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## **Nominee's Role in Tribunal Case Draws Democrats' Interest**

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WASHINGTON -- Continuing the preliminary sparring over the nomination of Judge John G. Roberts Jr. to the Supreme Court, Democrats posed questions Wednesday on a potential conflict of interest in a decision in a recent case involving the Bush administration while liberal groups, including Naral Pro-Choice America, prepared new campaigns against him.

Senators Russell D. Feingold of Wisconsin and Charles E. Schumer of New York, both Democrats, sent a letter to Judge Roberts asking him to explain why he had participated in deciding the case after he was interviewed for the court seat.

The case, *Hamdan v. Rumsfeld*, concerned the Bush administration's use of military commissions to try terrorism suspects held at Guantanamo Bay, Cuba. On July 15, shortly before President Bush announced his nomination, Judge Roberts was part of a three-judge panel of the United States Court of Appeals for the District of Columbia Circuit that ruled in favor of the administration, unanimously overturning a lower court's decision that the military tribunals violated the Constitution and international law.

Judge Roberts was placed on the panel last December. He was first interviewed by Attorney General Alberto R. Gonzales for the nomination in April, days before the panel began hearing the case and months before the Supreme Court vacancy.

In response to the Democrats' letter, Senator Arlen Specter, the Pennsylvania Republican who is chairman of the Judiciary Committee, released letters from two law professors arguing that Judge Roberts was right to participate in the decision.

In one, Professor Thomas D. Morgan of George Washington University Law School argued that except for the chief justice, every federal judge was a potential candidate for a higher position and that judges were routinely interviewed about potential openings. In the other, Professor Ronald D. Rotunda of George Mason School of Law argued that requiring judges to recuse themselves in similar circumstances could allow the government to choose who hears its cases by scheduling interviews that would effectively eliminate any judge it does not want.

The Democratic senators, however, noted that other legal ethicists had said that Judge Roberts should have recused himself, in part because of the *Hamdan* case's importance to the administration. The two senators asked him to explain, before confirmation hearings begin on Sept. 6, why he had continued to participate in the case and what research he had done on ethical issues.

Outside liberal groups also stepped up their efforts to lobby against the confirmation. People for the American Way, the largest and best financed group in the liberal network on judicial nominations, formally announced its opposition to Judge Roberts. It released a 50-page attack on his record, and Ralph Neas, the group's president, said the liberal group MoveOn.org was sending it by e-mail to two million members.

Naral Pro-Choice America, which recently pulled an advertisement against Judge Roberts because of criticism of its inaccuracies, is also expected to begin a new advertising campaign by the end of the week, said people briefed on its plans.

The new advertisements are expected to discuss broader issues about privacy rights as well as Judge Roberts's work as a lawyer arguing for the first Bush administration in the 1991 case of *Bray v. Alexandria Women's Health Clinic*, defending the right of abortion opponents to protest outside clinics. The previous Naral commercial drew criticism for linking Judge Roberts's role in that case to clinic bombings that took place years later.

In Los Angeles, Senator Dianne Feinstein, a Democrat, pledged on Wednesday to press Judge Roberts about his views on abortion rights when the Judiciary Committee considers his nomination to the Supreme Court next month.

In a speech laying out her views on the confirmation process, Ms. Feinstein said she would decide how to vote on the nomination after "evaluating whether Judge Roberts's judicial philosophy represents the mainstream of American thought," including his views on *Roe v. Wade*.