



Statement by Senator Dianne Feinstein in Opposition to the Nomination of  
Judge John G. Roberts Jr. to be Chief Justice  
September 22, 2005

*Washington, DC – Senator Dianne Feinstein (D-Calif.) today voted to oppose the nomination of Judge John G. Roberts Jr. to be Chief Justice. The following is the text of the statement Senator Feinstein delivered during the Committee meeting:*

“There is no question that Judge Roberts is an extraordinary person. I think there is no question that he has many stellar qualities, certainly a brilliant legal mind and a love and abiding respect for the law, and I think a sense of its scope and complexity as well.

But before taking the momentous step of agreeing that a nominee serve as the Chief Justice of our Supreme Court, for what in this case could be over 30 years, I wanted to have a reasonable sense of confidence that he would uphold certain essential legal rights and protections that Americans rely on, and rights that reflect the values and ideals that make our country so great.

**I don't ask for certainty.**

I don't ask for promises – especially as to how a nominee would rule in any case in the future – even one as important as *Roe v. Wade*.

But I ask for some ability to find a commitment to broad legal principles that form the basis of our fundamental rights:

- Equal protection under the law, and the ability to remedy discrimination.
- A basic right to privacy that extends from the beginning of life to the end of life.
- The ability of the American public to elect representatives that have the constitutional power and authority to protect and respond to America's safety, social, and environmental needs; and
- A view of Executive Power that extends deference – but within the law.

It's important to know that a Justice will be willing to at least start with these fundamental rights.

In making the judgment as to how Judge Roberts evaluates these fundamental rights, I must start with his record.

As a young lawyer in government service, he was involved in the most important issues of the day and issues that continue to be critical to this day. He was in positions to advise the most important lawyers in the Executive Branch.

In these positions, he advanced arguments opposing many of these fundamental rights, and, when asked whether he disagreed with any of those positions today – some even more extreme than his superiors adopted – he did not disagree with *virtually* any of them.

I asked him about a series of written comments and margin notes that appeared to demonstrate a denigrating view of issues impacting women.

I said it appears he used a very acerbic pen or else he really thought that way. Then I gave him an opportunity to distance himself, to say that he was a young lawyer and would not use that language today, or whatever it might be, to distance himself.

I expected him to admit that the derogatory comments about women were wrong or that at least he regretted making them.

Instead, Judge Roberts responded, “Senator, I have always supported and support today equal rights for women, particularly in the workplace.”

When Senator Schumer asked him a similar question he received a disappointing response.

Senator Schumer said, “So my question is not the substance, but *do you regret the tone of some of these memos?* Do you regret some of the inartful phrases you used in those memos, a reference to ‘illegal amigos’ in one memo?” Again, an easy question with an obvious response.

Instead, Judge Roberts responded, “Senator, in that particular memo, for example, it was a play on the standard practice of many politicians, including President Reagan.”

If Judge Roberts had provided different answers to these questions, he could have easily demonstrated to us that wisdom comes with age, and a sense of his own autonomy. But he did neither.

Simply put, I didn’t find the argument that he was just an employee doing what his boss wanted him to do to be credible.

When discussing his work while Principal Deputy Solicitor General, where he argued to overturn *Roe* and advanced many other troubling positions, we received similar dispassionate answers.

Not only did he refuse to disavow *the tone* used in his earlier memos, he also refused to disavow many of *the positions* he advocated while in the Solicitor General’s office.

I had hoped he would have given some indication that, even if he would not tell me what he thought about a particular case, he would tell the Committee that he believed in a general right to privacy. But he refused.

Senator Schumer specifically asked whether Judge Roberts agreed that there is a “general” right to privacy provided in the Constitution.

His response was, “I wouldn't use the phrase ‘general,’ because I don't know what that means.”

Then when I couldn't get a sense of his judicial philosophy, I attempted to get a sense of his temperament and values. And I asked him about end of life decisions – clearly, decisions that are gut-wrenching, difficult, and extremely personal.

Rather than talking to me as a son, a husband, a father – which I specifically requested that he do. He gave a very detached response:

“Well, Senator, in that situation, obviously, you want to talk and take into account the views and heartfelt concerns of the loved one that you're trying to help in that situation, because you know how they are viewing this.”

I also asked him about how he planned to be in touch with “the problems real people have out there?”

And once again, rather than discussing the importance of reaching out to communities that he normally would not be in contact with, and spending time to understand the problems that average people face, in my communities of Hunters Point, of East L.A., of some of the agriculture areas of our state, he mentioned the attendance at soccer games with his family. Now, that is a slice of life, true, but it is a very narrow slice of life.

His answer failed to recognize the point of the question and the concern about staying in touch with people who have different life experiences.

Several Senators asked him about whether he could admit he made a mistake when he was wrong.

Senator Biden asked him about a very specific legal term regarding what kind of review the Court should give to cases involving gender discrimination.

Rather than clarifying his position or admitting he was wrong to argue for a lesser standard, Judge Roberts said he was using two very different legal terms interchangeably.

He stated, “And, Senator, the memorandum is using ‘heightened scrutiny’ the way you use ‘strict scrutiny,’ which is scrutiny that's limited to the basis of race.”

Now, it seems hard to believe that such a sophisticated jurist would interchange these two well-defined legal terms. This was brought to my attention by a lawyer. I didn't know about it. I have asked other lawyers. They all said this is something you learn about during the first year of law school. That they are not in fact interchangeable.

I posed a series of questions regarding the *Plyler* case, which had to do with Texas statutes that prohibited illegal alien children from going to public schools. I asked him, “Do you believe you were wrong? Could you say you were wrong if you believed you were wrong?”

And again, I got an unsatisfactory response. I had given him the memo. I had asked him to review it overnight. The response I got was, “I have no quarrel with the Court's decision.”

I was struck as I reread the transcript by his use of the line “I have no quarrel with” five times in referencing the *Plyler* case, the *Eisenstadt* case and other cases.

Then I went back and read Judge Thomas’ transcript and he used that phrase numerous times on eight different topics.

And yet when faced with these topics on the Court, he took a position indicating that he did in fact have a quarrel with the case. On abortion, on Church and State separation, on precedent, and on the Commerce Clause he took a clear position that contradicted his use of the words, “I have no quarrel with it.”

*So I came to believe that “I have no quarrel with it” is a term of art of equivocation, frankly.*

Judge Roberts used this phrase when discussing 5 topics adoption rights, the right to privacy as applied to a single person, Title IX and remedies, the Americans with Disabilities Act and its application to States, and *Plyler*.

So does this mean that he, too, will have a quarrel with these issues when they come before him?

Now, I realized this past week, after reading and rereading the transcripts and going over his answers to the questions that I felt that I knew as little about what Judge Roberts really thought after the hearing as I did before the hearings.

This makes it very hard for me, because he was very young when he wrote many of these memos.

And yet, when we asked to review his memos from 16 cases when he was Principal Deputy Solicitor General, we were denied those documents, which denied us the ability to really see whether his thinking had changed or matured.

What remains is the few years on the Circuit Court, where virtually all of the 50 cases -- over 40 were unanimous -- were relatively uncontroversial in the nature of the decision.

So, I can not in good conscience, cast a “yea” vote. I will cast a “no” vote.

However, I also expect that a majority of my colleagues in the Senate will vote for his confirmation. I respect their decision.

I take this position mindful of the fact that Judge Roberts will very likely be our next Chief Justice and I hope and pray that when he serves in that most important post he will do so in a way that protects and preserves our Nation’s fundamental strengths and some of our most important laws and protections of people.

I basically believe that once someone has earned a right they should not lose that right and the rights coming before the court in this upcoming session and in future sessions are really critical rights.

I am the only woman on this committee. And when I started, I said that was going to be my bar. He didn't cross my bar.

Thank you very much.”