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Evaluating the New Justices in Light of the Confirmation Ordeal

Gina Holland*

I think the confirmation hearings left the press, and maybe the public as well, wanting more substantial information, but we got a little bit of the style of the Justices. The two men you saw on the screen are very much on the bench like they were before the senators. John Roberts, particularly, was very comfortable before the grilling of the senators, and on the bench he is also right at home. He's funny—not as funny as Justice Scalia—David Savage was talking a little bit of the surprises or what we expected. Chief Justice Roberts does ask a ton of questions on the bench. I guess I was surprised. During the confirmation hearings, Roberts talked a little bit about Justice Rehnquist and whether he would be a Rehnquist type Chief Justice. He indicated that he wanted to be his own man. Rehnquist asked very few questions and was really concerned more with keeping of the time, and if one of the Justices ran on too long, he'd grumpily rap him—not literally, but say, "Let's move on."

Roberts is a very active questioner, and to use his words, I think he strategically will "lay traps," and very smart ones, in cases for the lawyers we've seen get called on. He was a very good litigator before the Court and he's turned that around on the other side and I feel sorry for some of the lawyers.

Erwin, you survived. Sort of. Sorry.¹

* Supreme Court Correspondent for the Associated Press. Before she received her current assignment in 2001, Ms. Holland had been a writer for the AP since 1989, where she began her career in Jackson, Mississippi. Her coverage has always included politically charged issues, ranging from Mississippi's long-running college desegregation case, to then-Mississippi Attorney General Mike Moore's lawsuit against the tobacco companies. Since assuming her current assignment with the Supreme Court, she has covered such issues as the retirement of a Justice, the death of the Court's leader, and the nomination and appointment of two new Justices.

1. Erwin Chemerinsky argued before Chief Justice Roberts and the Supreme Court on November 30, 2005. *See* Scheidler v. NOW, Inc., 126 S. Ct. 1264 (2006). He represented respondents National Organization for Women and two health care clinics that perform abortions in a Hobbs Act action against anti-abortion individuals and organizations. The Supreme Court reversed the Seventh Circuit decision upholding the jury's verdict in favor of respondents because it rested on valid grounds distinct from grounds rejected in an earlier Supreme Court decision. *Id.* at 1270.

But just quickly touching on Justice Alito, he appeared a little uncomfortable before the senators, and on the bench, so far, he has not quite hit his stride. He asked very few questions; sometimes one, an argument, sometimes none. I read a recent interview he gave and he indicated he was having trouble with the microphone button.² Maybe it was something like Jeopardy where you have to hit the button first.

So, hopefully the Alito of the future will just jump right out there and get a little faster. But the thing I do like about Justice Alito is that he does seem pretty human. With John Roberts, it's almost absolutely perfect. Every article you read for the longest time said "charming" and "likeable," and with Alito, maybe there's a sympathy factor that he had to follow Roberts. But I like that he maybe doesn't necessarily say the right thing every time and doesn't know every rule. He has had a few blunders, but we're not all the cool kid in the class. So I look forward to seeing the two of them in future years.

2. See Kate Coscarelli, *Justice Samuel A. Alito Jr.: The Life and Times of a Justice in the Making*, STAR LEDGER (N.J.), Aug. 27, 2006, at 1. Alito stated that in order to speak, the Justices must flick a switch on their microphones. He found that he had to be "very quick on the draw," or another Justice would speak first. See *id.*