In fact, one of the major decisions written by Justice Kagan was in the case of *Miller v. Alabama*, 132 S. Ct. 2455, issued on June 25, 2010, in which the Supreme Court declared that it was unconstitutional to impose mandatory life imprisonment without parole for juvenile offenders, even in cases where juveniles have committed homicides. Along with Justice Kagan, Justice Kennedy cast the critical vote in this 5-4 decision.

The Court as a Whole

The United States Supreme Court was created in 1789 by Article III of the United States Constitution. It is the only constitutionally established Federal Court, with all of the others being created by legislative statute. Throughout its history, the Court has not always had its current nine members. In fact, for many years, the Court served with six Justices. In 1869, Congress set the Court's size to nine members, where it has remained since. With the appointment of Justice Kagan, 112 Justices have now served on the Court. The Justices are nominated by the President of the United States and appointed after confirmation by the United States Senate. Justices of the Supreme Court have life tenure. During its history, the average length of service on the Court has been slightly less than 15 years. Since 1970, however, the average length of service has increased to about 26 years, and recent appointees to the Court have tended to be younger, and have averaged about 53 years of age. Currently, the salary received by members of the Supreme Court is \$223,500 per year for the Chief Justice, and \$213,900 per year for each of the Associate Justices.

During most of its history, members appointed to the United States Supreme Court have been white males of the Protestant religion. The first Jewish member, Justice Brandeis, did not join the Court until 1916; the first black member, Justice Marshall, was appointed in 1967, and the first female member, Justice O'Connor, was appointed in

1981. Today, however, six members of the Court are of the Catholic faith (Roberts, Alito, Kennedy, Scalia, Thomas and Sotomayor), and three are Jewish (Breyer, Ginsburg and Kagan). There are currently no Protestant members of the Court. Three members of the Court are also women, the highest number to date. Justice Thomas is the only black member of the Court, and Justice Sotomayor is the only Hispanic.

Because of the sharp philosophical split in the Court during the last several years which has resulted in several 5-4 decisions in controversial matters, a recent survey has revealed that the public's approval rating for Supreme Court Justices has fallen to 44%, down from 66% in the late 1980s.

Although the Court is comprised of nine distinct individuals having varied backgrounds and differing philosophies, all the members of the Court continue to assert that despite their differences, they all remain on the most cordial of terms and have a great deal of respect for one another. Justice Kagan, in a recent appearance at St. John's University Law School, was quoted as stressing that although the Justices may have different views on cases, they really like each other and respect each other greatly. Justice Thomas also, in fact, was recently quoted in a public interview, when speaking of his colleagues "these are good people." I hope that this article has provided a brief look at the good people behind the important decisions rendered by our nation's highest Court.

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