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Subject: FW: AP - The young Alito issued a rousing defense of privacy and gay rights
Sent: Wed, 2 Nov 2005 18:11:06 -0500

b(6)

From: White House News Update [mailto:News.Update@WhiteHouse.Gov]
Sent: Wednesday, November 02, 2005 5:03 PM
To: Kavanaugh, Brett M.
Subject: AP - The young Alito issued a rousing defense of privacy and gay rights

The young Alito issued a rousing defense of privacy and gay rights

By CALVIN WOODWARD

WASHINGTON (AP) In college, Samuel Alito led a student conference that urged legalization of sodomy and curbs on domestic intelligence, a sweeping defense of privacy rights he said were under threat by the government and the dawning computer age.

President Bush's choice for the Supreme Court, in a report written years before ubiquitous personal computers made electronic privacy the everyday concern it is now, warned of the potential for abuses by officials and companies collecting data on individuals.

Three decades before the Supreme Court decriminalized gay sex, Alito declared on behalf of his group of fellow Princeton students that "no private sexual act between consenting adults should be forbidden." Alito also called for an end to discrimination against homosexuals in hiring.

As a federal appellate judge, Alito has built a scant record on gay-rights issues and a mixed one, at best, on privacy matters generally, in the view of civil liberties advocates who are still examining his opinions.

But they saw in the 1971 report a prescient thinker taking on issues ahead of their time, including the need for computer encryption, stronger oversight of domestic intelligence and curbs on the surveillance powers of states.

"The document itself is amazing," said Marc Rotenberg, executive director of the Electronic Privacy Information Center. "It is a dramatic statement in support of the right of privacy."

"Nonetheless," Rotenberg went on, "his decisions as an appellate judge over the last 15 years do raise some significant concerns about his willingness to apply Fourth Amendment privacy standards." Rotenberg cited an example in which Alito appeared to support the strip search of two people involved in an authorized search but not named in a warrant.

The college report was first reported in The Boston Globe.

The Human Rights Campaign, which advocates gay rights, said the report gives senators the

basis to question Alito on that subject and privacy matters broadly in his confirmation hearings.

“If these are his views today and there is no indication they are not it's a hopeful sign that may provide some insight into his philosophy,” said David Smith, the group's policy vice president. “This isn't pop-the-champagne-cork time. His views need to be explored.”

Even so, Smith was struck that Alito's report would raise a subject few tackled back then, and come down so unequivocally on it. “Very few people were standing up for gay Americans 34 years ago,” he said.

Harriet Miers, whose withdrawal from contention led to Alito's nomination, had gone on record in 1989 as favoring equal civil rights for gays but opposing repeal of the Texas anti-sodomy law, since overturned by the Supreme Court. Smith said that in comparison with Miers' known views on gay rights, “Alito wins and it isn't by a nose.”

Alito is listed on the paper as the chairman of the conference, entitled the Boundaries of Privacy in American Society, and author of the report's seven-page summary of findings. It was done for Princeton's Woodrow Wilson School of Public and International Affairs. Alito was a senior acting as a “commissioner” for the undergraduates in his group.

Mark Dwyer, a college roommate of Alito's, said such class projects were typically “one of those academic exercises of 'let's pretend in the real world.'”

Rotenberg said the report sounds much like one produced later by a national committee drawn together by that era's Health, Education and Welfare Department. Recommendations in that report became the basis of the landmark 1974 Privacy Act.

“A lot in this paper is surprisingly forward-looking,” he said.

In it, the young Alito writes that the Census Bureau should be barred from asking unnecessarily intrusive questions, federal privacy ombudsmen should be appointed and the government should face strict conditions for keeping and distributing dossiers on citizens.

Much as privacy-savvy Web sites today promise not to disseminate personally identifiable information, Alito said the government should limit its use of information on individuals to “bulk statistics.”

“The cybernetic revolution has greatly magnified the threat to privacy today,” he said.

In one recommendation that was commonly debated at the time but a nonstarter today, he said all computer systems should be licensed by the federal government.

The report, two years before *Roe v. Wade* affirmed a constitutional right to abortion, does not address that subject. Abortion-rights supporters consider that right to be a fundamental matter of privacy.

As an appeals court judge, he held that states can require women seeking abortions to notify their spouses. The Supreme Court disagreed.

Also on the bench, Alito supported a high school student who was taunted because he was perceived as gay, and a family seeking to adopt an HIV-positive child. The adoption had been challenged on grounds that the child posed a medical threat to the family's other child.

Alito also, however, wrote the majority opinion in a 1999 decision overturning a school district's wide-ranging anti-harassment policy, ruling in favor of Christian students who wanted to preach against homosexuality.

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