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THE SUPREME COURT CONFIRMATION HEARINGS

Alito affirms right to privacy

Abortion, executive powers main topics

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WASHINGTON -- Judge Samuel Alito calmly deflected senators' questions about abortion rights and presidential power Tuesday as he pledged to keep an open mind if confirmed to the Supreme Court and insisted that no person is above the law, including the president of the United States.

During a marathon question-and-answer session spanning more than nine hours, Alito told Senate Judiciary Committee Chairman Arlen Specter (R-Pa.) that he believes in the right to privacy, as well as the principle of stare decisis, in which legal precedents should be overturned only rarely, for the sake of consistency in the law.

"People have a right to privacy in their homes and in their papers and in their persons," Alito said.

The right to privacy, and the subsequent right to an abortion, is one of the issues that hangs in the balance with Alito's nomination to replace Justice Sandra Day O'Connor, prompting repeated questions on the subject. By mentioning the right to privacy and the power of precedent, Alito seemed to be trying to placate abortion rights supporters who fear he would vote to overturn the landmark 1973 Roe vs. Wade abortion decision.

Though Alito once declared that the Constitution does not provide for a woman's right to an abortion, he dismissed that 1985 statement, saying it was made "as a line attorney for the Reagan Justice Department."

Should the abortion issue come before him on the Supreme Court, Alito said, "I would approach the question with an open mind, and I would listen to the arguments that were made."

How an issue is viewed, he said, differs according to whether someone is a lawyer or a judge.

"When someone becomes a judge, you really have to put aside the things that you did as a lawyer at prior points in your legal career and think about legal issues the way a judge thinks about legal issues," he said.

Asked if the Supreme Court would be damaged by overruling Roe vs. Wade, Alito told senators that courts should generally follow precedent and avoid being swayed by public opinion.

"We have a basically democratic form of government, but the judiciary is not elected, and that's the reason, so that they don't do anything under fire. They do what the law requires," Alito said.

Alito also defended his support for a Pennsylvania law requiring women to notify their husbands before obtaining an abortion.

In *Casey vs. Planned Parenthood*, his colleagues on the 3rd U.S. Circuit Court of Appeals struck down the law, and the Supreme Court agreed.

"I did it because that's what I thought the law required," he said.

But Alito's smooth responses frustrated Democrats as they tried to pin him down on past statements, speeches and legal opinions.

"I don't think we've heard anything from the nominee except statements that every nominee would make," complained Sen. Charles Schumer (D-N.Y.), who fruitlessly tried to get Alito to express his personal opinion on whether the Constitution allows for the right to an abortion. "Every nominee would say, 'Of course I will keep an open mind.'"

Even so, Specter praised Alito for being more forthcoming with the committee than prior Supreme Court nominees, noting that he had answered more questions than Chief Justice John Roberts Jr. at his September confirmation hearings.

"Judge Alito has gone farther and I think that's given a lot more substance to these hearings," said Specter, who has previously complained that some nominees are reluctant to provide anything as minimal as name, rank and serial number.

In addition to asking abortion-related questions, Republican and Democratic senators protested President Bush's unilateral use of power, citing the War Powers Act, even when his actions were at odds with statutes. Alarmed by news reports of wiretaps in the U.S. without warrants and the possible use of torture on suspected terrorists, senators repeatedly pressed Alito to find out if he would come down on the side of sweeping presidential authority.

Many Democrats already had said they believed that Alito, a government lawyer before he became a judge, would favor the rights of the executive branch over citizens' civil liberties.

"Time and again, even in routine matters involving average Americans, you give enormous, almost total deference to the exercise of governmental powers," said Sen. Edward Kennedy (D-Mass.).

Alito sought to dissuade the committee of that view.

"Our Constitution applies in times of peace and in times of war, and it protects the rights of Americans under all circumstances," he said.

That goes for the Bill of Rights, too, Alito said, adding: "It's particularly important that we adhere to the Bill of Rights in times of war and in times of national crisis."

But senators repeatedly questioned Bush's use of the War Powers Act as a rationale for ignoring the Foreign Intelligence Surveillance Act, which requires court authorization for domestic wiretapping.

And they complained that when Bush signed an anti-torture amendment into law, he attached a statement suggesting he felt the law allowed for exceptions for him or those working for him.

Without saying how he would rule on such conflicts, Alito said: "No person in this country is above the law, and that includes the president and it includes the Supreme Court."

Alito grilled on issues

Supreme Court nominee Judge Samuel Alito took questions on several important issues during Tuesday's hearing before the Senate Judiciary Committee.

ABORTION: Alito gave no indication how he would vote if faced with the question of whether to overturn the Supreme Court's 1973 Roe vs. Wade decision establishing a woman's right to an abortion, but said he would approach the issue with an open mind.

He defended his dissent in the 1991 Planned Parenthood vs. Casey case, in which the 3rd U.S. Circuit Court of Appeals struck down a Pennsylvania requirement that women seeking abortions notify their spouses.

WARRANTLESS WIRETAPS: Democratic senators zeroed in on a 1984 Alito memo suggesting the attorney general should be immune from lawsuits when acting to protect national security--even if it included illegal wiretapping of U.S. citizens. Alito said the issue was settled in that case, the attorney general has no immunity.

EXECUTIVE POWER: Asked if the president could ignore the law and authorize others to do the same, Alito said the president cannot override a constitutional statute. As to whether the president could immunize somebody who violates a law against using torture--an apparent reference to the new ban on cruel, inhuman and degrading treatment of foreign detainees--Alito said he couldn't give his opinion without knowing specifics and hearing the arguments.

-- Associated Press

ON THE INTERNET

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