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Proving His Mettle in the Reagan Justice Dept.; [FINAL Edition]

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The captains of the Reagan revolution at the Justice Department had two big concerns about a bookish new recruit named Samuel A. Alito Jr., who arrived in 1981: his blank slate as a conservative activist and his pedigree from a perceived bastion of legal liberalism.

"I wouldn't let most people from Yale Law School wash my car, let alone write my briefs," said Michael A. Carvin, a political deputy at the department.

Six years later, the revolutionaries saw Alito as one of them, tapping him to become U.S. attorney in New Jersey in 1987 and eventually, they hoped, a judge. Speaking on a New Jersey public affairs television program, the young prosecutor showcased the philosophy that had won the confidence of his Washington mentors.

Asked his opinion of President Ronald Reagan's nomination of Robert H. Bork to the Supreme Court, Alito gave a ringing defense of the conservative icon he said had been "unjustifiably rejected" by the Senate in one of the most ideologically polarizing nomination battles in decades.

"I think he was one of the most outstanding nominees of this century," Alito told Michael Aron of NJN News's "Front Page New Jersey" in a little-noticed 1988 interview. "He is a man of unequaled ability, understanding of constitutional history, someone who had thought deeply throughout his entire life about constitutional issues and about the Supreme Court and the role it ought to play in American society."

Confirmation hearings begin today on Alito's own nomination to the Supreme Court, and he is urging senators to focus on his record as a judge, rather than on the opinions he expressed as a Reagan administration partisan. "I don't give heed to my personal views. I interpret the law," he has said.

But Alito's mentors in the Reagan Justice Department carefully heeded those views when they identified him for advancement. Conservatives had struggled for a generation against a Supreme Court they believed was imposing liberal social policies in the guise of constitutional law. Bork was to have been their agent on the high court, but the department's leaders also moved aggressively to elevate like-minded conservatives throughout the judiciary.

Alito proved himself to top Justice Department operatives by distilling their agenda to reshape the nation's civil rights laws and overturn abortion rights into brilliantly analytical legal strategies. Much like his father, who had served both parties in a politically riven New Jersey legislature, he won the trust of the president's most ardent loyalists as well as the career civil servants who were often at war with them.

Alito left Washington an accomplished institutional player with friends in important places. His six years here positioned him to become a Supreme Court nominee as much as did the tomes of jurisprudence he accumulated in 15 years as an appeals judge and 30 years in the law.

Assistant Attorney General William Bradford Reynolds was frustrated. The White House had tasked him with enshrining into law Reagan's conservative policies on racial discrimination, abortion and school prayer. Standing in his way was the Office of the Solicitor General.

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The solicitor general represents the government before the Supreme Court. While part of the Justice Department, the office is also known as the "10th justice" for its tradition of independently balancing duty to represent the president with respect for the court and its precedents.

Reynolds charged that many of the office's longtime staff lawyers were hostile to the president's agenda, and were actively undermining it in the guise of showing deference to the court. In response, Solicitor General Rex E. Lee started assigning the "agenda cases" to lawyers who were ideologically compatible with the administration.

"They wanted to find assistants who were sympathetic to [Reynolds's] causes so he couldn't possibly make that claim," said Alito's former colleague Joshua Schwartz, a law professor at George Washington University whose account was confirmed by four other former administration officials. "For affirmative action, it was Sam."

Alito had come to the solicitor general's office as a career lawyer in 1981, after a stint as an assistant federal appellate prosecutor in Newark. Initially, he was assigned to the less controversial area of his expertise, criminal law. But over time, he proved his conservative credentials. He gave money to the National Conservative Political Action Committee, which financed ads painting Democrats as liberal extremists. He donated to Jeffrey Bell, a 1982 GOP Senate primary candidate in New Jersey who opposed abortion and gun control and favored voluntary school prayer. And in 1983, he joined the conservative Federalist Society.

Among the society's featured speakers was Bork, who asserted that the Constitution protected only rights enumerated by the Framers -- a view that foes of his Supreme Court nomination would call threatening to civil rights, abortion rights and limits on police powers.

Any lingering doubts about Alito's commitment to the Reagan cause were put to rest in 1984, when he took over the civil rights agenda cases from a colleague who had left for private practice. Reynolds had branded Alito's predecessor, Carter Phillips, a "quota lover" for insisting on incremental attacks on affirmative action rather than a wholesale assault, Phillips recalled.

But Reynolds came to feel far more comfortable with the mild- mannered Alito. "I don't recall ever disagreeing with him," Reynolds said.

Alito proved his mettle to Reynolds and others in a case called Wygant v. Jackson Board of Education. The case involved a voluntary agreement by a Michigan school board with a history of discrimination to lay off whites ahead of blacks to preserve racial balance. A 1985 brief co-written by Alito argued that the Constitution prohibits the government from treating people differently based on race or gender merely to achieve diversity.

The Supreme Court rejected that broad argument, while striking down the Michigan layoff arrangement. But Solicitor General Charles Fried, who had taken over for Lee, raved about a phrase Alito had come up with to critique affirmative action. Baseball great Hank Aaron would not be regarded as the home-run king "if the fences had been moved in whenever he came to plate," Alito wrote.

More agenda cases started landing on Alito's desk. Charles J. Cooper, who was Reynolds's deputy, said he was "pleasantly relieved" that Alito "was determined not to be an impediment."

Staff lawyers admired the way Alito, while sympathetic to the administration's goals, tended to be more pragmatic about how to achieve them. He was not perceived as "part of the cabal" whose ideological directives threatened the credibility the office had historically had with the Supreme Court, said former colleague Mark Levy, a Democrat who later became a senior political appointee in the Clinton administration.

The administration had been pushing for a frontal assault on Roe v. Wade, the landmark 1973 case establishing a woman's right to an abortion. Senior Justice Department officials saw a vehicle in the 1985 case Thornburgh v. American College of Obstetricians and Gynecologists.

Alito cautioned against what he thought was a pointless and potentially costly gesture. The votes simply were not there. The administration should "make clear that we disagree with the decision," he wrote in a 1985 memo. But rather than urging the court to overturn Roe, he said the focus should be on upholding the abortion regulations at issue in the case, a strategy that he said could make clear the states' interest in "protecting the unborn." That, he said, would "advance the goals of bringing about the eventual overruling of Roe v. Wade and, in the meantime, of mitigating its effects."

Fried overruled him, and the administration lost the case. But Alito's caution was not held against him -- quite the opposite. Cooper said he was convinced that Alito was a team player, simply offering savvy strategic advice to reach the administration's goal. "If it had been followed, who knows where we would be now?" he mused.

Cooper was promoted soon afterward to head the Office of Legal Counsel, the constitutional adviser to the president and his Cabinet. He wanted Alito to be his deputy.

Cooper was impressed not only with Alito's legal acumen, but also his ability to "throttle back his own philosophical passions" in pursuit of administration objectives.

But a big hurdle remained. The position of deputy assistant attorney general required White House political clearance. Cooper and Reynolds knew Alito's loyalties, but the White House did not.

On Nov. 15, 1985, Alito penned an uncharacteristically zealous application letter. Laying bare his personal politics, he declared, "I am and always have been a conservative."

He shared the administration's strenuous opposition to decisions of the Supreme Court in the 1960s, particularly those involving criminal procedure, separation of church and state, and legislative reapportionment, which he viewed as usurping power the Constitution intended lawmakers to wield. And he was "particularly proud" of the contributions he had made toward the administration's conservative civil rights agenda and its efforts to convince the court "that the Constitution does not protect a right to abortion."

Alito got the job and was immediately thrust into a variety of high-profile controversies.

In 1986, Attorney General Edwin I. Meese III disclosed that as much as $30 million from the covert sale of arms to Iran had been secretly diverted to anti-communist guerrillas in Nicaragua. Reynolds and Cooper said Alito helped craft the administration's defense of its actions.

"Sam was the kind of person you want when the entire world is going to be flyspecking everything you write and challenging every construct you advance," Cooper said.

Alito was designated to defend the office's widely criticized conclusion that the law did not bar employers from firing people with AIDS because of "fear of contagion, whether reasonable or not." He also helped the office's efforts to quash an independent counsel's investigation into whether a high-ranking Justice Department official misled Congress. And when Congress began investigating allegations that the White House had fired a top aide because of political pressure from conservatives, Alito advised a key witness to claim executive privilege and tell Congress nothing.

Even as his job grew increasingly political, to those beneath him, Alito remained above politics. He was cautious, thorough and logical. There was no aura of fervency about him, and career lawyers saw him as the epitome of what an Office of Legal Counsel lawyer should be -- someone who considered the law and rendered an opinion, whether the administration liked it or not.

"People make enemies in the types of jobs he had," said Bradford R. Clark, who worked for Alito and is now a law professor at George Washington University. "But there's nobody out there that dislikes Sam."

Former colleague John McGinnis said he believes Alito struggled with conflicting impulses. On the one hand, he said, Alito had a civil servant's respect, honed at the Solicitor General's Office, for incrementalism and stability in the law. At the same time, Alito "really wanted to forward" the administration's legal agenda -- a goal that demanded a radical departure from the status quo.

"That always struck me as a tension in his thoughts," said McGinnis, a Northwestern University law professor.

By that time, Alito knew he wanted to be a judge, said Phillips, a friend since their days in the Solicitor General's Office. But the selection process is fickle, Phillips said, and "other than making yourself the big fish in a small pond, I don't think it's anything you can plan for."

It was time for Alito to head home, to a place where a Reagan conservative might stand out in a sea of moderate Republicans. And to a job with a history of serving as a steppingstone to the bench.

Late one night in the fall of 1986, as Cooper and he were finishing up work, Alito asked his boss for a favor. He had just learned that the interim U.S. attorney for New Jersey was going to step down, and he wanted the job.

The year before, Alito had married Martha Ann Bomgardner, the law librarian he met when he worked in the U.S. attorney's office as a young assistant appellate lawyer, and the couple had a baby boy. The decision to apply, she said, was driven as much by a desire to raise their children near their parents as any thought of becoming a judge.

"Sam, if there's any way I can help you, I will," Cooper recalls telling his 36-year-old deputy.

Cooper said he went directly to the top, making Alito's interest known to Reynolds and Meese.

Reynolds was an especially controversial figure in Washington. Two years earlier, the Republican-controlled Senate had rejected his nomination to become associate attorney general, with members accusing him of placing more importance on rolling back the civil rights of minorities, women and the disabled than on protecting them. Sen. Arlen Specter (R-Pa.) charged that Reynolds had elevated his "own legal judgment over the judgments of the courts."

Reynolds said he felt that he and others working on the administration's civil rights "agenda cases" had been unfairly vilified, noting that the Supreme Court has since struck down some affirmative action programs. But at the time, "we were under fire from all quarters," a defining experience that he thought made those like Alito "more likely to stand fast than to drift," he said.

And that was important because Reynolds, still one of the most powerful figures in the Justice Department, had a plan that he and Meese hoped would carry forward the Reagan legacy long after they were gone. The idea was to quickly move gifted conservative lawyers into positions that could lead to the federal bench.

Alito fit the bill, Reynolds said.

"Were we interested more than anything else in finding younger, rather than older, intelligent people who could take the arguments and policies we felt were important and promote them? Did we think in terms of those people becoming judges? You bet your life," Reynolds said. "Sam was a good candidate for the grooming we were hoping would happen."

To Meese, Alito was only one of "a group of very talented lawyers," he said. But Reynolds said he told Meese that Alito was the man to back for the U.S. attorney job. With the attorney general on board, the deal was all but sealed. Still, six other candidates had applied for the position, and Alito did not leave anything to chance.

He had the support of some powerful figures in New Jersey, including Gov. Thomas H. Kean (R). Kean knew Alito's father, who had headed the New Jersey Office of Legislative Services and had a reputation for scrupulous nonpartisanship. Alito also lined up the support of two New Jersey congressmen.

His chief opponent was a wealthy lawyer named Peter Sudler, who had GOP cachet as a major donor. Alito decided to do a little digging into Sudler at the Federal Election Commission, remembered David Grais, Alito's friend.

"He looked up his records and found that he'd given a lot to Democrats as well, and he made sure that information got to the right people," Grais said. "Sam is modest, but he is not a political naif."

On March 19, 1987, Alito was sworn in as U.S. attorney for New Jersey, an office with a time-honored reputation for political independence. His appointment was cheered as an affirmation of that tradition.

Back home, Alito was known for the quality of the work he did there in the 1970s. No one there saw him as the ideological conservative he had pitched in the letter to the White House just two years earlier.

"He was viewed in New Jersey by the people who knew him as a nonpartisan candidate of excellence -- exactly the opposite of what comes across in that letter," said Dan Rabinowitz, a law school classmate who had worked with Alito in the U.S attorney's office.

Alito took on corrupt public officials and corporate wrongdoers. He prosecuted the country's first international terrorism case. And his office convicted Louis Manna, the consigliere of the Genovese crime family, on charges of racketeering and conspiracy to commit murder.

Federal judges appreciated his willingness to leave to local officials penny-ante narcotics cases that had clogged their courts, despite the high priority the Reagan administration placed on its war on drugs. Internally, Alito was well liked as someone who valued merit above all else.

While he opposed numeric hiring quotas, he took steps to diversify an office that had a reputation as something of a "white boys' club." Alberto Rivas, a criminal defense lawyer and a Democrat, said that when Alito hired him, he was the only Latino lawyer in the office. By the time Alito left, Rivas said, there were four, as well as more blacks.

"His whole experience shows that he has some commitment to diversity," Rivas said.

But the heavily administrative job was not as intellectually challenging as the work Alito had done in Washington. When Judge John J. Gibbons unexpectedly announced his retirement from the U.S. Court of Appeals for the 3rd Circuit on Sept. 11, 1989, Alito jumped at the opportunity to replace him.

Senators from the president's party typically wield great influence in picking their state's judges. But New Jersey had elected two Democrats, so the choice was left to the White House and the new administration of President George H.W. Bush.

Alito again turned to his Reagan Justice Department allies. Cooper, who by then had left government but had close ties to the administration's decision makers, said he made calls at Alito's request. As the president contemplated his choices, White House counsel C. Boyden Gray asked Reynolds to vouch for Alito. Reynolds said he was "fully supportive of Sam."

Phillips recalled how anxious Alito was, but in the end, the president was sold.

On April 5, 1990, Alito and a 1st Circuit nominee named David H. Souter appeared before the Senate Judiciary Committee. Sen. Edward M. Kennedy (D-Mass.) peppered Souter, now one of the more liberal justices on the Supreme Court, about his views. But the 40-year-old Alito was confirmed with nary a substantive question.

In speeches as a judge, Alito has advised law students and legal professionals: "Watch the rhetoric" and "Don't wear your views on your sleeve." In 15 years on the bench, he has practiced what he preaches.

Rather than brandishing his judicial philosophy like a sword, he has tucked it into one tightly reasoned opinion at a time. More methodical technician than theoretical firebrand, Alito has shunned pyrrhic challenges to Supreme Court precedent favored by some of his conservative brethren.

Like the career lawyers in the Reagan Justice Department, his fellow judges speak highly of his skill and collegiality. They see a cautious intellectual who is temperamentally unlikely, in the words of one judge, a Democrat, to "kick long-standing precedent in the teeth."

"He may come out differently than I do," said Judge Thomas L. Ambro, a Clinton appointee, but "I don't see his personal views spilling across the page."

At the same time, Alito has compiled the type of record that his Reagan-era colleagues had hoped for. In his copious opinions on politically divisive issues such as abortion, civil rights and religion in the public square, they see Alito joining a gathering juggernaut of conservative thinking on the nation's highest court.

"He's a Borklette, a Bork without the edge," said Bruce Fein, who was associate deputy attorney general in the Reagan Justice Department. "I see a judge who reads the statutes as written and interprets the Constitution using its original meaning, instead of assuming the role of platonic guardian and ordaining a society he thinks is enlightened."

Today, Alito will begin to tell the Senate, and the country, how he sees himself.

Research editor Lucy Shackelford and researcher Madonna Lebling contributed to this report.