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FACE THE NATION

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GUESTS: ALBERTO GONZALES
US Attorney General

Senator JOE BIDEN, (D-DE)
Judiciary Committee

JAN CRAWFORD GREENBURG
The Chicago Tribune

MODERATOR: BOB SCHIEFFER - CBS News

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FACE THE NATION - CBS NEWS
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BOB SCHIEFFER, host:

Today on FACE THE NATION: What about President Bush's new Supreme Court nominee, John Roberts?

Last week President Bush surprised Washington and the country when he nominated the 50-year-old DC Circuit Court judge to fill Sandra Day O'Connor's seat on the Supreme Court. Now it is up to the Senate Judiciary Committee to try and find out where Judge Roberts stands on a number of issues, including abortion, the environment, civil rights, and presidential power. Will he be confirmed by the US Senate? And if so, could he change the composition and direction of the court? We'll ask US Attorney General Alberto Gonzales, and from the Senate Judiciary Committee, Democrat Joe Biden of Delaware. Jan Crawford Greenburg of the Chicago Tribune will join in the questioning and I'll have a final word on ego-phoniacs. What's that? We'll explain.

But first, who is Supreme Court nominee John Roberts?

Announcer: FACE THE NATION with CBS News chief Washington correspondent Bob Schieffer. And now from CBS News in Washington, Bob Schieffer.

SCHIEFFER: Good morning again. And with us now from Scotts Valley, California, the attorney general, Alberto Gonzales. Joining in the questioning, Jan Crawford Greenburg of the Chicago Tribune.

Thank you for joining us, Mr. Attorney General. And before we begin to talk about John Roberts, I want to ask you about these latest reports coming out of Europe. They are suggesting now that the back-to-back attacks in Cairo and London were probably connected, and that it appears to be the work that was ordered by the high command of al-Qaida and perhaps Osama bin Laden himself. What can you tell us?

Mr. ALBERTO GONZALES (US Attorney General): Well, it's too early to tell whether that's, in fact, true, Bob. We obviously are looking carefully at the events in London and in Egypt and working with the British and the Egyptian authorities to offer our assistance in connection with the investigation. But it really is too early to tell whether this is a coordinated effort. What I can say is that we--that because of the success of the American military and our allies, because of activities here at home, I think we've made it much more difficult for al-Qaida to operate and serve as a threat here domestically. But there--obviously we know from these attacks that there is a threat to America and its allies, and I want to assure the American people we're doing everything we can to find out what happened and do what we need to do to ensure that it doesn't happen again.

SCHIEFFER: Well, I take your point, Mr. Attorney General. But when you look at this, some might suggest that Osama bin Laden is stronger than ever, that he operates and he strikes when and where he pleases. How can the administration say that you've hurt this effort? It doesn't seem to have stopped him.

Mr. GONZALES: Well, it's certainly difficult to protect democracies and open societies, and that is one of the challenges that we have to deal with. But the fact that we've had these two attacks in the past two weeks should not negate the successes that we've enjoyed the past three and a half years and before that. So we've made a lot of good effort. Obviously the threat is still out there. One of the dangers as time passes is that some people may become complacent, that

the threat is not real. But we know the threat is real and the government has been working as hard as it can to work with our allies to protect America and our allies from these kinds of attacks. And obviously they were successful with respect to these attacks and we need to investigate out how and why so that we can make it more difficult in the future.

SCHIEFFER: All right. Well, let's go to John Roberts. Jan.

Ms. JAN CRAWFORD GREENBURG (Chicago Tribune): Mr. Attorney General, Senate Republicans and Democrats, including the Judiciary Committee chairman, Arlen Specter, had urged the White House to nominate a justice in the mold of Sandra Day O'Connor, a moderate, someone who would be in the center. Is John Roberts going to be that kind of justice?

Mr. GONZALES: I think John Roberts is going to be the kind of judge that most Americans want, and that is someone who is of professional excellence, someone who has unquestioned integrity and character and someone who has appropriate respect for the law and respect for separation of powers, someone who does not come to the bench with a personal ideology, a personal agenda, but simply wants to apply the law, apply the words of the Constitution in rendering his decisions.

Ms. GREENBURG: How did the president reach that conclusion on John Roberts? How did he come to the idea that he would strictly apply the Constitution?

Mr. GONZALES: The president went through a very careful, deliberate process, having several conversations with close advisers. He read a lot of materials. He met personally with Judge Roberts, and based upon all the information that was made available to him, he made the decision this was the right person to serve this country, to serve the Supreme Court, to move forward the jurisprudence of American law. And for all those reasons, he believes that John Roberts should serve on the Supreme Court.

Ms. GREENBURG: Well--but Senate Democrats already are saying that they need to know more about the views of John Roberts and they're suggesting that they're going to seek--and some already have said they will be seeking--memos that he wrote when he was in the Justice Department representing the administration in front of the Supreme Court. What is your view on whether or not those confidential memos that John Roberts was involved in should be turned over to the Senate Democrats?

Mr. GONZALES: Well, it's not surprising that they would say that they need more information. The nomination was made just this week. We have spent a great deal of time looking at John Roberts' record. We've interviewed him. The Senate Judiciary Committee has not had any opportunity to even question him. So the fact that they're saying they need more information is clearly not surprising.

And as to whether or not we will provide certain information, I don't want to prejudge that issue. We're going to work as hard as we can to provide the appropriate information to the Senate and to reach an accommodation so that they do have the information that they need, certain information that's clearly more sensitive, more deliberative that we would traditionally not share outside the executive branch. But we're going to deal with this on a case-by-case basis, as other White Houses have done with respect to the Supreme Court nomination. Then let's just see what happens.

Ms. GREENBURG: Well...

SCHIEFFER: So let me just make sure we understand what you're saying here. You're saying, bottom line here, you may turn over some of these memos and some of these papers that have his name on them when he was a government employee. You may do that. You're saying you're not going to prejudge that, but you're going to look at it and you might do that.

Mr. GONZALES: Well, again, this is very sensitive information and there's a tradition of not sharing that information for obvious institutional reasons. But whether or not the Senate Judiciary Committee needs this, I don't want to prejudge this. Let's wait for the request to come in. We'll evaluate the request and see if there's a way we can reach an accommodation with respect to this information so that they have the knowledge necessary and appropriate to make an informed judgment about Judge Roberts.

Ms. GREENBURG: Certainly, there is precedent for turning over this information and some was released during the nomination of Robert Bork. Is that something that will guide the White House's thinking on this issue?

Mr. GONZALES: Well, when you say it's precedent, it was done one time, but we've had 108 other Supreme Court judges. And in many cases, such information was not shared. In fact, it may be most relevant if we talk about precedent to look at the two most recent cases as Justice Breyer and Justice Ginsburg's nomination. And I don't believe that kind of information was shared with the Senate Judiciary Committee. And so, again, every nomination's different. Every request by the Senate Judiciary Committee is different. And every response by the White House is different.

Ms. GREENBURG: But...

Mr. GONZALES: And so I think it would be inappropriate to prejudge what would happen in this case.

SCHIEFFER: Judge, you yourself have said in a recent interview that you don't want to put somebody on the court that has a secret agenda or a private agenda. In order to find that out, is it fair to ask Judge Roberts his general view on this question of abortion?

Mr. GONZALES: Well, certainly it's--a senator can ask any question that he or she wants to. I don't know wh...

SCHIEFFER: Well, should he expect an answer. Should he expect an answer to that?

Mr. GONZALES: Bob, the question in my mind would be: Are you asking for his personal views on abortion, whether that's morally wrong? Are you asking whether or not do you think *Roe v. Wade* was wrongly decided? Are you asking should *Roe v. Wade* be overturned? The question for me would be: What kind of information are you looking for? I think asking for someone's moral views, for example, on that issue and others in my judgment is not relevant to the decision or the debate because we expect our judges to be disciplined enough to put aside their own moral views about a particular issue and simply apply the law.

SCHIEFFER: All right. Let me ask you this question. Normally I would not think it fair to hold someone accountable for their views of his wife. We live in a modern society where Democrats are married to Republicans and so on and so on, but I am told that in making its case to conservative groups that John Roberts was the right person for this nomination that the White House and its allies continuously made the point that Judge Roberts' wife is very active

in an anti-abortion group. Is that fair game in this case to ask him about his wife's work in an anti-abortion group?

Mr. GONZALES: You know, I think Senator Kennedy said it best. I think he said that the wife's views, positions on this issue, should not play a factor in this discussion. This is not about John Roberts' wife. This is about John Roberts. He will be the one that'll be, if confirmed, serving on the court. He will be the one that--making decisions with respect to this and other kinds of issues.

SCHIEFFER: Let me also shift to this whole Karl Rove controversy and the leak of the CIA agent who was his wife--her name. You were the White House counsel when all of this took place. And according to Frank Rich in The New York Times this morning, on September 29th, 2003, when you were the White House counsel, the Justice Department notified you that it had opened an investigation into who outed Joe Wilson's wife, but that you waited 12 hours to notify White House staffers that they had to preserve materials connected to that case. That, of course, would give people time to shred documents and do any number of things. Why didn't you immediately notify the White House staff that this Justice Department investigation was about to commence?

Mr. GONZALES: When I was the counsel, it was always my practice to work very, very closely and carefully with investigators and to seek permission with respect to every step that I took with respect to an investigation. In this particular case, we were notified by the Department of Justice late one evening. I guess it was about 8:00. And I specifically had our lawyers go back to the Department of Justice lawyers and ask them, 'Do you want us to notify the staff now, immediately, or would it be OK to notify the staff early in the morning?' And we were advised, 'Go ahead and notify the staff early in the morning. That would be OK.' And again, most of the staff had gone home. No one knew about the investigation. And we made...

SCHIEFFER: Well, let me just ask you the obvious question, Mr. Attorney General. Did you tell anybody at the White House, 'Get ready for this, here it comes'?

Mr. GONZALES: I told one person in the White House that--of the notification and...

SCHIEFFER: Who?

Mr. GONZALES: ...then immediately--I told the chief of staff. And then immediately the next morning, I told the president. And shortly thereafter, there was a notification sent out to all the members of the White House staff.

SCHIEFFER: Mr. Attorney General, can I ask you why you didn't investigate this as the White House counsel when this first blew up?

Mr. GONZALES: I think that this is the kind of issue that I felt that we should wait and see whether or not there would be some kind of criminal investigation. And, of course, there was, and once the criminal investigation began, I've always felt that it would be counterproductive and would be in the way and might, in fact, hinder the criminal investigation. And that's why the decision was made and it wasn't just solely my decision.

SCHIEFFER: Do you regret making that decision? Did you--do you regret that?

Mr. GONZALES: No, absolutely not. I think it was a--the absolute right decision. We've got a very strong prosecutor that's now looking at that--at this, and I--whatever the facts are, he will uncover the facts and justice is going to be served in this case.

SCHIEFFER: Mr. Attorney General, thank you so much. Back in a moment with Senator Joe Biden.

(Announcements)

SCHIEFFER: And with us now from Toronto, Canada, the ranking Democrat on the Senate Judiciary Committee, Senator Joseph Biden of Delaware.

Senator, thanks for coming. Before we get to the Supreme Court business, I want to ask you about what I was just talking about last there with the attorney general, who now says that he waited 12 hours after the Justice Department notified him that they were launching a formal investigation into this who leaked and who outed, who blew the cover of a CIA agent. He waited 12 hours before telling the White House staff about that. But in the meantime, he did confide to the White House chief of staff that there was such an investigation coming. It seems to me to perhaps open a whole new can of worms. What is your reaction?

Senator JOSEPH BIDEN (Democrat, Delaware; Judiciary Committee): Well, it raises a lot of questions. I don't doubt the attorney general's sincerity. But it does seem to me it wasn't the soundest in judgments. There's been a real inertia at the White House to look into this to begin with, number one. And number two, the real question now is who did the chief of staff speak to? Did the chief of staff pick up the phone and call Karl Rove? Did the chief of staff pick up the phone and call anybody else? Ordinarily, you would think that he would immediately send out an e-mail to every member of the staff and say--you know, you don't have to call them. Every of those staff members carries around a BlackBerry and--send an e-mail saying 'Boom.' But I'm sure what's going to happen now is the investigators will take a look at--to see who, in fact, the chief of staff spoke to.

SCHIEFFER: The attorney general did confirm earlier today, and I believe for the first time, that he also was called before the special prosecutor and he, too, testified. Of course, we cannot know at this point what they talked about in that conversation. But it does seem to me that this story has now moved beyond where it was.

Sen. BIDEN: Well, it seems to me it is, too. I didn't realize how many people had been called before the grand jury. I predict one of the things that will come out here is the comparing what the principal persons being investigated here now--Mr. Rove and Mr. Libby--what did they say to the grand jury, what did other people say to the grand jury. You know, lots of times in these kinds of investigations, the thing that gets you in the most trouble is an inconsistency. I'm not saying there is one, but it's much more extensive than I thought it was, and I think it has a way to go.

SCHIEFFER: All right. Jan.

Ms. GREENBURG: You know, we also spoke with the attorney general about the Roberts nomination and whether or not certain documents that Senate Democrats have suggested they'd be interested in taking a look at would, in fact, be turned over from when Judge Roberts was in the Justice Department. What documents do you think should be made available to the Senate?

Sen. BIDEN: Well, I don't know enough to know that. I do know enough to know, having conducted many of these hearings as a chairman or ranking member for 17 years, that it is not at all inappropriate to seek documents. And in most cases, the documents sought are provided. A lot of it has to do with work product of cases that have been worked upon. But, again, the one thing I'll agree with the attorney general on, I think it's a little premature to make a blanket judgment about what should be asked for and what should be given. But my guess is the administration--look, this should be fair, this should be open and it should be a two-way street. We should treat the nominee with respect, and the White House should treat with respect the request coming from the Senate.

Ms. GREENBURG: Well, back in 2003, Senate Democrats blocked the nomination of Miguel Estrada to the same court that Judge Roberts sits on now, saying that they just didn't know enough about his views, and the White House would not release those documents, so therefore, they just couldn't vote for him. Now John Roberts was in a very similar situation at that point, yet the Senate Democrats did not demand at that time the White House turn over the same documents. Why not? Why didn't you demand those documents and filibuster John Roberts at that point?

Sen. BIDEN: Because there was not nearly as much controversy surrounding the role played by John Roberts in the administration and by Estrada, though they were very different questions being asked. I don't think you just go out in a blanket fishing expedition and ask for every single thing that a nominee has written or advised the White House or the Justice Department or the solicitor general. In the case of the nominee that was blocked, there were very specific requests raised as a consequence of questions that related to that particular nominee.

Ms. GREENBURG: But--go ahead. I'm sorry.

SCHIEFFER: I was just going to ask you, Senator, this does present something of a problem for Democrats who are thinking about running for president next time out it would seem to me.

Sen. BIDEN: I don't know any of those.

SCHIEFFER: You don't know any of those. You have suggested on this broadcast that you intend to seek the nomination. Most people think Hillary Rodham Clinton is going to seek the nomination. Will presidential politics play any part in how Democrats react and vote on this nomination?

Sen. BIDEN: I don't think so, but I think every single thing that anyone is thinking our president does or says will be viewed through that prism. So whether or not that is the motivation of anyone voting on Roberts or asking questions about Roberts, I'm sure it'll be phrased in that context. I'm kind of where the American people are right now, Bob, and that is I like what I see about Roberts in terms of his personality, his temperament. He doesn't seem to be an absolute ideologue by any stretch of the imagination. But like the American people, to know more.

You asked a rhetorical question: Could this mean a radical change in the direction of the court? The answer is, it could mean that. The 5-to-4 decisions were ones that involved O'Connor. She's being replaced. For example, what is the role of the cur--are you able to get a second opinion or can HMOs stop you from that? O'Connor said, no, you get a second opinion. Are you able to enforce the EPA regulations against a state? O'Connor said, yeah, you can. What

happens if this guy says no? So the answer is there's a great deal at stake about personal autonomy, Schiavo kinds of cases, and the willingness of the court to allow the government to intervene as a shield on behalf of people. For example, can tobacco companies target our kids? There's a real issue. On the right...

SCHIEFFER: Well...

Sen. BIDEN: ...they say no, that's freedom of speech. Big deal.

SCHIEFFER: ...let me just as you the obvious one and the hot-button issue. Is it fair to ask him what he thinks about abortion?

Sen. BIDEN: That's the question my students most often ask me. I've been teaching this issue for 13 years now, and that's the one they most ask. And after extensive research I've done and others have done who teach this issue, a senator's allowed to ask anything he or she wants and the nominee's allowed to decline or answer anything in any way they want. And then a senator makes his or her judgments based on what satisfies them. I personally do not ask specific outcomes, 'How would you vote on A, B, C or D,' but I do think it's really important, and John Roberts said in his previous nomination hearing, he said, 'I don't have any particular methodology, because some of the words in the Constitution are clear--two-thirds must vote for a treaty. It's clear on its face.' Other things, the liberty clause of the 14th Amendment. It what--that's in the eye of the beholder. So I want to know, how are you going to interpret those phrases in the Constitution that aren't clear on their face?

Ms. GREENBURG: And Sen...

Sen. BIDEN: And I think there's much at stake there.

SCHIEFFER: Barring any unforeseen development here, do you think he's going to be confirmed, Senator?

Sen. BIDEN: Oh, I'm not going to make that judgment again. I've been down this road before. You never, ever know. I just hope, and I believe, he will get a fair and respectful hearing and I expect in return that the administration will respond respectfully to the Senate's requests.

SCHIEFFER: All right. Well, Senator, we have to leave it there. Thank you so much for joining us this morning.

I'll be back with a final word in just a minute.

(Announcements)

SCHIEFFER: And finally today, another in our occasional comments on the cell phone culture. I realized a long time ago that cell phones are not to communicate. They are the new cigarette, something to grab when we're nervous, but I have come to believe they are something more, a magic carpet that takes us from reality to a different place like a child who reads "Harry Potter" or the drunk who believes he is invincible, as in, 'It's OK, honey. They'll never see us over here.'

Cell phone users are transported to a place where they no longer see or hear the world around them. Unfortunately, in the world around them where the rest of us are, we hear them. It's

like standing on the corner when one of those cars that blare rap music stops for a light. Mercifully, the cars move on. These ego-phoniacs just keep on talking about things that are, one, boring, or, two, no one else's business.

In the Denver Admiral's Club airport lounge early one morning last week, I listened for a full half-hour as a woman explained confidential details of a business presentation including her company's fall-back positions. What would the other side have paid for what was being forced on me for free?

I'm not sure how the rest of us can combat this, but here is one thought. The next time an ego-phoniac shares a secret you don't want to hear, just join in the conversation, something like, 'Why that's a terrible idea,' or, 'Don't be such a gutless ninny. Stand up for yourself.' On second thought, that could be a good way to get hit in the mouth with a cell phone. Still, it might be worth the risk.

That's it for us. We'll see you next week right here on FACE THE NATION.