

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

August 10, 2005

The Honorable Arlen Specter
Chairman
U.S. Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Arlen:

Thank you for your letter today about documents related to the nomination of Judge John G. Roberts, Jr., to the U.S. Supreme Court.

I appreciated learning from your letter that the White House tomorrow will begin to release some of the documents housed at the Reagan Library that the White House earlier said would be provided to the Committee. The Committee's evaluation of these documents will help us learn more about Judge Roberts's work and legal views while he was employed at the White House and the Department of Justice during the Reagan Administration. I also appreciate your written request to White House Counsel Harriet Miers, pursuant to my written request yesterday to the President, that all of these documents be made available to the Committee as soon as possible and in no event later than August 22. As we have discussed many times before, timely cooperation from the Administration is essential for the Committee's preparation for the upcoming hearings on this nomination. The hearings will begin soon under the agreement we have reached, and that makes cooperation and good faith especially important in ensuring that these hearings will be as full and fair as the American people expect them to be.

I must agree to disagree with your judgment that the Administration is not wrong to decline providing documents from Judge Roberts's tenure in the Solicitor General's Office during the Administration of President George H.W. Bush. I and my Democratic colleagues on the Committee have made a carefully crafted and narrow request for documents in 16 important cases that might illuminate Judge Roberts's views on important issues of concern to all Americans – civil rights, privacy and access to justice. John Roberts's work as a political appointee in the office of "the people's lawyer" – the Solicitor General – is especially relevant to his nomination, in our view, because his decisions there were made at the intersection of his legal views and major public policy decisions. This was the highest-ranking job Judge Roberts ever held in any administration, where by his own account he had "final responsibility for determining whether the United States would seek further review of adverse decisions in some 380 cases" during his time there. He had a more significant policy role there than in his previous positions, and his work as an appellate advocate before the Supreme Court would be particularly

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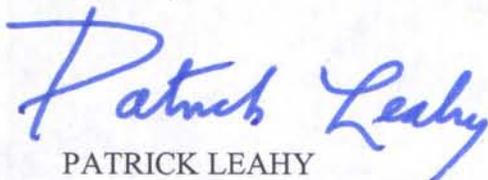
illuminating as to his views on judicial decision-making. Since he was also considerably farther along in his legal career, his views were likely both more developed and more settled.

Those records we have received, which would have been publicly available anyway, have suggested that Judge Roberts, while working for the Attorney General earlier in his career, had strong views about such vital issues as access to courts, the right to privacy, and desegregation. It is therefore still more important for us to examine his work on these same issues in cases before the OSG in order to get a sense of his approach to these and other key rights and values at a more mature point in his career. In addition, looking at the internal OSG documents will help us to determine to what extent it is fair to ascribe to Judge Roberts the views expressed in the publicly available OSG briefs and to what extent his views at that time were consistent with the strong positions expressed earlier in his career.

I welcome the understanding that we seem to share that any White House assertion of attorney-client privilege is not appropriate in the context of a request from Congress, and I would suggest that the decision in the case cited in your letter [In re Sealed Case, 121 F.3d 729 (D.C. Cir. 1997)] does not apply to Congress. To quote from that decision: "[W]e take no position on how the institutional needs of Congress and the President should be balanced." In our letter to the Attorney General we have cited precedents for our request.

I look forward to continuing to working with you in a bipartisan fashion to hold fair and through hearings on the nomination of Judge Roberts to a lifetime appointment to the highest court in the Nation.

Sincerely,



PATRICK LEAHY
Ranking Member