

## Some Comments on the Supreme Court

*By Louis P. Solomon*

The resignation of Associate Justice Sandra Day O'Connor from the Supreme Court has given the President of the United States an opportunity to make another appointment to the Supreme Court.



I was moderately surprised by the President's initial choice to fill the position of Associate Justice of the Supreme Court: Judge John Roberts from the Circuit Court of Appeals for the District of Columbia. When Chief Justice of the Supreme Court, William Rehnquist, suddenly died, Judge Roberts was nominated to become the Chief Justice. There was some modest grumbling by different groups about the positions taken by Judge Roberts during his spectacularly brilliant legal career. He was found to be a little too conservative by some groups, and he was found to have positions which were not quite conservative enough for other groups. However, among the members of the legal profession, and in particular among the recognized brilliant leading lights of the nationwide judiciary, Judge Roberts was considered to be a consummate professional. His briefs were very well constructed; the logic was flawless; his presentations before various courts, but particularly before the Supreme Court, were considered to be the ultimate performance of a litigator. As Deputy Solicitor General, from 1989 to 1993, Roberts argued 39 cases for the government before the Supreme Court, prevailing in 25 of them.

I am not a single issue person. I recognize that, in the phrase used several times by the late President Kennedy, "what you lose in apples you make up in bananas." While I certainly have preferences on many issues that have come before the Supreme Court, I recognize that applying political labels to thinking, erudite, scholarly judges is folly. What I personally want in a Supreme Court judge is someone who considers the Constitution of the United States the operative document, with likes and dislikes as well as political viewpoints and biases taken into account, but the law, in a nation of laws, is what needs to be considered. Judge, now Chief Justice, Roberts had all the skill, knowledge, and intellectual horsepower to make him some one on whom I could depend. He may make decisions as part of the Supreme Court with which I don't agree; but there are means to change the law using the Congressional process.

We now come to Harriet Meirs. She has done quite well in her 27 years as a lawyer in private practice where she focused mainly on business law. She is apparently smart, and quite capable as a practicing lawyer and as the first woman president of the Dallas Bar Association and later the State Bar of Texas. Her friends think she is wonderful. Her membership in a devout evangelical church is not at issue. What was at issue, to me, was that during her career never served as a judge and never argued a case before the Supreme Court. Her views on constitutional law and other issues that may have come before the Supreme Court are largely unknown. Several organizations have focused on her conservative religious views, but I do not. What I found very unsettling about Ms Meirs was her lack of experience with the Supreme Court, her non-existent written views on constitutional law, and her lack of experience in the judicial arena. It is true that one does not need to be a judge with a long experience in constitutional law to be successfully appointed to the Supreme Court. I concur with that requirement, or lack of it.

But, Ms Meirs appeared to have none of the skills that should be associated with a Supreme Court justice. In particular, she should have had a paper trail of views that have been considered and discussed by her peers and found to have merit. A candidate at 60 years old, could easily be on the court for another 20 years if confirmed. I find that the selection and nomination of Ms Meirs was wholly unsatisfactory because of her lack of experience on judicial matters a record that indicates how she, as one of the nine justices, could affect the interpretation of the Constitution of the United States. If President Bush selects a justice with sparkling legal credentials, regardless of their political leanings, that certainly would satisfy me, and, I think, many others.