United States Senate

September 9, 2005

President George W. Bush
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear President Bush:

We will soon vote upon whether Judge John Roberts will become the Chief Justice of the United States. Our votes will fulfill a duty of the Senate of great consequence under the United States Constitution, our decision whether to consent to the appointment for life of one of the most powerful officials in our government. The gravity of this decision, and the importance of our complete investigation of Judge Roberts' qualifications, ideas, and values, underscores how critical it is that we have before us all the information that is reasonably available concerning Judge Roberts.

Our obligation to gather complete information on the nominee is not only owed to the people who elected us. Under the Constitution, all Americans depend upon us to investigate and consider this nomination with utmost care. The Senate's evaluation process is our sole opportunity to make sure that we as a nation are making a good decision, one that all of us, and our children and grandchildren, must live with in the decades to come. The Framers structured our Constitution so that the people expect, and the people deserve, the Senate's fully informed decision on each judicial nomination, especially a nomination for Chief Justice.

For this reason, on behalf of the people we represent, and in the interests of all Americans, we ask you immediately to release to the Senate documents reflecting Judge Roberts' decisions and views that were created during his tenure as the "political deputy" in the Solicitor General's office from 1989 to 1993. We ask particularly for the release of documents pertaining to 16 specific cases, of the thousands Judge Roberts was responsible for in that office, already requested by members of the Senate Judiciary Committee.

We are unpersuaded by reasons given earlier for the refusal to release these documents. The argument is made that their release would discourage open and frank communication among line lawyers in the Solicitor General's office. This suggestion might have some force if Judge Roberts had worked in a line lawyer position. However, he was the lead political appointee in the Solicitor General's office, just below the Solicitor General himself, with direct responsibilities to meld law and politics in the work of the office, and frequently was the Acting Solicitor General or actual decision-maker in many cases where his superior was recused or had delegated

authority to him. His communications, and communications to him in that job, reflected his high level policy positions and decisions on issues of public importance, and he certainly knew that he was accountable for them. Moreover, even after sensitive documents from that office and other offices at the Department of Justice were repeatedly provided to the Senate for the Bork, Rehnquist and other confirmation proceedings in the 1970's and 80's, there was no indication that the candor of attorney recommendations suffered at all.

Any claims of attorney-client privilege for this information are unfounded. Putting aside the Constitutional fact that the Senate decides upon its own rules of evidence and procedure, subject to no court or other authority, Judge Roberts represented the people of the United States when he was Principal Deputy Solicitor General and Acting Solicitor General. His public clients are the same people — represented now by their Senators — who need us to review these records. Claims that the process of deliberation within the Solicitor General's office bars Senate review are similarly flawed, legally and historically. Senators want to review these records for reasons vitally important to the public interest, especially in the context of a nomination for Chief Justice, and any ordinary argument for secrecy must, as it has time and time again in the past, give way to the paramount need for disclosure.

We look forward to learning a great deal more about Judge Roberts during the Judiciary Committee hearings that will start on September 12. Your release of the Solicitor General's records would facilitate those hearings immeasurably, and assist the Committee in meeting its responsibility to determine the whole truth about the nominee. The hearings will be much more difficult and less productive if these records remain secret.

We stand upon a very simple principle. There should be no secrets from the American people in the confirmation process for a Chief Justice who will lead an entire branch of our government. The people deserve to know the complete truth about Judge Roberts, the good and the bad alike, as the Senate decides whether to bestow upon him a position of such great power. The release of the Solicitor General's records can only help illuminate this truth.

Ken Salazar Jack Reed

Barbara A. Mikulski

Barbara Boxer

Hillary Rodham Clinton

John F. Kerry

Tom Carper

Jon Corzine

Carl Levin

Jack Reed

Mark Pryor

Blanche L. Lincoln

Mark Dayton

Jeff Bingaman

Ron Wyden