



from the November 04, 2005 edition - <http://www.csmonitor.com/2005/1104/p02s02-usju.html>

Should senators ask Alito about the role of his faith?

If confirmed, he would become the fifth Catholic among the nine justices on the Supreme Court.

By [Warren Richey](#) | Staff writer of The Christian Science Monitor

WASHINGTON - One of the defining characteristics of American liberty is that a person's religious faith - or lack of religious faith - is generally a private matter outside the realm of government concern.

Indeed, Article VI of the Constitution bars any religious test for prospective government officials.

But now, President Bush's nomination of Samuel Alito to a seat on the US Supreme Court is raising a sensitive question: To what extent should a nominee's religious faith be a legitimate area of inquiry during Senate confirmation hearings?

The issue arises as Judge Alito stands at the threshold of making Supreme Court history. Should he win confirmation, he will become the fifth Roman Catholic among the roster of nine justices, marking the first time a majority on the high court would be Catholic.

It is a remarkable development, considering he would be only the 12th Catholic justice on a court that has seen the service of more than 100 justices.

But in a country with a tradition of separation between church and state, any focus on Catholicism seems to some analysts more a relic of anti-Catholic prejudice than a well-intentioned effort to examine Alito's temperament, intellect, or judicial philosophy.

"The question is fidelity to the law," says Douglas Kmiec, a constitutional law professor at Pepperdine University School of Law. "So it is entirely appropriate for the Senate to make that inquiry. What is inappropriate is for the Senate to only make that inquiry of Catholics."

He also says, "The history of those Senate inquiries is that [Catholics] are the only people who have been asked." The late Justice William Brennan, Justices Antonin Scalia and Anthony Kennedy, and, most recently, Chief Justice John Roberts, were all asked if their Catholic faith would interfere with their ability to uphold the Constitution and the laws of the United States, Professor Kmiec says.

Now the question is emerging anew as supporters and opponents gear up for what analysts say could become judicial-confirmation Armageddon. Some see such questions as a form of anti-Catholic bigotry. Others see complaints about religious questioning as being part of a campaign to head off aggressive interrogation.

"It is a tactic aimed at shutting down discussion on a crucial area of legal philosophy," says the Rev. C. Welton Gaddy, president of the Interfaith Alliance. "It is very difficult to get into the process without being labeled anti-Catholic. And that is by design by people on the religious right."

Mr. Gaddy adds, "In reality, it is not about religion. It is about politics."

Many older Americans are aware of the so-called Catholic question from the way presidential candidate John F. Kennedy responded in 1960 to a group of ministers who expressed their concerns that a Catholic president might have dual loyalties to both the US and the Vatican.

Mr. Kennedy answered: "I do not speak for my church on public matters, and the church does not speak for me." The response went a long way in opening doors for American Catholics seeking positions of leadership in a country once dominated by Protestants. But many are asking why the question is still arising in 2005.

Supreme Court justices must swear two oaths: to protect and defend the Constitution and to faithfully and impartially uphold the Constitution and US laws. Legal analysts say that while it is sometimes easy to distinguish between the rulings of liberal and conservative judges, it is impossible to identify any meaningful characteristics of a Catholic judge, or Jewish judge, or Protestant judge. Rather, they are judges who happen to be Catholic, or Jewish, or Protestant.

During his confirmation hearings in September, Mr. Roberts was asked at least three times a version of the JFK question. He answered: "My faith and my religious beliefs do not play a role in judging. When it comes to judging, I look to the lawbooks and always have. I don't look to the Bible or any other religious source."

Manuel Miranda, founder of the Third Branch Conference, a coalition of grass-roots organizations monitoring judicial issues, says both the question to Roberts and his answer were inappropriate.

"How insulting. How offensive," Mr. Miranda wrote for OpinionJournal, the online edition of The Wall Street Journal's editorial page. "The JFK question is not just the camel's nose of religious intolerance; it is the whole smelly camel."

In a telephone interview, Miranda said he wishes Roberts had been more forceful in his response: "What he could have said is, 'You really have crossed the line in asking me that question, and I take offense at it. And I would like to remind you that the Constitution of the United States, to which you have sworn an oath, senator, requires that you not ask me a question like that.' "

Miranda is a former staff aide to Republican Sen. Orrin Hatch and Senate majority leader Bill Frist. While working in the Senate, he pioneered the Catholic bias issue as a counter to Democratic filibusters of Bush judicial nominees.

Gaddy of the Interfaith Alliance says the stakes for the nation in the direction of the Supreme Court are high. The confirmation process must be free and open enough to foster a wide-ranging examination of a prospective life-tenured justice, he says.

"The issue is not just about abortion. It is larger than that," Gaddy says. "What is at stake is the advancement of a view that the government of the United States has a responsibility to shape and monitor the personal, moral values of the citizens of this nation."

Gaddy says he hopes senators won't be intimidated by false accusations. "I think they have to ask those questions," he says. "You can be sure when they ask them, anti-Catholic

charges will be raised."

Among the eight Democratic members of the Senate Judiciary Committee, four are Jewish and four Catholic. The Catholics include Sens. Patrick Leahy, Edward Kennedy, Joseph Biden, and Richard Durbin.

"Some of the people who will be asking hard questions of Judge Alito are Catholics," says James Hitchcock, a history professor at St. Louis University and author of "The Supreme Court and Religion in American Life."

Professor Hitchcock says the divide over the so-called Catholic question has less to do with religious doctrine than with the increasingly contentious liberal- conservative political divide in the US.

"The kind of people back in 1960 who were questioning [John] Kennedy were Baptist ministers," he says. "I think that insofar as Baptists belong in the category of religious conservatives, they are not likely to object to a man just because he is Catholic if they feel he has a view of the world somewhat similar to their own."

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