

Chairman Backs White House on Keeping Roberts's Memos

By Sheryl Gay Stolberg

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WASHINGTON, Aug. 10 - The chairman of the Senate Judiciary Committee said Wednesday that he backed President Bush's decision not to release certain legal memorandums written by Judge John G. Roberts Jr., a move that could escalate a fight between Democrats and the White House over Judge Roberts's nomination to the Supreme Court.

The chairman, Senator Arlen Specter, Republican of Pennsylvania, wrote to the committee's ranking Democrat, Senator Patrick J. Leahy of Vermont, that he had reviewed the law and concluded that the White House was justified in saying the records are privileged. They date from Judge Roberts's days as deputy solicitor general in the first Bush administration.

"While the privilege is not absolute," Mr. Specter wrote, "it is my conclusion that the absence of any issue of misconduct and the extensive disclosure of numerous other relevant documents prepared by Judge Roberts support the White House conclusion."

As Judge Roberts continued making rounds in the Senate on Wednesday, the White House disputed the account of Senator Ron Wyden, Democrat of Oregon, who met with him on Tuesday. After the meeting, Mr. Wyden said he had asked Judge Roberts a question intended to elicit his views on Congress's intervention in the case of Terri Schiavo, the brain-damaged Florida woman who died earlier this year after her feeding tube was removed under court order.

Mr. Wyden, whose aides took notes during the meeting, said at the time that Judge Roberts refused to discuss the Schiavo case specifically. The senator recounted Judge Roberts's reply to a more general question: "I am concerned with judicial independence. Congress can prescribe standards, but when Congress starts to act like a court and prescribe particular remedies in particular cases, Congress has overstepped its bounds."

Judge Roberts has not discussed the contents of meetings he has been having with individual senators since President Bush announced his selection in mid-July. But on Wednesday, Ed Gillespie, the chief White House lobbyist for Judge Roberts's Senate confirmation, sent a letter to The New York Times, saying that notes taken by a White

House aide during the session reflected a different response: "I am aware of court precedents which say Congress can overstep when it prescribes particular outcomes in particular cases."

Josh Kardon, the senator's chief of staff, said Mr. Wyden stood by his account.

"Senator Wyden greatly appreciated Judge Roberts's candor," Mr. Kardon said. "The White House has said they want a dignified and bipartisan process. Candor is the way to get it. Mr. Gillespie's letter is the way not to get it."

The White House dispute with Mr. Wyden, coupled with the Democrats' efforts for documents and competing television advertisements on abortion rights, are setting the stage for an increasingly contentious confirmation fight.

Democrats have already said that the White House is slow-walking the release of papers relating to Judge Roberts's days as a young lawyer in the administration of Ronald Reagan. Now, they must figure out how hard to fight for access to the solicitor general documents, which would shed light on his views later in his career, from 1989 to 1993, when he was deputy solicitor general.

Responding to Mr. Specter on Wednesday, Mr. Leahy said Democrats had issued a narrow request for records relating to 16 cases that "might illuminate Judge Roberts's views on important issues of concern to all Americans -- civil rights, privacy and access to justice."

"This was the highest-ranking job Judge Roberts ever held in any administration," he added.

The White House has already made public thousands of pages of documents; on Thursday, another 500 pages, relating to Judge Roberts's tenure as special assistant to the attorney general in 1981 and 1982, is set to be released.

But a second set of records promised by the White House, housed at the Ronald Reagan Presidential Library in California and relating to the nominee's tenure as associate counsel to the president from 1982 to 1986, has yet to be made public. Mr. Specter sent a letter to the White House on Wednesday asking to release any records it intends to make public by Aug. 22, two weeks before the hearings begin on Sept. 6.

In the past, fights over documents have prompted Democrats to block the confirmation of at least two of Mr. Bush's nominees, Miguel Estrada and John R. Bolton. Mr. Estrada, who had been nominated to an appeals court position, later withdrew his name. The president recently installed Mr. Bolton as ambassador to the United Nations, circumventing the Senate by putting him in place during the Congressional recess.

Now the question is whether Democrats will similarly block Judge Roberts. Senator Charles E. Schumer, Democrat of New York and a member of the Judiciary Committee, said Wednesday that no decision could be made until after the hearings.

"Miguel Estrada not only refused to release documents, but abjectly refused to answer any question in an almost contemptuous way," Mr. Schumer said. "So what this does is, it puts a greater onus on Roberts to answer questions in a forthright manner."

Earlier Wednesday, the National Association of Manufacturers endorsed Judge Roberts's nomination, entering a federal judicial confirmation debate for the first time in its 110-year history. Judge Roberts also met with another Democratic senator, Bill Nelson of Florida.

Mr. Nelson says he is especially concerned about a recent Supreme Court decision that upheld the right of municipalities to use the power of eminent domain to take private property. He has proposed legislation that would sharply limit the power of eminent domain, and he said he asked Judge Roberts about the recent case.

The nominee would not discuss that case, Mr. Nelson said, but rather said that "law, expressed through legislative intent, is going to be one of the major markers that a Supreme Court would look to in deciding questions of taking of private property."

Mr. Nelson also said he asked Judge Roberts "about one's personal beliefs and how that should affect a judge." The question was asked broadly, he said, and not intended to elicit the judge's views on abortion.

"He clearly said that a judge has the responsibility to set aside personal beliefs to follow the law," Mr. Nelson recounted.