

Ronald Reagan Presidential Library  
Digital Library Collections

---

This is a PDF of a folder from our textual collections.

---

**Collection:** Chew, David L.: Files  
(Operations, Office of)

**Folder Title:** Judge Robert Bork Nomination (5 of 6)

**Box:** OA 14941

---

To see more digitized collections visit:

<https://www.reaganlibrary.gov/archives/digitized-textual-material>

To see all Ronald Reagan Presidential Library inventories visit:

<https://www.reaganlibrary.gov/archives/white-house-inventories>

Contact a reference archivist at: **reagan.library@nara.gov**

Citation Guidelines: <https://reaganlibrary.gov/archives/research-support/citation-guide>

National Archives Catalogue: <https://catalog.archives.gov/>

NEW YORK TIMES  
9-28-87

## Politics in the Bork Battle

### Opinion Polls and Campaign-Style Pressure May Change Supreme Court Confirmations

By STUART TAYLOR Jr.

Special to The New York Times

WASHINGTON, Sept. 27 — The battle raging over Judge Robert H. Bork, from the Senate caucus room to the television screens of America, has thrust electoral politics and public opinion into the Supreme Court confirmation process more deeply than ever before.

News  
Analysis

With the Senate Judiciary Committee hearings entering their third week, that process may have been permanently transformed, especially if the Bork opponents who have seized the momentum in the last two weeks carry their string of tactical victories through to final triumph.

"We're getting perilously close to electing a Supreme Court Justice," Lloyd N. Cutler, a leading Washington lawyer who has been the most prominent Democrat so far to testify for Judge Bork, said gravely in a hallway interview last week.

Certainly the process has many earmarks of an election campaign. Millions of dollars are being spent on both sides of the battle in campaign-style advertising and mailings, charges of

distortion are being traded thick and fast, and television images are often overwhelming real issues.

Judge Bork himself has become the first nominee to testify in detail about his views on issues that come before the Court, seeking to sway undecided senators with assurances about his positions, assurances vaguely reminiscent of a politician's campaign promises.

#### Important Role for Voters

The outcome, still in the balance, may hinge largely on the nominee's appeal to the electorate as measured by poll results, which in turn may depend more on simplistic images in advertisements and television news programs. This could overshadow the sometimes profound but esoteric constitutional debates in the hearings.

Last week, with considerable suc-

cess, the Democrats who control the judiciary committee carefully structured the scheduling of witnesses and gave selective emphasis to Judge Bork's published views, in an effort to dominate the news and appeal to undecided senators and the constituencies on which they depend. Key senators have said they will be paying close attention to their constituents' reactions in deciding how to vote.

The Committee Democrats, with unexpected help from Republicans who pressed Judge Bork with repetitious questions, kept anti-Bork witnesses with impeccable credentials in the spotlight, pushing many of the best pro-

Bork witnesses into the evening hours.

In such a contest, public reactions to Judge Bork's appearance and demeanor — his beard, his naturally gruff voice, his dignified but somewhat professorial display of stamina, patience and intellect in the face of harangues by impassioned opponents — may count for as much as his positions on such issues as when precedents should be overruled.

Mr. Cutler and other Bork supporters suggested that this extreme politicization of the confirmation process could not only undermine the court's majesty as a bastion of principle, above the political fray, but set a precedent that might haunt the next Democratic President.

It might also, they say, impoverish American jurisprudence by preventing confirmation of bold, probing thinkers who dare to question orthodoxy or to offend powerful interest groups.

There is some irony in the role Judge Bork's opponents have played in fomenting the election-style political debate that concerns Mr. Cutler. It is the opponents, after all, who have most passionately stressed the need for the Supreme Court to be an independent bulwark of individual rights against majoritarian tyranny, resisting the popular pressures to which elected officials are subject, and who see the nominee as a threat to that role.

But Bork opponents reject suggestions that concerns about overly politicizing the confirmation process make it somehow inappropriate to oppose this nomination on ideological grounds. Responsibility for the current political battle, they say, is widely diffused.

#### Reagan Effort to Alter Court

President Reagan, who has sought more systematically to alter the ideological balance of the Court than any President in 50 years, chose a nominee known for his scathing denunciations of



The New York Times

Judge Robert H. Bork

major Supreme Court decisions expanding civil rights and civil liberties as far back as 1922.

Senate Democrats have reacted by waging the most openly ideological campaign in the recent history of Supreme Court nominations.

They say a lame-duck President should not be able to use his appointment power to further a social agenda that he cannot get through Congress, especially at a time when the Court is so closely balanced and many senators fear Judge Bork might move it in a dangerous direction.

And the Court itself has invited such political gut-fighting over its role by thrusting itself for decades into the political arena with controversial decisions that, rightly or wrongly, struck down laws passed by elected repre-

sentatives on issues like abortion and school prayer.

"I would prefer less ideologically charged nominations and am confident that that would produce less charged confirmation hearings," Paul Gewirtz, a Yale law professor, said Friday after testifying against Judge Bork.

#### Paralleling Popular Sentiment

Without disputing Mr. Cutler's point that the process of selecting Supreme Court justices should not become the functional equivalent of an election campaign, Professor Gewirtz said: "Fundamental changes in the way the Supreme Court interprets the Constitution should not occur unless the country broadly accepts those changes, as occurred in President Roosevelt's time."

Bork opponents also stress that some of the same Republicans who now want the Senate to confirm Judge Bork led the openly ideological filibuster that blocked President Johnson's nomination of Associate Justice Abe Fortas to be Chief Justice in 1968.

The Bork battle has taken one step farther down the political road than did the Fortas contest in that Judge Bork, under pressure from undecided senators, has found it necessary to expose himself in testimony to deep probing of his views.

Judge Bork himself also testified, in response to a question, that it was proper for the Senate to scrutinize his judicial philosophy. The Bork supporters who had argued that ideology should play no part in the confirmation process seem to have lost that point.

Inssofar as the Bork battle has become like an election campaign, it has been marked by a series of early victories for opponents of the nomination, to the point that White House officials said on Friday that Judge Bork's chances were even, at best.

Liberal groups, who organized early

and worked hard, have produced a blizzard of memorandums and studies focusing attention on the nominee's most controversial statements. The counterpunches from pro-Bork lobbyists were too little and too late to have as much effect.

The nature of the forum also presented Judge Bork with a problem in explaining some past positions that seemed out of tune with popular notions of justice: His legal reasoning, while resting on respectable grounds, often lacked popular appeal. It was also drained of much of its intellectual force by the time it had been compressed into news reports.

The strategic advantage that Democratic control of committee procedures gave to opponents was augmented by sometimes counterproductive efforts of Republican Senators to discredit witnesses who testified against him.

For example, Orrin G. Hatch of Utah, Gordon J. Humphrey of New Hamp-

shire and others kept prominent and articulate anti-Bork witnesses on the stand for hours with sometimes fumbling cross-examinations. Pro-Bork witnesses, some grumbling privately that the pro-Bork senators were hurting their own cause, waited deep into the twilight hours to testify.

The momentum could shift, however, when the nomination reaches the Senate floor, especially if the demonstrated power of the White House to tip close confirmation battles with popular appeals and the dangling of carrots before key senators comes into play.

(2)

# Senate tide seems to be against Bork

## Southern senators sensitive to black opposition at home

By Peter Osterlund  
Staff writer of The Christian Science Monitor

Washington

The polls have turned against Judge Robert Bork. And so may another barometer of public opinion, the United States Senate.

Judge Bork's nomination to the Supreme Court seems to be in trouble. Interest groups opposed to Bork have tirelessly pressed their cases on wavering and undecided senators. By comparison, Bork's supporters seem quiescent. "The intensity is on the side of the critics," says Sen. Bob Graham (D) of Florida, one of roughly 20 senators who have yet to choose sides in the Bork debate.

Several polls show a reversal in public opinion on the Bork nomination since his appearance before the judiciary committee - with a slight plurality of the public now opposed to Bork. The surveys suggest those who are undecided are siding with the opposition as attention focuses on the confirmation struggle.

With the public split on Bork, many senators can be sure of antagonizing large numbers of

voters no matter which side they choose. "It's almost a lose-lose situation," says Sen. Arlen Specter (R) of Pennsylvania, one of four on the 14-member judiciary committee not to have expressed a position on Bork's nomination.

Nonetheless, constituent opinion is sure to influence the outcome. "I'd like to say that I'll decide my position strictly based on the facts that have been presented," says Sen. Dennis DeConcini (D) of Arizona. "But human nature being what it is, [public opinion] is going to have some slight influence."

Close observers of the Bork confirmation battle are watching to see how southern Democrats react to public opinion. Historically, conservative southern Democrats could be counted on to support a Republican judicial nominee. But the four southern Democrats newly elected in

1986 - Senators Graham, John Breaux of Louisiana, Wyche Fowler of Georgia, and Richard Shelby of Alabama - were elected with an unprecedented amount of minority, particularly black, support.

One theory holds that these senators will find it particularly difficult to vote in favor of Bork. "Some of the constituent groups that helped get me elected are the ones that are the most strongly opposed to Bork," says Senator Breaux. With the Senate roughly split on the Bork nomination, the votes of these undecided freshmen could be decisive.

William Schneider, a political analyst at the American Enterprise Institute, thinks the politician's penchant for safety will prove even more decisive. "It is not necessarily the right move that is important to a politician, but the safe move," says Mr. Schneider.

On this basis, Schneider ar-

**Civil rights goals and the law**  
Blacks don't see courts as allies the way they did in the heyday of civil rights protests.  
Page 3

could...

(1)

... cont'd

gues, the safe action will be a vote against Bork. He reasons that some voters will be angered no matter which way a senator votes. So senators will want to vote in such a way to preserve the status quo.

"The possibility exists that Bork will sit on the bench and write opinions that could destroy the very fragile consensus that has developed on racial, religious, and privacy issues," says Schneider. "When that happens, everybody could get hurt - Democrats tear themselves up on race; Republicans split on religious issues."

At the same time, many senators continue to be troubled by conflicts between the often moderate views Bork expressed in testimony before the Senate Judiciary Committee and the mostly conservative positions he adopted during a long academic career. The phrase "confirmation conversion" has become a familiar one on Capitol Hill as

senators attempt to decide whether Bork's testimony reflected his true opinions on an array of legal questions, or whether his statements were crafted to win a Senate majority.

Some senators also puzzle over the ideological eclecticism that seems to characterize Bork's record as a scholar, solicitor general, and federal appeals court judge. They hesitate to vote for a man who, after a record-breaking five days of Senate testimony, remains much of a mystery. "He's been very liberal at some times, very conservative at others," says Breaux. "That makes it very difficult to predict how he would act on the Supreme Court."

Bork's supporters recognize the magnitude of their task. At the present time, White House strategists privately concede that they are a few votes short of a confirmation.

"There's been a lot of dirt thrown at him - I'm almost sur-

prised he's done as well as he has," says Tom Korologos, the White House lobbyist for Bork. "The only poll I'm interested in is the one on the Senate floor where they say 'the clerk will call the roll.'"

There is a question whether Bork's nomination will get to a roll call vote - several Democrats and at least one Republican have pledged a filibuster. But Sen. Alan Simpson (R) of Wyoming suggests the tactic could backfire. "No nominee has ever answered as many questions in committee as Bork did. Another nominee could be from Turkey Creek and, very graciously, refuse to tell us a thing," he says, adding that several moderate Republican senators who had first opposed Bork are reconsidering. "One way or another, President Reagan is going to have a new appointment to the Supreme Court - you can bet a conservative. ... How will they like Paul Laxalt?"

WASHINGTON TIMES  
9/28/87

# Innis asks to testify in support of Bork

By Gene Grabowski  
THE WASHINGTON TIMES

Roy Innis, chairman of the Congress of Racial Equality, said yesterday he has asked to testify in support of Supreme Court nominee Robert H. Bork to "erase the misconception that all civil rights groups are against him."

Mr. Innis also said he has asked to meet with Judge Bork and has requested help from Sen. Strom Thurmond of South Carolina, ranking Republican on the Senate Judiciary Committee, to schedule his testimony sometime this week.

The White House, meanwhile, concerned by recent national polls showing support for Judge Bork slipping, stepped up its counter-offensive against liberal organizations trying to derail the nomination.

Presidential domestic policy adviser Gary Bauer, in a weekend speech, denounced what he called

"the pit-bull politics" employed by groups that allegedly are distorting Judge Bork's record in advertisements and news releases.

"Yet another man of character and intellect is being viciously chewed on by Washington's special-interest lobbyists," Mr. Bauer said in a speech to the conservative Eagle Forum in Washington on Saturday.

"A coalition of pro-abortionists, radical feminists, left-wing lawyers and far-out civil libertarians have engaged in an incredible special-interest campaign to force the Senate to reject this nomination," Mr. Bauer said.

Washington lobbyist Tom Korologos, whom the White House retained to help coordinate committee testimony for Judge Bork, said the nominee's critics should focus on what the judge said in five days of testimony and on the legal opinions

-CONTINUED-

he has written rather than earlier speeches and articles.

"There's all this conversion talk" about Judge Bork having moderated his views for the committee hearings, Mr. Korologos said in an interview with The Associated Press. "Look, the man testified under oath. Either confirm him or indict him. He was on the record."

Mr. Innis, who has headed CORE since 1968, said in a telephone interview from his home in New York City that he has "been disgusted" by the repetition of unfair charges against Judge Bork's civil rights record by liberal groups and senators who oppose the nomination.

"Judge Bork has answered those charges, and you can't find any record of racism or sexism in his judicial decisions," said Mr. Innis, who testified last year in support of William Bradford Reynolds, assistant attorney general in charge of the civil rights division, when he was nominated unsuccessfully to be associate attorney general.

"If you look at the evidence so far, the prosecution hasn't proven its case that Judge Bork is against blacks, but his opponents continue to make those charges," Mr. Innis said.

Mr. Innis has battled with other civil rights leaders in recent years over his support for conservative Republican initiatives and his offer of legal aid to Bernhard Goetz, a white man acquitted this year of attempted murder charges in connection with his shooting of four black youths in a New York subway in 1985.

Judge Bork yesterday declined to say whether he would meet with Mr. Innis. Committee staffers said they didn't know if the schedule could be rearranged at this late time to accommodate the civil rights leader. Among witnesses for Judge Bork in the final days of testimony will be Richard Thornburgh, Pennsylvania's former GOP governor, who is scheduled to appear today.

Committee Chairman Joseph Biden has promised that the panel will vote on the nomination and send it to the Senate floor by Thursday.

Conservative supporters of Judge Bork, who have been critical of White House efforts to back its nominee, said they are hopeful that a strong effort in the final week of hearings could influence several senators before next week's expected floor vote on confirmation.

Both the committee and the full Senate are considered almost evenly divided on the Bork nomination. Supporters on both sides are unwilling to predict the vote.

"I'm encouraged that the White House finally appears to realize the seriousness of the fight," said Pat McGuigan of Coalitions for America, a conservative group coordinating pro-Bork forces. "I just hope it's not too late."

Mr. McGuigan spent the weekend in New England meeting with organizers from Maine, New Hampshire, Rhode Island, Massachusetts and Vermont in the hope of generating a strong pro-Bork mail and telephone campaign aimed at senators this week and next.

As part of the renewed conservative attack, pro-Bork radio advertisements now are being broadcast

across the country. The spots are heard mainly on religious and country music stations willing to air them as a public service to counterbalance paid anti-Bork ads sponsored by People for the American Way.

"We just don't have the money that the other side has for getting out our message," said Mr. McGuigan, whose groups have been relying primarily on direct mail campaigns to stir support for Judge Bork.

Conservative leaders have estimated that, at most, they will raise and spend \$2 million for the pro-Bork campaign, while liberal groups have projected they will spend at least twice that amount on ads, direct mail and public information campaigns.

Most key senators report that mail and phone calls for and against Judge Bork are running about even.

By the weekend, the office of Arlen Specter, an uncommitted Pennsylvania Republican, reportedly had received 100,000 calls and letters relating to Judge Bork. Included were two death threats, one from a Bork supporter and one from an opponent.

Mail and telephone calls also were evenly divided on the nominee at the offices of Sen. Dennis DeConcini, Arizona Democrat, until the "700 Club," put on by conservative Pat Robertson's Christian Broadcasting Network, flashed the names and phone numbers of the senator and other undecided Judiciary Committee members on the television screen.

"Then there was a whole slew that skewed it for Bork," said DeConcini aide Jamie Ridge.

In Pennsylvania over the weekend, the Republican state committee's leaders sponsored a resolution urging the Senate Judiciary Committee to confirm Judge Bork. The move was clearly aimed at influencing Mr. Specter, a former Philadelphia district attorney who won his second Senate term in November.

Republican committee member Gordon Humphrey of New Hampshire, in a radio interview broadcast in Philadelphia, said he welcomed the new surge of White House support for Judge Bork and encouraged more emphasis on the nominee's criminal justice record to offset liberal criticism.

"I think the president can win, particularly if he stops playing by their rules," Mr. Humphrey said. "What we've got to do is change the rules and attack about the need for law enforcement."

USA TODAY  
9/28/87

# Reagan urged to lead new charge for Bork

By Sharen Johnson  
USA TODAY

Robert Bork's Supreme Court confirmation hearings enter their 10th day today after a weekend of debate about the controversial conservative:

■ After reports that administration insiders think Bork's

success is unsure, some conservatives urged President Reagan to go on the attack.

■ A new poll showed most USA citizens oppose Bork.

Tom Korologos, White House lobbyist, said the Senate vote will be "extremely close" and could go either way.

White House sources rate

Bork's chances "at best, 50-50," *The New York Times* reported Saturday. That's too pessimistic, said Sen. Gordon Humphrey, R-N.H., urging Reagan to take the offensive.

But a Sept. 17-23 Louis Harris Survey in the *New York Daily News* Sunday found 57 percent of 1,249 polled opposed

Bork; 29 percent backed him; 14 percent were undecided.

"We have not seen the Harris poll," said assistant White House spokesman Ben Jarratt. "Our most recent polls show that a bulk of the American public has not formed an opinion (and) at least a quarter of the Senate is undecided."

Today's Senate Judiciary Committee witnesses include ex-Gov. Richard Thornburgh, R-Pa., former Bork Justice Department colleague; and ex-Sen. Thomas Eagleton, D-Mo.

The hearings start at 10 a.m. EDT. PBS and CNN will provide live coverage; C-SPAN, delayed coverage tonight.



CHICAGO TRIBUNE  
9-28-87

# Bork

By Janet Cawley  
and George de Lama  
Chicago Tribune

WASHINGTON—White House officials are launching an all-out campaign to salvage the nomination of Robert Bork to the Supreme Court in the face of mounting public opposition that could lead to his defeat in the Democratic-controlled Senate.

At least three polls released in recent days have shown substantial public opposition—in one case, by a 2-to-1 ratio—to Senate approval of Bork after Judiciary Committee hearings on his nomination end early next month.

Some White House aides fear swelling public disapproval could make it far easier for the as yet undecided senators, who will determine the outcome of the final vote, to cast their ballots against President Reagan's nominee.

"It'll be a very tough battle," White House pollster Richard Wirthlin predicted of the upcoming Senate fight. "I'd be pressed to say which way it'll turn out. I would say he would win, but I wouldn't bet the ranch on it."

Wirthlin said he did not want to comment on specific tactics the White House might use to push Bork's nomination, but left open the possibility of Reagan making a na-

tionally televised appearance on Bork's behalf.

Another White House official said Reagan would continue to lobby for Bork in public appearances, beginning with a speech to conservative business people and ethnic groups, tentatively scheduled for Wednesday.

"We think it's going to be close and tight and tough, but we're still confident he'll be confirmed," the official said.

By one White House count, as many as 30 to 40 senators still are undecided on how they will vote on the 60-year-old judge's nomination, although other estimates put the figure somewhat lower.

A majority of the 100 senators would have to approve the nomination for Bork to be placed on the court. In the event of a 50-50 tie, Vice President George Bush, as president of the Senate, would cast the tie-breaking vote.

Some White House officials acknowledged that Bork's appearance before the Senate Judiciary Committee earlier this month was not enough to offset opposition to his nomination, as Reagan aides had earlier hoped.

As a result, White House Chief of Staff Howard Baker, the former Senate majority leader who has

-CONTINUED-

made the Bork nomination a personal priority, plans to step up his lobbying of his former colleagues over the next two weeks, aides said.

Some conservatives within and outside the administration have expressed disappointment that Reagan and Baker chose the tactic of portraying Bork as a "mainstream conservative" and judicial moderate in trying to win support from key moderate senators.

Reagan repeated that theme Friday, using an appearance before a conservative women's group to accuse Bork's critics of being outside the political mainstream. The carefully orchestrated event was calculated to show female support for Bork, who has been accused of being insensitive to women's rights.

Some conservatives had urged Reagan to portray Bork as a staunch conservative and to make the political argument that his presence on the Supreme Court could help reverse decisions handed down by the court when it was dominated by liberals.

Their thinking, according to one White House official, was that a confrontation with the Democratic-controlled Senate would galvanize support for Bork from a majority of Americans and could spill over into support for Republican candidates in the 1988 presidential election.

But Reagan rejected this advice after Baker consulted with key moderates of both parties and concluded that a confrontation with Senate Democrats would not help Reagan's priority—getting Bork confirmed.

Wirthlin's poll showed that of the 1,050 people surveyed Sept. 19-22, immediately following Bork's testimony at the confirmation hearings, about two-thirds were aware of the hearings, and 31 percent of those thought Bork should be confirmed. Thirty percent were opposed, and the remainder had no opinion.

Pollster Louis Harris released a far less favorable poll that showed 57 percent of the 1,249 persons surveyed Sept. 17-23 thought Bork's nomination should be rejected, compared to 29 percent who thought he should be approved and 14 percent who were undecided.

Of those who said they saw his confirmation hearings on television or followed them closely in newspapers, 61 percent opposed the nomination, while 32 percent approved of it—meaning Bork apparently did not help himself with the public, at least, during his nearly

five days of testimony.

An ABC-Washington Post poll released late last week showed 44 percent of those who were aware of Bork's nomination approved, compared to 48 percent who disapproved.

In early August, the ABC-Washington Post poll showed 45 percent in favor of the nomination and 40 percent opposed, indicating a significant increase in public opposition over the past two months.

But some of Bork's supporters say they see no slackening in the public backing for Bork, who was nominated last July to succeed retired Justice Lewis Powell.

A spokesman for Republican Sen. Orrin Hatch of Utah said his office was receiving "2,000 to 3,000 pieces of mail a day [on Bork] from across the country, and 80 to 85 percent of it is favorable. The calls are running 15-20 to 1 in favor."

Judiciary Committee Chairman Joseph Biden (D., Del.) originally said he hoped to have a committee vote on Bork's nomination by Oct. 1. But with the hearings lagging way behind schedule, he indicated last week the vote could be delayed by several days.

The 14-member panel can reach one of three conclusions on the Bork nomination: it can recommend approval, recommend rejection or issue no recommendation at all.

With four panel members publicly undecided, it is not clear how the Judiciary Committee vote will go, but one conservative source said, "It doesn't look likely that they'll get a favorable."

An unfavorable or no recommendation would clearly give more ammunition to Bork opponents in the Senate.

Should Bork be defeated, there has been considerable speculation that Hatch, a staunch conservative, would be named as a replacement candidate. Several White House officials said that that was a possible scenario but, one emphasized, "We don't expect to lose."

Since the hearings opened Sept. 15, there has been unusually extensive testimony from Bork, as well as from myriad other witnesses, both pro and con. In all, 107 public witnesses are to appear, according to one committee source, an extraordinary number in view of the fact that only about half that many appeared at last year's hearings on William Rehnquist's nomination to be chief justice.

Several times during the debate over Bork, references have been made to Hatch as a possible replacement choice for the court. The underlying implication seemed to be that, if the senators defeated Bork, they nonetheless would face a diehard conservative whose nomination probably would go through.

*Tribune Washington correspondent Timothy McNulty also contributed to this report.*

# 57% reject Bork

By a clear-cut 57% to 29% margin, the American people believe the U.S. Senate should reject the nomination of Judge Robert Bork to the U.S. Supreme Court, according to the Louis Harris Survey.

The other 14% of those polled were undecided.

The results, according to the telephone survey of 1,249 adults nationwide between Sept. 17-23, reflect public reaction to Bork's own testimony to the Senate Judiciary Committee and not the subsequent witnesses, pro and con.

Significantly, 61% of those who said they saw the hearings on TV or who followed them closely in the newspapers, opposed confirmation of Bork, against 32% who supported it. Thus, the evidence is that the judge did not help himself in his testimony.

According to the survey, 57% of the adult public say they have paid close attention to the Bork hearings. This is below the 70%, for example, who saw or followed the Iran-Contra hearings when Lt. Col. Oliver North testified.

People describing themselves as conservatives supported Bork, but only by a narrow 44% to 40%. Moderates opposed him 61% to 30% and liberals by a massive 79% to 13%.

Men were against Bork by 55% to 36%, but women by a higher 59% to 23%. Whites opposed his confirmation by 55% to 31%, blacks by 71% to 15% and Hispanics by 62% to 27%.

# Bork Is Losing Southern Democrats While Picking Up G.O.P. Moderates

By NATHANIEL C. NASH  
Special to The New York Times

WASHINGTON, Sept. 26 — Interviews with a number of conservative Democratic Senators from the South indicate a growing resistance among them to Robert H. Bork, a development that might foretell a bloc vote against his confirmation to the Supreme Court.

At the same time, another key group of undecided senators, moderate Republicans who at first seemed mildly opposed to Judge Bork's nomination, now appears to be moving in his direction, or at least to a largely neutral position, interviews indicate.

These potentially crucial shifts in sentiment come amid recent White House acknowledgement that so far the Administration does not have the Senate votes needed to gain confirmation of Judge Bork. The loss of a large part of the conservative Democratic vote, about 20 senators in all, mostly from the South, would almost certainly doom his nomination.

Most of the Southern Democrats maintain that they are still undecided as to how they will ultimately vote. But in the interviews, conducted late this week, many conceded that in the last two weeks of hearings by the Judiciary Committee they had become increasingly concerned about the long-term effects of having Judge Bork on the Supreme Court.

"If we were really sold on Bork, you'd be hearing it," said one Southern Democrat, Senator Richard C. Shelby of Alabama.

## 'Whole Bloc Moving Against Him'

"I think the whole bloc of Southern Democrats is moving against him a little," said Senator Wendell H. Ford, Democrat of Kentucky, "just like the public seems to be moving against him."

Another Democrat, Senator David Pryor of Arkansas, said: "A month ago I would have said Bork had 57 to 58 votes in the Senate. I don't think he has that many votes now."

The moderate Republicans who are considered swing votes do not make up so large a voting bloc, numbering about 10, or half the size of the conservative Democratic vote. Nor are they moving so strongly toward the Bork nomination as the Southerners are against.

"I have seen some of my moderate Republican colleagues, who came in skeptical about Bork, now in a position of not knowing where they stand — and that is progress," said Senator Dave Durenberger, Republican of Minnesota. "They are moving from a negative presumption to one of neutrality."

As a bloc, the moderate Republicans do not seem so united on the Bork nomination as do the conservative Democrats.

For example, Bob Packwood of Oregon vowed this week to lead the floor fight against the nomination, while Oregon's other Senator, Mark O. Hatfield, also a Republican, seemed to indicate that he was leaning in favor of Judge Bork. "I don't mind working with people of basic intelligence, even though I might disagree with them, and I don't find anyone challenging Bork's

intelligence," Senator Hatfield said. "In other words, I'd rather have a smart conservative than a dumb liberal, and I'm a liberal."

Many of these Republicans say they have been lobbied only mildly by the White House, although they acknowledge that this could quickly change: if the Administration feels it is losing the Southern conservative vote, it may decide to concentrate more heavily on the moderate Republican, invoking party loyalties.

Of perhaps greatest concern to most of the Southern Democrats interviewed was their fear that Judge Bork's views on civil rights and privacy guarantees could reopen those issues again at a time when most legislators feel they have been substantially settled by law.

"My deep concern is that you could turn back the clock on civil rights," said one Democrat, Senator Lloyd Bentsen of Texas. "We've already fought those fights, and we're happy with the outcome."

Amid the intense public relations efforts on both sides of the nomination, the fear of retreating on racial equality has been perhaps the most effective lobbying message delivered by Bork opponents.

Further, a number of the Southern Democrats were elected largely with the support of black voters and are therefore particularly sensitive to these voters' concerns about Judge Bork.

For example, Senator Shelby received only 40 percent of the white vote in Alabama last year, while getting more than 90 percent of the black vote. Senator John B. Breaux of Louisiana also got only 40 percent of the white vote last year and close to 90 percent of the black.

"Those who helped us get elected — the black voters, the working people — are united in their opposition to Bork, and don't think for a moment that we are going to ignore that," Senator Breaux said.

He added that the groups opposing the nomination were much more intense in their position than those supporting it and that in much of the South a vote for Judge Bork could have long-time adverse political consequences.

"If you vote against Bork, those in favor of him will be mad at you for a week," Senator Breaux said. "But if you vote for him, those who don't like him will be mad at you for the rest of their lives."

"Those who are counting on the Southern Democratic vote to go with Bork are making a mistake."

Another issue on these senators' minds is that if Judge Bork, a native of Pittsburgh, is confirmed as successor to Justice Lewis F. Powell Jr., a Virginian, the South will no longer be represented on the Supreme Court. "The

Southern seat issue is emerging as a real problem," said Senator Breaux.

While the Southern Democrats are beginning to voice their concerns about Judge Bork publicly, they are also closely watching one of their most esteemed colleagues, Howell T. Heflin of Alabama. A former Chief Justice of the Alabama Supreme Court, a staunch advocate of civil rights, a member of the Judiciary Committee and a man considered to exercise impeccable judgement, Mr. Heflin finds himself under considerable pressure and scrutiny.

Indeed, many are saying that his vote in committee will have such influence on the decisions of a number of Southern colleagues that it could, in effect, decide the outcome of the nomination.

"Howell went through the anti-Wallace movement in Alabama," said one Southern Democrat, who asked not to be identified. "He is not a man to take a chance, and I think he is asking himself now whether having Bork on the Supreme Court is worth running the risk of reliving" the civil unrest of the past.

Though Senator Heflin has often been the least combative of the 14 Judiciary Committee members in the questioning of Judge Bork and his supporters, he has steadfastly refused to indicate in which direction he is leaning. But, his Democratic colleagues say, his stature is such that if he ultimately votes against the nomination, it will be hard for most of the other Southern Democrats to vote for him.

"Heflin's vote is more than a single vote," said Senator Bob Graham, Democrat of Florida. "It carries a lot of weight. His vote will be part of my decision, but not all of it."

Members of the Senate are going at different paces in confronting the Bork nomination and coming to their conclusions. Some such as Senator William S. Cohen, a Maine Republican, and Senator J. Bennett Johnston, a Louisiana Democrat, say that other responsibilities have made it impossible at this point to study the transcripts of the hearings and reach conclusions.

But others say they are in the process of deciding where they stand.

Senator Terry Sanford, Democrat of North Carolina, said he had reviewed all the hearings so far, has read Judge Bork's writings and decisions, and plans "sort it all out this weekend."

Referring to recent polls that have indicated that public opinion has turned away from favoring the Bork nomination in recent weeks, Senator Sanford indicated that he might make a public announcement on how he will vote sometime next week.

Also, Senator Pryor said that in the last few days he had begun to decide how he would vote. "But I've only told one person which direction I'm going — my wife," he said.

BALTIMORE SUN  
9-27-87

## Pa. Republicans press Specter to support Bork

### Senator says issues remain on Supreme Court nominee

PHILADELPHIA (AP) — Pennsylvania Republican leaders tried to move Sen. Arlen Specter off the fence yesterday, saying he should support the party and President Reagan by voting to confirm Supreme Court nominee Robert Bork.

Mr. Specter has refused to take a position on Judge Bork until Senate Judiciary Committee hearings on the nomination are finished.

The Republican State Committee's leaders sponsored a resolution urging the Senate Judiciary Committee to confirm Judge Bork. The move was clearly aimed at Mr. Specter, a second-term Pennsylvania Republican who serves on the Judiciary Committee.

A group of about 80 students, representing Pennsylvania College Republicans and the Young Republicans, was more vociferous. The students waved signs and chanted, "We want Bork," and "We need Bork," as the senator arrived to participate in the state committee's annual fall meeting.

"I don't see any reasons why he shouldn't vote with the party and for the president," said John Fluharty, regional chairman of the College Republicans and state chairman of Young Americans For Freedom. "There's no reason to play games with this nomination."

Mr. Specter told the protesters they could keep a Republican in the White House if they applied the same enthusiasm to the 1988 presidential race but said that he will remain uncommitted until he hears all the witnesses.

The senator said that he is impressed with Judge Bork's intellect but troubled by some of the changes in positions the nominee has professed.



ASSOCIATED PRESS

Sen. Arlen Specter, R-Pa., faces members of Pennsylvania College Republicans showing support with signs and chants for the confirmation of Robert Bork to Supreme Court.

SARASOTA NEWS  
9/27/87

## Bork promises a fair shake to everybody

Gannett News Service

WASHINGTON — Supreme Court nominee Robert Bork completed a record five days of Senate testimony Saturday.

He promised to blend his strict reading of the Constitution

with a respect for established legal precedent.

Foes try  
new tactics

Page 12A

"I've received criticism in some quarters for being too rigid and criticism in other quarters for being inconsistent or self-contradictory," Bork told the Senate Judiciary Committee during an unusual weekend session. "Neither charge is, in my opinion, an accurate one."

If confirmed by the Senate, the 80-year-old federal appeals court judge said, "I'll give everybody a fair shake."

But skeptical senators continued to voice dissatisfaction with Bork's insistence that the original intent of the Constitution's framers be his guide.

Throughout the week, Bork stuck by most of his controversial views. He shed a few key opinions of the past, on issues of free speech and equal protection, in particular.

His performance left supporters anticipating that regardless of a close committee vote, a majority will be found in the full Senate.

yonnndgw yonnndlh  
na--w

na--w

al204na--w

d w pm-bork-reagan 9-28 0239

WASHINGTON (UPI) — A White House spokesman Monday accused the Senate Judiciary Committee's Democratic leadership of trying to turn the nomination of federal appeals Judge Robert Bork to the Supreme Court into "a public referendum by appealing to special interest groups."

Spokesman Marlin Fitzwater also lashed out against "the liberal big spending advertising campaign" against Bork.

Fitzwater appeared to reflect White House frustration in the campaign to win Senate confirmation of the controversial nomination of Bork to the high bench, and he discounted recent polls showing a swing away from the president's nominee.

He said that generally, White House polls show a large number of those sampled have not made up their minds. He declined to give specific figures, saying "we have some numbers. The polls are shifting up and down."

"This is not a public referendum," he declared. "I don't think the public opinion polls are the best way to pick a judge."

"The Judiciary Committee has done some real damage in trying to make this into a public referendum by appealing to special interest groups," he said.

"I think it's clear the liberal Democratic leadership has taken a number of special actions to foster" special interest opposition to Bork.

But Fitzwater said the hearings "were helpful," adding, "We're in good shape and we believe he will be confirmed."

Asked about reports that a White House official said that if Bork is rejected, the next nominee will be Sen. Orrin Hatch, R-Utah, he replied: "The next Supreme Court judge will be Judge Bork."

-----  
upi 09-28-87 01:05 ped

00010-----

r w PM-Bork 3rdLd-Writetnru 09-28 0946

PM-Bork, 3rd Ld-Writetnru,1149(

Eos: First 10 grafs new with Bell testimony; picking up 5th graf  
ovs. Eagleton insisted(

By LARRY MARGASAK=

Associated Press Writers=

WASHINGTON (AP) — Griffin Bell, attorney general under President Carter, today backed Supreme Court nominee Robert H. Bork, whom Bell called "conservative but ... principled."

Bell, the second top legal official of the Carter administration to support Bork, rhetorically asked the Senate Judiciary Committee: "If we don't get Judge Bork, who will we get?"

Bell testified after former Sen. Thomas Eagleton urged his former colleagues to reject Bork because, Eagleton said, Bork in effect would close the courthouse door to Congress in any clash with the president.

Eagleton, a Missouri Democrat, testified that in disputes over the use of military forces, foreign intelligence surveillance and investigations by a special prosecutor, Bork believes, "It's all up to the president."

Bell's testimony followed last week's appearance by Carter's White House counsel, Lloyd Cutler, in favor of the nominee.

Now an Atlanta attorney, Bell said he wants a Supreme Court justice who would "know what the Constitution means," and told senators that is Bork's strength.

He cautioned senators, several of whom have criticized Bork's writings, that "it's easy to get someone who's never written anything," but added, "We want somebody who's written a lot and said a lot. I wouldn't let a good man go until I knew who was coming down the line."

Eagleton told the committee, "Judge Bork's views are vintage George III," referring to the British king whose heavy-handed treatment of his American subjects triggered the U.S. revolution.

Ending the second week of hearings on the nomination, Eagleton pointed out that Bork, now a federal appellate judge in Washington, once wrote in an opinion that courts should "renounce outright" Congress' right to challenge the president in court.

Eagleton insisted that Bork failed to recognize that the founding fathers had decided that "powers relating to war and use of military forces are shared powers between the president and Congress."

"When it's a dispute between the president and Congress, where Judge Bork is concerned, the president is always right, and Congress should always be deprived of the power to challenge him in court, even in matters of deep institutional conflict," Eagleton said.

Without the right to sue, Eagleton said, Congress' only recourse if a president failed to follow the law would be impeachment.

Meanwhile, undecided Sen. Arlen Specter, said today the most important question before the Senate is whether its members can believe Bork when he says he'll respect legal precedents.

Specter, interviewed on ABC-TV's "Good Morning America," noted that many of Bork's writings differ sharply from established doctrines on free speech and equal protection, but that the nominee has claimed he won't seek to overturn the precedents on such matters.

"It's a judgment call for the Senate as to whether we can accept his assurance ...," said Specter, a Pennsylvania Republican. "He's a very powerful intellect and we have to really evaluate whether we can accept those assurances against the backdrop of a philosophy to the contrary."

Sen. Howell Heflin, D-Ala., another undecided senator interviewed along with Specter on ABC, said the Senate is so divided on the Bork nomination that if the full chamber voted today, "it could be as close as one or two votes either way."

Sen. Dennis DeConcini, D-Ariz., said on CBS-TV's "Morning News" that he won't make up his mind on the nomination until all witnesses have testified before the Senate Judiciary Committee.

"Our responsibility is to hear all the witnesses, all the evidence, don't jump off the cliff either for or against this man," DeConcini said.



cont'd

Several law school professors arranged to testify before the committee today, as did former Pennsylvania Gov. Richard Thornburgh, a Republican who served with Bork in the Justice Department in the early 1970s, was also on the list of witnesses, as were other former department colleagues.

Academic witnesses and prominent private lawyers have dominated the witness list since Bork finished five days of testimony. They have produced diametrically opposed conclusions from Bork's writings and legal opinions.

Bork's supporters repeatedly have cited statistics showing the Supreme Court never has reversed the federal appellate judge, who participated in more than 400 opinions.

Bork's opponents counter that the Supreme Court has not yet reviewed any of these decisions.

Another dispute has centered on Bork's writings as a Yale professor, compared with his court rulings and his legal briefs as solicitor general.

Opponents cite Bork's articles as examples of his extremism. For instance, he has written that only political speech deserved constitutional protection; that the 14th Amendment's guarantee of equal protection only applied to blacks, not to women; that demonstrators who advocated violence but did not actually break the law did not deserve protection under the free speech section of the First Amendment; and that it would be a mistake to force desegregation of public facilities.

He since has changed those views, in some cases doing so for the first time during his committee testimony.

But Bork's supporters said the Senate should ignore old articles that were "ranging shots" and academic exercises.

Senators should concentrate instead on Bork's opinions and legal briefs, which show — according to backers — that Bork upheld women and minorities, and championed press freedom.

Sen. Alan K. Simpson, R-Wyo., a Bork supporter, said the concentration by opponents on the nominee's old articles will have a chilling effect on law professors who want to become prolific writers. They now realize, he said, that controversial writings could jeopardize their chance of ever being confirmed for the Supreme Court.

Meanwhile, a Louis Harris Survey taken Sept. 17-23 of 1,243 adults found 57 percent opposed to Bork's confirmation and 29 percent in favor.

And a New York Times-CBS News poll reported that of 836 adults surveyed Sept. 21-22, after Bork testified, 26 percent said they had an unfavorable opinion of the nominee; 16 percent had a favorable opinion; and 57 percent were undecided or had no opinion.

When the same question was asked Sept. 9-10, before the hearings began, 12 percent said they had an unfavorable opinion of Bork; 11 percent had a favorable opinion; and 77 percent had no opinion.

A Washington Post-ABC poll completed last week showed no significant difference in those who approve of Bork's nomination, from 45 percent on Aug. 5 to 44 percent in the latest poll. But it showed 48 percent disapproving, compared with 44 percent in the earlier survey, with the number of those with no opinion dropping.

The Times-CBS and Post-ABC polls have a margin of sampling error of plus or minus 3 percentage points. The margin of error in the Harris survey was not reported.

APTV-09-28-87 1313EDT(-

(2)

06207

U W NY-Bork ENCLD-writetaru 02-28 23-0

NY-Bork End LO-writetaru, 10150

ECS: First 8 grafs new: picking up end graf ovs. Specter interviewed. Subs 1 graf for grafs 7-8 ovs. Several law. to delete reference to Eagleton.

By LARRY MARGASAK

Associated Press writer

WASHINGTON (AP) — Former Sen. Thomas Eagleton urged his onetime colleagues today to reject the nomination of Robert H. Bork to the Supreme Court, saying Bork would close the courthouse door to Congress in any clash with the president.

Eagleton, a Missouri Democrat, told the Senate Judiciary Committee that in disputes over the use of military forces, foreign intelligence surveillance, and investigations by special prosecutor, Bork believes, "It's all up to the president."

"Judge Bork's views are vintage George III," Eagleton said, referring to the British king whose heavy-handed treatment of his American subjects triggered the U.S. revolution.

Leading off the third week of hearings on the nomination, Eagleton pointed out that Bork, now a federal appellate judge in Washington, once wrote in an opinion that courts should "renounce outright" Congress' right to challenge the president in court.

Eagleton insisted that Bork failed to recognize that the founding fathers had decided that "powers relating to war and use of military forces are shared powers between the president and Congress."

"When it's a dispute between the president and Congress, where Judge Bork is concerned, the president is always right, and Congress should always be deprived of the power to challenge him in court, even in matters of deep institutional conflict," Eagleton said.

Without the right to sue, Eagleton said, Congress' only recourse if a president failed to follow the law would be impeachment.

Meanwhile, undecided Sen. Arlen Specter, said today the most important question before the Senate is whether its members can believe Bork when he says he'll respect legal precedents.

Specter, interviewed on ABC-TV's "Good Morning America," noted that many of Bork's writings differ sharply from established doctrines on free speech and equal protection, but that the nominee has claimed he won't seek to overturn the precedents on such matters.

"It's a judgment call for the Senate as to whether we can accept his assurance . . .," said Specter, a Pennsylvania Republican. "He's a very powerful intellect and we have to really evaluate whether we can accept those assurances against the backdrop of a philosophy to the contrary."

Sen. Howell Heflin, D-Ala., another undecided senator interviewed along with Specter on ABC, said the Senate is so divided on the Bork nomination that if the full chamber voted today, "it could be as close as one or two votes either way."

Sen. Dennis DeConcini, D-Ariz., said on CBS-TV's "Morning News" that he won't make up his mind on the nomination until all witnesses have testified before the Senate Judiciary Committee.

"Our responsibility is to hear all the witnesses, all the evidence, don't jump off the cliff either for or against this man," DeConcini said.

Cont'd . . .

... cont'd

Several law school professors arranged to testify before the committee today, as did former Pennsylvania Gov. Richard Thornburgh, a Republican who served with Bork in the Justice Department in the early 1970s, was also on the list of witnesses, as were other former department colleagues.

Academic witnesses and prominent private lawyers have dominated the witness list since Bork finished five days of testimony. They have produced diametrically opposed conclusions from Bork's writings and legal opinions.

Bork's supporters repeatedly have cited statistics showing the Supreme Court never has reversed the federal appellate judge, who participated in more than 400 opinions.

Bork's opponents counter that the Supreme Court has not yet reviewed any of these decisions.

Another dispute has centered on Bork's writings as a Yale professor, compared with his court rulings and his legal briefs as solicitor general.

Opponents cite Bork's articles as examples of his extremism. For instance, he has written that only political speech deserved constitutional protection; that the 14th Amendment's guarantee of equal protection only applied to blacks, not to women; that demonstrators who advocated violence but did not actually break the law did not deserve protection under the free speech section of the First Amendment; and that it would be a mistake to force desegregation of public facilities.

He since has changed those views, in some cases doing so for the first time during his committee testimony.

But Bork's supporters said the Senate should ignore old articles that were "ranging shots" and academic exercises.

Senators should concentrate instead on Bork's opinions and legal briefs, which show — according to backers — that Bork upheld women and minorities, and championed press freedom.

Sen. Alan K. Simpson, R-Wyo., a Bork supporter, said the concentration by opponents on the nominee's old articles will have a chilling effect on law professors who want to become prolific writers. They now realize, he said, that controversial writings could jeopardize their chance of ever being confirmed for the Supreme Court.

Meanwhile, a Louis Harris Survey taken Sept. 17-23 of 1,249 adults found 57 percent opposed to Bork's confirmation and 29 percent in favor.

And a New York Times-CBS News poll reported that of 836 adults surveyed Sept. 21-22, after Bork testified, 26 percent said they had an unfavorable opinion of the nominee; 16 percent had a favorable opinion; and 57 percent were undecided or had no opinion.

When the same question was asked Sept. 9-10, before the hearings began, 12 percent said they had an unfavorable opinion of Bork; 11 percent had a favorable opinion; and 77 percent had no opinion.

A Washington Post-ABC poll completed last week showed no significant difference in those who approve of Bork's nomination, from 45 percent on Aug. 5 to 44 percent in the latest poll. But it showed 48 percent disapproving, compared with 44 percent in the earlier survey, with the number of those with no opinion dropping.

The Times-CBS and Post-ABC polls have a margin of sampling error of plus or minus 3 percentage points. The margin of error in the Harris survey was not reported.

AFTV-09-28-87 1110EDT(-

ypnrrngw ypnrrrrln ypnrrrrlj ypnrrrrpp  
na--w

na--w

a0995na--w

r w pm-bork 1stld-writethru 9-28 0744

(bgrafid-pickup+cngraf: bork's critics \_ eagleton says bork's views  
'vintage george III')

urgent

BY JOHN HANKAHAN

WASHINGTON (UPI) — Robert Bork's views on presidential powers "are vintage George III," former Sen. Thomas Eagleton, D-Mo., said today.

In a sharp attack on the controversial Supreme Court nominee's views, Eagleton told the Senate panel considering the nomination that Bork favors an "imperial presidency" that has more power than the Congress or federal courts.

"His views are vintage George III and the founding fathers wanted no more vintage George III," Eagleton told the Senate Judiciary Committee.

Eagleton's testimony came as the committee opened its 10th day of Bork's confirmation hearings. Bork, 60, a judge on the U.S. Court of Appeals for the District of Columbia, was nominated July 1 by President Reagan to succeed retiring Justice Lewis Powell, widely considered a moderate.

In the first two weeks of hearings, critics have portrayed Bork as a right-wing ideologue whose past writings and speeches were hostile to most of the major civil liberties and civil rights issues decided by the high court in the last three decades. Bork's supporters have cast him as a judicial moderate who would be in the same mold as Powell.

Eagleton criticized Bork's views challenging Congress's powers relating to war and peace, a special prosecutor's office independent of the executive branch, and Congress's right to sue the executive branch.

Eagleton said Bork's views on Congress's war and peace powers have strong implications because of Congress's concern "where and how American armed forces are to be deployed under threat of hostile action — the Persian Gulf or someday, God forbid, Nicaragua, for example."

A Louis Harris Survey released Sunday found that of 1,249 people asked, 57 percent opposed Reagan's choice of Bork, while 29 percent backed him and 14 percent were unsure.

Bork's critics said the Harris poll showed a growing negative feeling toward him noted in other surveys. Last week, for example, a Washington Post-ABC News poll found 44 percent against Bork and 40 percent in favor of him.

But White House spokesman Ben Jarratt disputed that assessment, saying, "We have not seen the Harris poll and won't comment on it. Our most recent polls show that a bulk of the American public has not formed an opinion. In addition, at least a quarter of the Senate is undecided."

Jarratt said he was referring to White House polls taken by the president's pollster, Richard Wirthlin. The latest Senate head count by Democrats found far less than a quarter of the 100 members undecided, however.

In the Harris survey, Americans who described themselves as conservatives supported Bork but only by a narrow 44 percent to 40 percent. Moderates opposed him 61 percent to 30 percent, and liberals overwhelmingly were against the controversial nominee 79 percent to 13 percent.

Men were against Bork 55 percent to 36 percent, but women opposed him by the larger margin of 59 percent to 23 percent, the poll said. Whites opposed Bork 55 percent to 31 percent, blacks by 71 percent to 15 percent and Hispanics by 62 percent to 27 percent.

Bork's opposition has been strong among women and minorities, who warn he could tip the high court's balance to the right and blunt years of progress in civil rights and individual liberties.

The 60-year-old former Yale University law professor, who sits on the U.S. Circuit Court of Appeals for the District of Columbia, was nominated July 1 to replace the moderate retired Justice Lewis Powell.

The Harris poll, conducted by telephone between Sept. 17-23, was copyrighted by Tribune Media Services Inc. and was published Sunday in New York's Daily News. It apparently reflects public reaction to Bork's five days of testimony to the Judiciary Committee Sept. 13-19.

The committee has planned to report to the full Senate by Thursday, with the chamber under pressure to vote on the nomination before the court begins its fall session Oct. 5 with only eight justices.

BORK

BY LARRY MARSHALL

WASHINGTON (AP) -- SEN. ARLEN SPECTER, A KEY UNDECIDED VOTE ON ROBERT H. BORK'S NOMINATION TO THE SUPREME COURT, TODAY SAID THE MOST IMPORTANT QUESTION BEFORE THE SENATE IS WHETHER ITS MEMBERS CAN BELIEVE BORK WHEN HE SAYS HE'LL RESPECT LEGAL PRECEDENTS.

SPECTER, INTERVIEWED ON ABC-TV'S "GOOD MORNING AMERICA," NOTED THAT MANY OF BORK'S WRITINGS DIFFER SHARPLY FROM ESTABLISHED DOCTRINES ON FREE SPEECH AND EQUAL PROTECTION, BUT THAT THE NOMINEE HAS CLAIMED HE WON'T SEEK TO OVERTURN THE PRECEDENTS ON SUCH MATTERS.

"IT'S A JUDGMENT CALL FOR THE SENATE AS TO WHETHER WE CAN ACCEPT HIS ASSURANCE . . ." SAID SPECTER, A PENNSYLVANIA REPUBLICAN, WHO'S A VERY POWERFUL INTELLECT AND WE HAVE TO REALLY EVALUATE WHETHER WE CAN ACCEPT THOSE ASSURANCES AGAINST THE BACKDROP OF A PHILOSOPHY TO THE CONTRARY."

SEN. HOWELL HEFLIN, D-ALA., ANOTHER UNDECIDED SENATOR INTERVIEWED ALONG WITH SPECTER ON ABC, SAID THE SENATE IS SO DIVIDED ON THE BORK NOMINATION THAT IF THE FULL CHAMBER VOTED TODAY, "IT COULD BE AS CLOSE AS ONE OR TWO VOTES EITHER WAY."

SEN. DENNIS DECONCINI, D-ARIZ., SAID ON CBS-TV'S "MORNING NEWS" THAT HE WON'T MAKE UP HIS MIND ON THE NOMINATION UNTIL ALL WITNESSES HAVE TESTIFIED BEFORE THE SENATE JUDICIARY COMMITTEE.

"OUR RESPONSIBILITY IS TO HEAR ALL THE WITNESSES, ALL THE EVIDENCE, DON'T JUMP OFF THE CLIFF EITHER FOR OR AGAINST THIS MAN," DECONCINI SAID.

SEVERAL LAW SCHOOL PROFESSORS APPEARED TO TESTIFY BEFORE THE COMMITTEE TODAY, AS DID FORMER SEN. THOMAS FRAGLETON, D-MO., A BORK OPPONENT WHO INTENDED TO ADDRESS THE NOMINEE'S VIEW THAT COURTS SHOULD REJECT CONGRESS' RIGHT TO SUE THE PRESIDENT TO CURTAIL HIS POWERS.

FORMER PENNSYLVANIA GOV. RICHARD THORNBURGH, A REPUBLICAN WHO SERVED WITH BORK IN THE JUSTICE DEPARTMENT IN THE EARLY 1970S, WAS ALSO ON THE LIST OF WITNESSES, AS WERE OTHER FORMER DEPARTMENT COLLEAGUES.

ACADEMIC WITNESSES AND PROMINENT PRIVATE LAWYERS HAVE DOMINATED THE WITNESS LIST SINCE BORK FINISHED FIVE DAYS OF TESTIMONY. THEY HAVE PRODUCED DIAMETRICALLY OPPOSED CONCLUSIONS FROM BORK'S WRITINGS AND LEGAL OPINIONS.

AP-4X-09-29-87 0925EDT

Mon 28-Sep-87 9:36 EDT

Subject: BORK

Mail Id: Rodota

Bork Respects Legal Precedent?

WASHINGTON (AP) — Sen. Arlen Specter, a key undecided vote on Robert H. Bork's nomination to the Supreme Court, Monday said the most important question before the Senate is whether its members can believe Bork when he says he'll respect legal precedents.

Specter, interviewed on ABC-TV's

"Good Morning America," noted that many of Bork's writings differ sharply from established doctrines on free speech and equal protection, but that the nominee has claimed he won't seek to overturn the precedents on such matters.

"It's a judgment call for the Senate as to whether we can accept his assurance . . .," said Specter, a Pennsylvania Republican. "He's a very powerful intellect and we have to really evaluate whether we can accept those assurances against the backdrop of a philosophy to the contrary."

Sen. Howell Heflin, D-Ala., another undecided senator interviewed along with Specter on ABC, said the Senate is so divided on the Bork nomination that if the full chamber voted Monday, "it could be as close as one or two votes either way."

Sen. Dennis DeConcini, D-Ariz., said on CBS-TV's "Morning News" that he won't make up his mind on the nomination until all witnesses have testified before the Senate Judiciary Committee.

"Our responsibility is to hear all the witnesses, all the evidence, don't jump off the cliff either for or against this man," DeConcini said.

Several law school professors arranged to testify before the committee Monday, as did former Sen. Thomas Eagleton, D-Mo., a Bork opponent who intended to address the nominee's view that courts should reject Congress' right to sue the president to curtail his powers.

Former Pennsylvania Gov. Richard Thornburgh, a Republican who served with Bork in the Justice Department in the early 1970s, was also on the list of witnesses, as were other former department colleagues.

Academic witnesses and prominent private lawyers have dominated the witness list since Bork finished five days of testimony. They have produced diametrically opposed conclusions from Bork's writings and legal opinions.

Bork's supporters repeatedly have cited statistics showing the Supreme Court never has reversed the federal appellate judge, who participated in more than 400 opinions.

Bork's opponents counter that the Supreme Court has not yet reviewed any of these decisions.

Another dispute has centered on Bork's writings as a Yale professor, compared with his court rulings and his legal briefs as solicitor general.

Opponents cite Bork's articles as examples of his extremism. For instance, he has written that only political speech deserved constitutional protection; that the 14th Amendment's guarantee of equal protection only applied to blacks, not to women; that

demonstrators who advocated violence but did not actually break the law did not deserve protection under the free speech section of the First Amendment; and that it would be a mistake to force desegregation of public facilities.

He since has changed those views, in some cases doing so for the first time during his committee testimony.

But Bork's supporters said the Senate should ignore old articles that were "ranging shots" and academic exercises.

Senators should concentrate instead on Bork's opinions and legal briefs, which show — according to backers — that Bork upheld women and minorities, and — championed press freedom.

Sen. Alan K. Simpson, R-Wyo., a Bork supporter, said the concentration by opponents on the nominee's old articles will have a chilling effect on law professors who want to become prolific writers. They now realize, he said, that controversial writings could jeopardize their chance of ever being confirmed for the Supreme Court.

Mon 28-Sep-87 8:29 EDT  
Subject: BORK  
Mail Id: Rodota

GARY, Ind. (UPI) — Mayor Richard Hatcher scheduled news conferences in seven Indiana cities Monday and Tuesday to oppose the nomination of Robert H. Bork to the U.S. Supreme Court.

Hatcher planned to be in South Bend, Fort Wayne and Lafayette Monday and in Terre Haute, Evansville, Bloomington and Indianapolis Tuesday.

Hatcher said he would be joined by officials from the Urban League and the NAACP in opposing Bork's nomination on grounds his decisions would not benefit poor people.



Sun 27-Sep-87 23:50 EDT

Subject: BORK

Mail Id: Rodota

Thurmond says Bork victim of distortion

POINT CLEAR, Ala. (UPI) — Sen. Strom Thurmond, R-S.C., said in his 33 years in the Senate he has never witnessed the kind of "blatant distortions and untruths" being leveled at U.S. Supreme Court nominee Robert Bork.

Thurmond is the ranking Republican on the Senate Judiciary Committee, which has held three weeks of confirmation hearings on President Reagan's nominee to the highest court.

Thurmond was in Point Clear Saturday for an annual fund-raising and birthday party for U.S. Rep. Sonny Callahan of Mobile.

"So many people have been misled," Thurmond said "They're even running TV ads against this man. I've never in my life heard of that."

Thurmond said groups like the National Organization for Women and the American Civil Liberties Union are leading what he called a "distortion campaign."

He said he believes Bork is "a man of character, ability, integrity and judicial temperament who is in the mainstream of American political thought."

About 300 people paid \$175 per person or \$300 per couple to hear Thurmond deliver the main address for Callahan's annual benefit.

---

Heflin remains undecided on Bork

MOBILE, Ala. (UPI) — U.S. Sen. Howell Heflin said in Mobile Saturday night he will remain undecided on Robert Bork's nomination to the Supreme Court of the United States until Senate confirmation hearings are finished.

"I am trying to be like a judge and remain fair and impartial until I hear all the witnesses," said Heflin, a member of the Senate Judiciary Committee considering Bork's nomination.

"I am purposely trying to withhold judgement," the Democrat from Tuscumbia and former Alabama Supreme Court justice said. "I don't think a judge in the middle of a trial would say someone is guilty."

The nomination hearings enter their third week Monday in Washington. Heflin said the committee will take testimony for about three more days before making a recommendation to the full Senate.

Sun 27-Sep-87 18:58 EDT

State Republicans compromise over campaign reform plans

By REBECCA LaVALLY

ANAHEIM, Calif. (UPI) — Feuding California Republicans, wrapping up a three-day gathering, Sunday overhauled their state party's board of directors to smooth a rift between public officeholders and grass roots volunteers.

...Delegates Sunday also adopted resolutions supporting Senate confirmation of President Reagan's nomination of Judge Robert Bork to the Supreme Court and calling for expanded reporting requirements on AIDS test results.

Sat 26-Sep-87 13:48 EDT  
Subject: BORK  
Mail Id: Rodota

#### Analysis

Religious groups take sides on Bork

By DAVID E. ANDERSON

UPI Religion Writer

WASHINGTON (UPI) — The paragraph in the National Right to Life News, newspaper of America's largest anti-abortion group, is startling: "Among the major groups weighing in on Bork's behalf were the 14.6 million-member Southern Baptist Convention ..."

It's not true.

Opponents of the controversial nomination of Robert Bork to the Supreme Court, on the other hand, have sought to portray the United Methodist Church — the second largest Protestant denomination behind the Baptists — as opposed to confirmation.

That's not true, either.

But the incidents underscore the fudging fuzziness if not deliberate deception that is being carried out among the churches as true believers seek to play every card in their deck in the bitter battle over Bork.

The fierceness of the fray has also caused some religious groups who usually refrain from partisan or personal politics, choosing instead to use their moral suasion in debate on issues, to enter the endorsement or non-endorsement campaigns.

The National Association of Evangelicals for example, for the first time in its 46 year history, has made an endorsement of an appointee, saying "it is our commitment to the Constitution which compels speaking out."

Equally, the National Council of Churches' 50-member executive committee, which speaks for the governing board of the 32-denomination agency, has come out against Bork, only the second time in its 37 year history it has spoken on a court appointment.

Bork's philosophies and positions "run counter to so many NCC interests, positions and concerns," the council said, while his underlying judicial philosophy has "failed to provide reasonable assurance that the nominee will advance the effective protection of the full rights of all citizens."

Other religious groups breaking with precedent to join the anti-Bork campaign include Reform Judaism's Union of American Hebrew Congregation and the pan-Protestant Church Women United.

And while many mainline Protestant denominations, as well as the National Conference of Catholic Bishops and its social policy action arm, the U.S. Catholic Conference, are maintaining their traditional steadfast silence on political appointments, other religious groups have become activist.

Much of the shift can be traced to the new ground rules of religious involvement drawn by conservative partisans of the Religious Right.

After decades of watching mainstream and liberal religious activism in the political arena on such issues as civil rights and the anti-war movement, fundamentalists and evangelicals began their own involvement in the late 1970s.

Unlike the mainstreamers, however, the Religious Right refused to recognize the subtle but sharp line that traditionally has been drawn between issues on the one hand and partisanship and people on the other.

From its heavy involvement in the presidential campaign of President Reagan in 1980 through "religious" endorsements of specific candidates in federal elections since then, the Religious Right has re-shaped the faith and politics debate.

The Southern Baptist Convention "endorsement" of Bork is a case in point.

What actually happened is that the Public Affairs Committee of the convention, on a 7-5 vote, passed a resolution which "strongly urged" Bork's confirmation.

Under Baptist policy, the vote represents nothing more than the opinions of the seven people voting for it and even to have taken the vote may have violated the denomination's by-laws \_ and certainly its history.

No person, no committee can speak for another Baptist, much less the Convention, which speaks for itself only once a year \_ during the only week it actually exists.

So, too, with the Methodist anti-Bork stance.

What actually happened is that the Women's Division of the 9.2-million member denomination circulated material expressing concern about Bork's position on a civil rights issues, urging church members to "study carefully" Bork's record and voice their concern to the Senate.

But like Baptist Public Affairs Committee, the Women's Division cannot speak for the church, but unlike the conservative-dominated Baptist body, however, it did not pretend to do so, noting the division's directors "have not met since the Bork nomination and they have not made any formal position statement."

Sat 26-Sep-87 17:31 EDT  
Subject: BORK  
Mail Id: Rodota

Wilson delivers Bork defense to party faithful

By REBECCA LaVALLY

ANAHEIM, Calif. (UPI) — Republican Sen. Pete Wilson roused party faithful Saturday with a spirited defense of Judge Robert Bork's nomination to the Supreme Court but later conceded his Senate confirmation would be more likely if Bork had not "popped off a great deal."

California's junior senator delivered his partisan pep talk on the second day of a three-day state GOP convention, which has been shunned by all Republican presidential candidates but Kansas Sen. Robert Dole, Saturday night's banquet speaker.

The absences from the richest and most populous state — with its winner-take-all June 1988 primary — fueled renewed talk of moving up California's last-in-the-nation primary to compete with other states.

Speaking to reporters, Wilson predicted that Bork will be confirmed by "the narrowest of margins." But if Bork is rejected, he said, President Reagan could be expected to appoint another jurist at least as conservative who could win the Senate's edorsement.

Bork in past writings and comments "popped off a great deal and it's coming back to haunt him," Wilson said. "There are a lot of judges with equally conservative records who would be a lot easier to confirm.

"He's said some things I don't agree with; some things he no longer agrees with," said Wilson, who will vote for Bork.

California's four-term senator, Democrat Alan Cranston, has said Bork is "likely to lose" the Senate vote, and some White House strategists have pegged his chances at no better than 50-50.

Wilson's bid for election next year to a second term is opposed by Democratic Lt. Gov. Leo McCarthy, a Bork foe.

Wilson in his remarks to hundreds of convention-goers likened Bork's opponents to those, among them McCarthy, who supported California Chief Justice Rose Elizabeth Bird's failed campaign for voter confirmation last year.

"Litmus-paper liberals" who oppose the death penalty and want "to broaden the rights of criminals at the expense ... of justice" have been winning decisions in court rather than at the ballot box, Wilson said.

But, he added: "That party is over. It ended in 1980 when Ronald Reagan was elected president.

"That's what the fight over Judge Bork is all about. That's what the fight over Rose Bird was all about, and the people spoke and the people won."

Sat 26-Sep-87 22:23 EDT  
Subject: BORK  
Mail Id: Rodota

#### Halperin defends Bork opposition

LINCOLN, Neb. (UPI) — The executive director of the American Civil Liberties Union's Washington office Saturday defended the organization's opposition to the nomination of Robert Bork to the U.S. Supreme Court.

Morton Halperin, speaking at the Nebraska Civil Liberties Union annual meeting, said the United States circuit judge does not meet the ACLU's standards.

"It is hard to imagine or even invent anyone whose view of the Constitution and civil liberties is more at war with the view of the ACLU," Halperin said.

Halperin, deputy assistant secretary of defense from 1967 to 1969 and a National Security staff member under former Secretary of State Henry Kissinger, spoke mostly about Bork even though he was scheduled to speak about secrecy in government.

The ACLU changed its policy in August of not supporting or opposing elected or appointed public officials. It then was allowed to take a position on Supreme Court justices when their philosophy threatens individual liberty, he said.

Halperin said Bork's view that the fundamental principle of the Constitution is that the only rights protected by it are those specifically enumerated limits the role of the court.

Bork's philosophy long has been the idea that the most important liberty is that of imposing your moral values on other people, he said.

"That the right to come together in a community and to decide that certain books should not be read by anybody in that community, to decide that everybody must go to public school rather than parochial school, to decide that contraception may not be used in the bedroom, and to enforce that on the entire community — that for Bork is the most important liberty that an individual can have," Halperin said.

Like Bork, the Iran-Contra affair shows why secrecy in government is incompatible with the American governmental system, Halperin said. Covert operations breed lying and lead to lawbreaking, he said.

The solution is to return "to the intent of the framers of the Constitution" that public debate precedes any decision to use military force, he said.

"As usual, the framers left us with a document and a set of procedures that enable us to protect our liberties and protect our securities at the same time, if only we remain faithful to that document," he said.

Fri 25-Sep-87 15:02 EDT  
Subject: BORK  
Mail Id: Rodota

Sociologist: Bork approval would cause social strife

GREENSBORO, N.C. (UPI) — A sociologist predicted Friday a period of social unrest around the nation if nominee Robert H. Bork is approved for a seat on the Supreme Court.

Dr. Hyman Rodman, a sociologist with the University of North Carolina at Greensboro, said Bork's appointment to the court would likely cause social strife because of his anti-abortion stance.

Rodman said Bork's appointment would set into motion a sequence of events that could lead to the overturn of Roe vs. Wade, the 1973 Supreme Court decision that effectively legalized abortion around the nation.

"The potential is there that if Bork is appointed, the court could overturn Roe vs. Wade," Rodman said. "There is not enough in Judge Bork's testimony to say that he definitely would vote to overturn Roe vs. Wade, but there is enough in his writings to suggest that he very well might."

The Senate Judiciary Committee is currently in its third week of hearings on Bork's nomination to the court. If his appointment is approved, Bork would cast a key vote in a court already divided on the issue of abortion.

Rodman said if the court ultimately overturns Roe vs. Wade, in effect leaving it up to the individual states to decide whether to outlaw abortion, the nation would undergo a period of "serious social and political strife."

"There would be vigorous objection to any anti-abortion laws passed by the states," he said. "We would have some states with prohibition all over again. There would be a lot of traffic from one state to another."

"The pro-abortion and anti-abortion forces would gear up like never before," Rodman predicted. "It would create tremendous controversy above and beyond anything there is now."

Rodman said the abortion issue is potentially explosive because it is rooted in "basic moral and legal issues."

"Neither side is willing to compromise," he said. "The prospects for taming the controversy are not good. As one side loses ground, it fights with greater vigor."

"Further restrictions on abortion will undoubtedly be met with stronger attempts to eliminate all restrictions," Rodman predicted.

"An easing of restrictions will be met with stronger attempts to prohibit all abortions."

"Should abortion again be criminalized, there would be outright defiance and an acrimonious campaign to eliminate the new prohibition," he said.

Rodman is the author of several books, including "Lower-Class Families: The Culture of Poverty in Negro Trinidad," "The Sexual Rights of Adolescents," and "The Abortion Controversy," which he co-authored after the 1973 court decision.

Fri 25-Sep-87 14:08 EDT  
Subject: BORK  
Mail Id: Rodota

Virginia News Briefs  
By United Press International

Farm Bureau endorses Bork

RICHMOND, Va. (UPI) — The Virginia Farm Bureau Federation has endorsed Judge Robert Bork for a position on the Supreme Court, the first time the farm organization has urged a judicial appointment, officials said Friday.

"Judge Bork is one of the most qualified candidates ever nominated to the Supreme Court," said Farm Bureau President Robert Delano. "He is a practitioner who has argued and won numerous cases before the Supreme Court."

The organization's board of directors made its endorsement Thursday, joining the American Farm Bureau Federation.

Delano said Bork "is a proponent of judicial restraint philosophy that judges must faithfully interpret the Constitution and statutes. He is committed to the idea of judges confining themselves to interpreting the law rather than advocating their own ideas of wise public policy."

Delano said Bork's critics are wrong in labeling the jurist an extremist and out of the mainstream of American thought.



Fri 25-Sep-87 18:12 EDT  
Subject: BORK  
Mail Id: Rodota

ST. PAUL, Minn. (UPI) — The Minnesota Farm Bureau of Directors has endorsed Robert Bork for U.S. Supreme Court justice.

The farm bureau called Bork a "strict constructionist" with a sound judicial record.

"Our organization has long held policies that the Supreme Court should confine itself to interpretation of the Constitution," Farm bureau President Merlyn Lokensgard said.

"The court should not perform a legislative function. Judge Bork's 25-year involvement with the law illustrates his view that judges must apply the Constitution and not their own preferences."

Lokensgard said many farm issues have ended up in court and his organization "does not want to see the Supreme Court appointment process clouded by politics."

upi 09-25-87 05:08 pcd

Fri 25-Sep-87 16:03 EDT  
Subject: BORK  
Mail Id: Rodota

Oregon rally for Bork slated Saturday  
By MARC McFARLAND

PORTLAND, Ore. (UPI) — Oregon Citizens Alliance Chairman Joe Lutz says a rally in support of Supreme Court nominee Robert Bork will be held Saturday at the political action committee's conference in Portland.

Supporters of the "Oregonians for Bork" rally also are critical of a decision by Sen. Bob Packwood, R-Ore., to oppose Bork's nomination to the nation's high court, Lutz said.

"This is the beginning of our effort to rally support for Judge Bork," Lutz said. "We will not desert President Reagan in this battle, even though our junior senator (Packwood) has jumped ship and vowed to fight President Reagan's nominee, even to the point of filibuster. Sen. Packwood is once again showing his true colors and where his allegiance lies."

Lutz lost to Packwood in in the May 1986 Oregon Republican primary.

Lutz also said Howard Phillips, chairman of Conservative Caucus, has been confirmed as a speaker at the PAC's meeting. Phillips' speech is titled "Our Freedom," Lutz said.

Other speakers will include Rep. Denny Smith, R-Ore., who will honor select Oregon state legislators, and Washington state Sen. Jack Metcalf, R-Island County, who will discuss the federal banking system, Lutz said.

An evening banquet will feature Rep. Jack Kemp, R-N.Y., Lutz said.

Bork currently is a judge on the U.S. Court of Appeals for the District of Columbia. Bork's confirmation hearing before the Senate Judiciary Committee was in its ninth day Friday after a a one-day recess for Rosh Hashana, a Jewish holiday.

Reagan nominated Bork on July 1 to succeed retiring Justice Lewis Powell.

During his five-day appearance before the Senate panel, Bork moderated much of his conservative philosophy, saying he now accepts as "settled law" Supreme Court decisions on various free speech, civil rights and women's rights issues and would not, if confirmed, vote to overturn those precedents as his critics fear he will.

Sat 26-Sep-87 9:44 EDT  
Subject: BORK  
Mail Id: Rodota

Rhode Island News Briefs  
SCHNEIDER OPPOSES BORK

PROVIDENCE, R.I. (UPI) — U.S. Rep. Claudine Schneider, R-R.I., has come out against Robert Bork's nomination to the U.S. Supreme Court but for Vice President George Bush as the country's next president.

In a television taping of Channel 10's "10 News Conference" Friday, Schneider said she is "not enthused" over Bork's attitudes and positions regarding women and minorities and intuitively "feels uncomfortable" about him.

She also said about 50 of her constituents have urged her to oppose Bork while only three have contacted her to say they support him.

Schneider said she feels Bush has the "most stellar credentials" of all presidential candidates. But she added she would also be comfortable supporting the man perceived as Bush's toughest challenge for the nomination, U.S. Sen. Robert Dole of Kansas.

Fri 25-Sep-87 18:43 EDT  
Subject: BORK  
Mail Id: Rodota

Kemp wants trade barriers torn down, tax base broadened  
MINNEAPOLIS (UPI)

...Kemp also said he supports Robert Bork for Supreme Court justice.

"I think Bork would be an outstanding judge," Kemp said. "I think we should be discriminating in choosing judges, but there are very few people on the (Senate) judiciary committee that could stand up to the same high standards Bork has met."

## REVIEW & OUTLOOK

### The Bork Battle Begins

Who needs Monday Night Football? The battle over Bork has just begun, and the hitting promises to get heavy before the clock runs out on the Senate floor.

The purpose of Judge Bork's appearance before the committee was to show the public and the White House whether this man's nomination is worth fighting for in the Senate, where the outcome turns on the votes of undecided senators. The nominee did what he needed to do on his own behalf. He demonstrated that he is qualified to judge this nation's most important legal disputes; his personal life is exemplary. Judge Bork may sit down now while the battle turns political. That game belongs to Ronald Reagan.

The question is will he adopt a game plan similar to what he used when Ollie North went before Congress? Ollie North had the courage to tell the country exactly what the stakes were in Nicaragua, an issue the public poorly understood before his testimony. Support for the Contras surged, then ebbed in the polis. The conventional "shooting-star" explanation for this doesn't wash, however. Support ebbed because the administration made little effort to sustain Ollie North's achievement. The public rightfully looked to the White House for confirmation of their instinctive support for Col. North. It never came.

Now Robert Bork has succeeded Oliver North as a public issue. Unlike the colonel, the case for Judge Bork has no troubling ambiguities. And where the North case threw a light backward on the Reagan presidency, the outcome of the Bork nomination will pitch forward. It is a test that will shape the Reagan presidency's last year. But will there be *sustained* presidential support for Judge Bork?

There'd better be. Polls released last week indicate some movement against the Bork nomination, but the oddly mixed results of the individual polls suggest that despite the large publicity given the hearings, the public is still waiting to be moved by this issue.

The opposition is already rolling. Many of the pressure groups that campaigned unsuccessfully against Mr. Reagan in two presidential campaigns seem to regard this battle as their Armageddon. Teddy Kennedy himself has testified that Judge Bork's appearance means the end is near. If Ronald Reagan wants Robert Bork confirmed, he will have to create an alternative choice to the one

these groups are trying to force on undecided senators. That means Mr. Reagan has to explain clearly why American society will benefit if judges such as Robert Bork apply the law in a neutral manner. He will have to point out why many of the long-held grievances of the electorate result when unelected judges manufacture new laws.

In a speech last Friday, Mr. Reagan took the first step toward shaping the nomination's political climate. There is one thing, he said, "I wish the hearings had dealt with more thoroughly, and that's crime. Nearly one-third of the Supreme Court's docket is devoted to criminal cases. As a judge on one of our nation's most important Appellate Courts, Judge Bork has handed down tough but fair decisions."

We hope there is a lot more of this to come. The stakes for the Reagan presidency are sufficiently high to warrant a large effort. If Robert Bork is defeated, the result will be seen, properly, as a victory for the Bidens, Kennedys, Metzenbaums and Leahys of American politics. It would open the lid on some bottled-up forces that will run full tilt at the White House for the next year. (No one in either party should delude himself that U.S. politics will be anything but bloody after a vote against this nomination.)

Their targets will include strategic defense, anything vulnerable in the defense bill (meaning anything militarily useful), Contra funding, the trade bill and, as Senator Byrd proved last week, any effort by this president to defend the country's interests in areas such as the Persian Gulf. Any time some faction in Congress starts talking about making a serious effort to invoke the War Powers Act, a president can be certain it is his blood they smell in the water. The most effective way the White House can prevent spending its remaining time dealing with this kind of frenzy is with a victory. The Bork confirmation is winnable.

It is winnable for reasons that have little to do with whether Mr. Reagan can explain Judge Bork's views of the *Brandenburg* decision or whether he can discuss the 99-year evolution of the 14th Amendment. It is winnable because President Reagan picked Robert Bork for the same reasons he asked the public to support his presidential candidacies. If he is willing to describe the events and forces that brought Judge Bork to his current prominence, the undecided members of the Senate will get the message.

BALTIMORE SUN  
9-28-87

## Blacks and Judge Bork

The most determined group in opposition to the nomination of Judge Robert Bork to the Supreme Court comes from the black community. It is not difficult to see why. William Coleman Jr., a black Republican lawyer who served in the Ford administration cabinet, told the Senate Judiciary Committee that Judge Bork has "criticized and rejected" every modern civil rights decision with the exception of *Brown vs. Board of Education*, the landmark that overturned separate-but-equal laws. Burke Marshall, who was assistant attorney general for civil rights in the Kennedy administration, said that "at every turning point in the past quarter century on which there was still room for disagreement, Judge Bork has favored positions that did harm to minorities."

The most telling example of that was his opposition to the 1964 Civil Rights Act. There was very little disagreement on that act outside the South. In an article in the *New Republic* in 1963, then-professor Bork of Yale attacked the legal and moral bases of the proposed law. How far out of the mainstream can you get? Not counting the Southerners, senators voted for the bill by 72-6. The Supreme Court upheld it 8-0.

Laws — and legal theories — have their consequences. We cannot imagine today's Baltimore if public accommodations were still segregated. We

cannot imagine the United States today if that law had not been enacted. America's influence in a largely non-white world and widening prosperity and opportunity for all its own citizens would not have come about but for that law.

Judge Bork counters that he has repudiated his old sentiments. He says that as a judge he has and as a justice he would adhere to the precedents the Supreme Court has established in the field of civil rights law. We believe him. Yet, we are troubled. Does this record of being on the wrong side of the civil rights issue time and time again suggest that he will be equally wrong when important new determinations have to be made on related and divisive issues in the future?

It is one thing to accept precedents already established in past cases and controversies now settled. It is another to help establish precedents in the future — in cases whose nature no one can predict. Very few citizens believe Judge Bork is a racist. That's not the issue. The issue is whether he is the kind of man who, when another crisis comes along, would lead the nation down the wrong path. Or have his and the nation's experiences this past quarter century, as portrayed in Senate testimony, prepared him to treat minorities wisely, fairly and with judicious regard for their constitutional rights?

NEW YORK POST  
9/28/87

## City Bar Assn. vs Robert Bork

The most unpleasant aspect of the battle over Robert Bork's nomination to the Supreme Court is the way in which the campaign against him has been waged — not the mere fact that there's been a campaign. And ugliest of all has been the effort at character assassination undertaken by various members of the Senate Judiciary Committee.

Not content with depicting the five-year federal judge and former solicitor general as a wild-eyed reactionary, Senator Biden (D-Del.) evidently found it necessary to try to portray Bork as an advocate of sterilization; Senator Leahy (D-Vt.) saw a need to represent the nominee as a shameless money-grubber; and Senators Kennedy (D-Mass.) and Metzenbaum (D-Ohio), among others, found virtue in trying to paint Bork as a racist.

These charges withstand no scrutiny whatever. But — as is often the case with slander — they can stick like mud.

Less unseemly, but equally disgraceful, is the recent behavior of some of the organizations involved in the anti-Bork effort.

For a case in point, there's no need to look beyond the five boroughs. So anxious were members of the New York City Bar Assn.'s executive committee to take part in the anti-Bork crusade that the committee arrogated to itself a right it doesn't enjoy under the association's by-laws — the authority to endorse or oppose a Supreme Court nomination.

The executive committee voted 14-to-4 to oppose Bork. Last week, a group of 53 bar association members reacted by issuing a strong protest. The dissidents argued that the committee lacked the authority to take such a decision, and emphasized that the bar association's 17,000 members were in no way consulted.

And the 53 argued — altogether persuasively — that when association president Robert M. Kaufman went to Washington to testify against Bork, bu-

ressed by the executive committee's vote, most onlookers would conclude that the association as a whole had taken a stand against Bork.

The dissidents made it plain that they themselves were mixed on the question of Bork's nomination — some were supporters, others opponents. But they were united in the view that the executive committee's conduct was "unauthorized ... irregular and political in nature."

Moreover — and this is a powerful comment on the inappropriateness of the committee's behavior — five of the 53 dissidents are sitting federal judges. A sixth is a retired member of the federal circuit bench.

Paul J. Curran, one of the organizers of the protest, is a former U.S. Attorney for the Southern District of New York. Curran felt so strongly about the manipulative behavior of the anti-Bork forces that he resigned his membership in the bar association.

This unusual spat within the inner sanctum of the New York legal fraternity raises larger questions about the fight to defeat Bork: How many other anti-Bork witnesses who — like Mr. Kaufman — appear to represent prestigious organizations, actually speak only for small cliques?

It's a question worth pondering as the parade of witnesses continues beginning today.

As for the New York City Bar Assn., its members will have to consider whether they haven't been taken for a ride.

Knowing New York lawyers, it seems likely that the rank-and-file would have wanted a chance at some input before their professional association jumped in on one side of a partisan political fray. The establishment of set procedures for passing on Supreme Court nominees might be one way for bar association members to signal their unhappiness with recent events — ousting the executive committee would be an even clearer statement.

MINNEAPOLIS STARTRIBUNE  
9/20/87

## Why Bork should not be confirmed

A week and more of hearings remain before the Senate Judiciary Committee votes on President Reagan's nomination of Robert Bork to fill a vacancy on the Supreme Court. Possibly illuminating and certainly passionate presentations are yet to come. But the crucial witness has now been heard, and the essential ingredients are in hand. From what we've seen so far, we think they add up to this: Reject Bork.

Simply Bork is qualified to serve on the high court. His record as attorney, law professor, solicitor general and judge has been amplified by extensive writing that portrays a man experienced in the law and dedicated to it. But legal qualification is not the only criterion for confirmation. As we have argued earlier, the Senate has a joint obligation with the president to appoint Supreme Court justices who would best uphold American ideals in carrying out their constitutional obligation to interpret the law. Bork, in our view, would fall short.

We hold that view because on nearly every point of judicial philosophy, Bork has argued sharply for positions with which we and many others take strong exception. In some instances he later blunted those arguments. But even in his recent comments there are undercurrents of convictions that pick the Reagan administration's assertions that

Bork is really a mainstream moderate. Bork remains wary of free speech; he has said that the 1973 abortion-rights decision was unconstitutional and that even abortion-rights advocates could not think otherwise. He has criticized affirmative action. He seems unpersuaded that citizens should be protected from, as well as by, government. He is excessively deferential to executive prerogative.

And he is contradictory. Bork maintains that judges can decide only what the legislature or the framers of the Constitution intended. Yet he also says they should consider contemporary social standards. He insists that judges decide only according to the intent of the legislature or the Constitution; that they "must not read their own ideals" into the law. Yet he says that he now accepts the civil-rights laws he once opposed because they do more good than harm. Perhaps that was the nonjurist Bork speaking. But we find it hard to imagine that his interpretation of the law as a Supreme Court justice would — or should — be devoid of individual values.

Bork draws praise from critics as well as friends. But the values he would bring to the court are not those that best reflect American ideals. That is why we oppose his confirmation.



NEW YORK POST  
9/28/87

BY DON FEDER

## Anti-Bork liberals simply have no faith in the people

**R**ELAX, this is not an enumeration of Robert Heron Bork's impressive credentials and sterling attributes. Like me, at this point you probably are thoroughly Borked out.

There was, however, an exquisite irony in juxtaposing the start of his confirmation hearings with the Constitution's bicentennial. While fulsomely praising our national charter, liberals graphically demonstrated how deeply they disdain it.

How they thundered over what they regard as the dread possibility of having another Supreme Court justice who actually adheres to the law of the land.

The political theater surrounding Bork's nomination boils down to this: conservatives will bow to the will of the majority, liberals won't.

Bork's position, and of conservatives generally, may be summarized thus: it makes no sense to have a Constitution unless its construction is based on an objective standard, giving effect to its clear language, looking to the design of the framers to interpret the same.

Liberals, on the other hand, want the Constitution to mean nothing and everything. They sincerely believe it signifies whatever they want it to say.

If they think the law should prohibit X or mandate Y, if activist judges (in their infinite wisdom) determine the prohibition of X and command of Y are essential to the happiness and well-being of the populace, well then the Constitution must require the same.

Despite red herrings thrown out by the likes of Alan Dershowitz, conservative judicial activism is a myth. Conservatives ask no more than a fair field and no favors from the bench.

We do not require that the Supreme Court interpret the Constitution so as to facili-

tate our social policy. On the abortion question, for instance, we aren't asking the court to outlaw feticide, based on the discovery of a right to life, located in the murky depths of some misinterpreted provision.

We simply ask the court to admit what clearly is the case: that rightly or wrongly the Constitution doesn't address the question, that the framers contemplated such matters would be resolved in the states, by designated delegates of the people.

What liberal attacks on Bork, and employment of the Constitution as a magic wishing well, demonstrate is their utter contempt for democracy. On capital punishment, gay rights, affirmative action and a host of other subjects, they know the people aren't with them, hence they are terrified of voters acting on these concerns.

Neither will they try to amend the Constitution, to provide what at present obviously is not there. Their one effort in this direction, the Equal Rights Amendment, was a phenomenal failure.

They will accept nothing less than a Supreme Court which is a super-executive/legislature, able to usurp the functions of the other two branches of the federal establishment, as well as those of the states, at will.

Moreover, they demand an extra-constitutional Supreme Court that they — and they alone — control, impervious to the desires of the electorate, expressed through its choice of chief executive.

Their goal, quite simply, is an omnipotent judicial House of Lords. The outcome of the Bork confirmation process will determine if the rest of us will let them have their way. If we do, then we might just as well abolish the Constitution and allow the liberals to institute the dictatorship they crave.

## ABROAD AT HOME

Anthony Lewis

# Question Of Judgment

Members of the Senate Judiciary Committee have the difficult job of appraising a Supreme Court nominee who came before the committee and seemed to abandon many of the views for which he was known. What are the senators to make of that?

The shifts of position cannot be explained as Judge Robert Bork suggested: His old opinions were the mere theorizings of a professor, while now he is a judge. That is a demeaning view of his old profession, and a grossly inaccurate one.

Of course law teachers often play devil's advocate in the classroom, arguing all sides of a question with students. But it is quite another matter for a professor to state in a professional paper what he or she believes the Constitution means. To put his name to views he does not in fact hold would be unthinkable — and unethical.

Does Judge Bork think that Paul Freund of Harvard would have read the Constitution differently if he had gone on the bench? Would Herbert Wechsler of Columbia, on whose writings Judge Bork has relied? The question answers itself.

Understanding Judge Bork's changes of position is difficult for another reason. The way he articulated his current thinking to the committee tended to leave the practical results unclear. Hence it offered no reliable guide to the kind of Justice he would be.

Consider, for example, his attitude toward the Supreme Court's 1969 decision in *Brandenburg v. Ohio*, allowing punishment of speech only when it incites people in conditions of imminent lawlessness. Judge Bork used to denounce that rule of free speech. In the committee hearings he said he accepted it.

That was not "a great change of mind" on his part, Judge Bork said. Senator Arlen Specter of Pennsylvania said he thought the difference in principles of free speech was "enormous." Judge Bork agreed that it was; he explained that he still doubted the *Brandenburg* principle but accepted it "as settled law."

Former Attorney General Nicholas Katzenbach characterized that approach, which Judge Bork took on a number of issues, as "I continue to believe what I believed in the past, but I will accept this precedent." Mr. Katzenbach said: "When I try to put that mix together, I do not know what it is. I do not know what he really believes."

The point is that the exact facts of a precedent do not come up in the Supreme Court again. In the next case there are always shadings, differences. So it is the justice's view of principle that really matters: his or her "mind-set," as Senator Specter said.

Or consider Judge Bork's intense past criticism of the 1965 decision holding unconstitutional a Connecticut law that forbade the use of contraceptives. Judge Bork told the committee he would "do my utmost to uphold" a right to marital privacy. But after his years of attacks on the 1965 case, what reason is there to think that he would now find a basis in the Constitution for upholding the right?

Judge Bork's extraordinary five days of testimony left the senators

---

## The real issue on the Bork nomination.

---

with a task that Mr. Katzenbach stated sensitively. "Were I in your position," he told the committee, "the central question I would be asking is this: Is Judge Bork a man of judgment? Not intellect, not reasoning, not lawyering skills, not ideology, not philosophy — simply, judgment. Is he a wise person?"

That is the right question to ask about Judge Bork's changes of mind: changes not just in these hearings. For over many years Judge Bork has staked out a theory, used it to address issues in a tone of arrogant certainty, then abandoned it when it produced unworkable or inconvenient results.

In 1963 he fought the proposed Civil Rights Act forbidding racial discrimination in hotels and restaurants. The proposal, he said, rested on a principle of "unsurpassed ugliness" and was likely to be "subversive of free institutions." Ten years later, when nominated to be Solicitor General, he changed his mind and said that the statute had "worked very well." Mr. Katzenbach said it was hard to believe "that a man of intelligence and perception and feeling could have opposed that legislation on the grounds that it deprived people of freedom of association." But Mr. Bork did, because he was then an extreme libertarian.

There is something deeply troubling about a judge who seeks certainty in abstractions: who discovers a grand theory that will solve all the problems, then turns to another when the theory fails — as it must. All of us make mistakes, as journalists surely know. But Robert Bork's pursuit of theory has led him to profound misjudgments on great legal and moral issues, and to unconvincing changes. That is why this intelligent and engaging man should not sit on the Supreme Court. □

NEW YORK TIMES  
9/27/87

# That Was the Real Bork Who Testified

By Joseph Goldstein

**W**HO IS the real Robert H. Bork? This is the question "all of us are asking," Senator Edward M. Kennedy said after listening to 27 hours of Judge Bork's testimony. I believe I know the answer.

I know Judge Bork well. I have been a member of the Yale Law School faculty for more than 31 years, and was a colleague of his during during his entire tenure at Yale. I served with him on faculty committees and audited sessions of the seminar he offered with Alexander M. Bickel.

During the last 10 years I have devoted most of my time to teaching constitutional law. I have been a registered Democrat for all of my voting life and, for many years, I have supported the work of the American Civil Liberties Union, the N.A.A.C.P. and the Planned Parenthood Association.

*Joseph Goldstein is professor of law at the Yale Law School.*

I take Senator Kennedy's question to mean that he and other Senators who publicly committed themselves in advance of the hearing are prepared to change their minds if they learn they have wrongly assessed the nominee.

In essence, the Senator is asking these questions:

"Is the real Robert Bork the person I have described as racist, sexist and an opponent of individual liberty and equal justice, who will disregard Supreme Court precedent, roll back the clock and uproot decades of settled law in order to write his own ideology into law?"

Or, "Is the real Robert Bork the person whose testimony before the committee and whose record as Solicitor General and as court of appeals judge demonstrates that he is sensitive to the rights of minorities and women, understands that every person is entitled to the equal protection of the law, recognizes the importance of precedent, even if developed in a manner contrary to his judicial philosophy, and strongly believes there is no place for a personal political or social agenda in the way Justices must carry out their work?"

The real Robert Bork is the latter.

Any U-turns have not been his — but will have to be made by supporters and detractors who brought to the hearing prematurely drawn portraits of how Judge Bork will behave if he becomes Justice Bork.

Judge Bork was not disingenuous in his testimony. He was for the first time in his career publicly addressing as more than hypothetical the question, "How will I carry out the work of a Justice of the Court that has the final say?" This is also the question the Senate Judiciary Committee is asking of him and that he has forthrightly sought to answer.

Judge Bork has faithfully performed each of his previous jobs in accord with its distinctive purpose. He has explained how he intends to carry out the special responsibilities of a Justice of the Supreme Court. He recognizes, and he asks the Senate to recognize, the differences between the classroom and the courtroom; between article, speech, brief and judicial decision; between teacher, Solicitor General and court of appeals judge. What he may have said or done in carrying out his duties in other settings must not be confused with what he will say or do as Justice Bork.

Judge Bork appreciates the awe-

some burden that comes with being a Justice on the highest court. Thus, he can say with conviction that he will go to the Court with open eyes and ears, eager "to read the briefs and discuss things with counsel and discuss things with my colleagues." He speaks with a commitment to the rule of the Constitution, to constructions of it by the Court and to the rule of law.

That is his agenda — and it is the only proper agenda for a Justice of the Supreme Court. The political and social agendas of his supporters or detractors must not be tagged to him. Some of these seem not to have understood that Judge Bork has been trying to respond to questions he has never before addressed publicly — how he will go about his work as a Justice of the Court. Judge Bork will not forget, as Justice John Marshall stressed in *McCulloch v. Maryland*, that his task will be to expand a written Constitution — "intended to endure for ages to come, and, consequently, to be adapted to the various crises of human affairs."

He will be what he is — a thoughtful, decent human being who understands and will take seriously the duties of his office. □

WASHINGTON POST  
9-27-87

## Justice Bork? We Can Do Better

Judge Robert H. Bork embraces—candidly and without qualification—the judicial doctrine of “original intent,” the thesis that a judge’s duty is to determine the original meaning of words penned in the Constitution 200 years ago.

In a professional—and personal—sense, I find Judge Bork’s original intent doctrine, as well as the definition of the appropriate role of the Supreme Court that it implies, deeply troubling.

Had I lived when the Framers wrote the words “We, the People,” I would not have been part of the We. Nor would most of you. The prevailing definition of “people” would have excluded most of us—would have excluded us because we were black, brown, yellow, or red, because we were female, because we were poor. Had liberty in America remained limited to the expressed views of the Founders, the *majority* of Americans would today still be deprived of basic constitutional rights and constitutional protections.

Had America held tight to the doctrine of original intent, I would today not be a teacher.

Nor would most of my colleagues. I would not be a citizen. Nor would most of you. And many of us would be chattel—items at public auctions. America would be a land of a propertyless majority ruled by an elite consisting of white, propertied, affluent males. The democracy you and I cherish would be defective to the core.

Fortunately, at critical junctures in our history, the Supreme Court has rejected original intent and chosen instead to bring to life the implicit ideals that constitute the heart of the Constitution. Particularly during the last 35 years, the High Court has extended the blessings of liberty to ever-growing numbers of citizens—and moved America ever closer to fulfillment of her destiny as the world’s citadel of freedom.

Judge Bork, meanwhile, holds fast to original intent. The Senate committee considering Judge Bork’s nomination has offered him ample opportunity to disown this disquieting doctrine. Judge Bork has refused each offer.

This steadfast passion explains Judge Bork’s repeated assaults on First Amendment free speech provisions, on key provisions of the

1964 Civil Rights Act, on laws prohibiting race and sex discrimination, on the rights of public employees, the rights of the handicapped, on every citizen’s right to privacy, even on the decision (*Bolling v. Sharpe*, 1954) that mandated the integration of schools in our nation’s capital. For Judge Bork, the doctrine of original intent seems to hold sway over the doctrine of inalienable rights.

Does it follow that Judge Bork would undo the progress toward justice for all that the Court in its finest hours has wrought? Would Judge Bork return us to the judicial America of the 18th century? Of course not. But these are not the decisive questions. More to the point is the question—Would Judge Bork continue America’s steady march toward full rights for all Americans?

Judge Bork himself has answered that question. His answer is no.

Judge Bork is philosophically erudite. But can America afford to place on the Supreme Court a man whose erudition carries the threat of judicial stagnation? Do we not need a

Supreme Court Justice who sees in the Constitution an unequivocal mandate to ensure that the right to due process under the law is denied to no citizen? Do we not need a Supreme Court Justice committed to a principle nowhere explicitly articulated in the Constitution—the principle that the rights of every American, regardless of race or gender or ethnicity, are sacred?

Such principles—principles now woven into the fabric of American life only because of the Supreme Court’s *rejection* of the original intent doctrine—have elevated and ennobled the nation. But is there one among us who would deny that America needs more elevation still, that we can reach still nobler heights?

Would Judge Bork serve to accelerate that upward movement? On that question, the Judge’s record and philosophy leave grave doubts.

With America facing a new age of new challenges, with America’s destiny still in the making, we, the people, deserve a Supreme Court nominee who will inspire hope rather than foster doubt.

Judge Robert Bork is not that person.



Mary Hatwood Futrell  
President, NEA

SAN DIEGO UNION  
9-24-87

# Bork: Pressure-group hostage

The central issue in the Bork confirmation fight is not Judge Bork's qualifications for the Supreme Court. By now it's incandescently clear that he is one of the best-qualified nominees of this century.

Rather, the central issue is whether selection for the nation's highest court is to be made hostage to pressure-group politics of the crassest sort, using one of the most vicious, calculated campaigns of slander since the days of Joe McCarthy.

One of the high points of the hearings came late Monday, when a visibly angry former Attorney General William French Smith told Sen. Howard Metzenbaum to his face that he was a liar and a demagogue. Which, of course, he is — one of the sleaziest to disgrace the Senate in the post-McCarthy era. But he and the left-wing pressure groups have long found one another mutually useful.

What made the Smith-Metzenbaum exchange so satisfying was what prompted it: A finger-waving challenge by Metzenbaum to explain how it could be that, if Bork wasn't really a monster, his nomination has caused so much fear in so many people — women, minorities, etc.

Smith's reply was, in effect, that a lot of people had been scared silly by the malicious lies being spread so slickly by Metzenbaum and his co-conspirators — which, of course, they have been.

And then, as Metzenbaum kept reiterating the lies for the cameras, the usually taciturn Smith was finally driven to tell Metzenbaum, in rising dudgeon, that the senator's shrill accusations were false, that Metzenbaum knew they were false, "and it borders on lying to the American

---

## Raymond Price

---

public."

A moment of candor as refreshing as it was dramatic.

Much of the opposition to Bork arises from what we might call the "feelgood" school of jurisprudence: If it feels good it ought to be declared the law of the land. For judges to be constrained by the law when it stands in the way of making people feel good is "mere legalism."

It was in the mists of this feelgood school that the late Justice William O. Douglas found those "penumbras, formed by emanations" from the Bill of Rights out of which he fashioned a generalized, undefined right of privacy, which he then used to strike down a long-dead 1879 law against contraceptives in the 1965 case of *Griswold vs. Connecticut*.

Bork has called the Connecticut law "nutty" and "an outrage." But he objected (as did Justice Hugo Black in dissent, and most serious constitutional scholars) to the vaporous reasoning by which Douglas conjured up those "penumbras" and "emanations."

It's not that Bork objects to a constitutional right of privacy: He points out that any number of specific constitutional provisions, including the First, Fourth and Fifth Amendments, establish various rights of privacy.

Nor does he object to broadening those rights. But not by reliance on anything so insubstantial and evanescent as penumbras and emanations, and not without some definitions of

the reach and limits of the privacy being protected.

But this isn't enough for the apostles of feelgood jurisprudence — the Timothy Learys of constitutional law. They and their senatorial champions couldn't care less about judicial reasoning. They're concerned solely with who wins, who loses, how it feels.

Judging is just precinct politics carried over into another arena. The Constitution should be whatever its noisiest constituents want it to be — and if another group makes more noise next year, get another judge to find another penumbra.

And so we get the Metzenbaum-Kennedy brand of demagoguery: Because Bork objects to the insubstantial line of reasoning used in *Griswold*, they seize on this to charge that he wants to bring jackbooted storm troopers into the bedroom of every married couple.

And so on through the whole litany of other issues — abortion, equal protection, everything — on which Bork has found fault with weak reasoning in a particular case. The demagogues have then accused him of being "against" the result or "hostile" or "insensitive" to the side that benefited from that weak reasoning.

Robert Bork has amply demonstrated that as a justice he would impartially and courageously serve one master: The Constitution. If pressure groups continue to choose the judicial rather than the political route to pursue their agendas, he would insist that they make their case on the basis of constitutional principle, not constituency politics.

But that, of course, is what has them so worried.

WASHINGTON POST  
9/27

MARY McGRORY

## Judge Bork And Dixie's Class of '86

**T**HE POLITICS of the Bork nomination come down to the politics of gratitude with at least four new southern Democratic senators.

Without the black vote, Richard C. Shelby of Alabama, Wyche Fowler Jr. of Georgia, John B. Breaux of Louisiana and Terry Sanford of North Carolina would not be sitting in the Senate today. In every case, the loss of white voters was offset by a turnout of blacks.

That is why they agonize over the choice. White voters could be alienated by what they might see as a bowing to "special interests", by which is meant the pro-choice, anti-school-prayer groups that have been mobilized against Bork. On the other hand, they feel a certain sense of obligation to the people who rescued them from defeat.

Their victory, and their dilemma, arise out of the Voting Rights Act of 1965, one of many civil-rights measures opposed by Robert Bork, who saw no harm in the poll-tax because it was so small.

"The White House took all the southern votes for Bork for granted," said a southerner. "In the case of the class of '86, they could be wrong."

The White House has been made

aware of southern discomfort over Bork. It adds to their unease about the confirmation.

Breaux was the target of a vicious Republican scheme called "Ballot Integrity Program", whereby hard-breathing activists sought to sweep off the registration rolls the names of blacks who had failed to vote for Ronald Reagan. The plot was discovered, and nationwide attention was directed on the race. Breaux lost the white vote to his Republican rival, W. Henson Moore, but came home with 90 percent of the blacks.

"I'm finding that the opposition to Bork is much more intense than the support," he says.

His mail and calls are running 12 to one in favor of Bork but they are "generated" and from out of state. The pro-Bork mail consists of printed forms with names filled in. The antis write individual letters.

Sen. Howell Heflin of Alabama, a Democratic member of the Senate Judiciary Committee who once referred to Bork as "weird," will give no hint of how he intends to vote. He has wondered out loud what kind of a justice Bork would be. He must face the voters in 1990 and may have difficulty explaining his vote either way.

The reason for the depth and strength of the opposition was

Cont'd...

(1)

... cont'd

explained with great elegance and eloquence by black political stars Barbara Jordan and Andrew Young, who testified last week.

For them it is quite simple. They would not be where they are today if Bork's published views—some of which he has repudiated—had prevailed.

**“**I would right now be running my 11th unsuccessful race for the Texas House of Representatives,” she declared with her awesome diction and in her chiming, cavernous voice.

The Supreme Court gave her her chance. Because of the one-man, one-vote decisions, she was finally elected to the state legislature and eventually to the House of Representatives, where, as a member of the Nixon impeachment committee, she sat in judgment on an erring president. She is now a professor of law at the University of Texas.

Andrew Young, as a poor young preacher, marched and sang at the side of Martin Luther King. He told the senators that if Bork's views on First Amendment rights had been in effect, King would not have been able to lead the great campaign for civil rights. “To think that we would not have been able to give the kind of aggressive non-violent leadership during that period is frightening.”

In those days, he said, the Supreme Court was “the voice of

God” to struggling blacks. Bork on the bench would mean a Supreme Court “that doesn't understand the passion and anguish of people whose rights are being denied.”

Young's life was transformed by the court and the Voting Rights Act. He was elected to Congress and became Jimmy Carter's ambassador to the United Nations. He is now the Mayor of Atlanta, a booming city that is “too busy to hate.”

Bork's allies try to point out that Bork the writer should be separated from Bork the judge. He has abandoned his old theories, they say. On the bench, he never rode them. But to blacks, he is indelibly identified as a heartless nay-sayer who coldly bade them to repair to their state legislatures in pursuit of rights that are not specifically described in the Constitution.

The southerners hope they will be spared a yes-or-no vote on Bork. A filibuster, by forcing withdrawal of the nomination, might provide the answer. A filibuster could be sustained with the southerners' help. It is a fine old southern tradition to vote against cloture, the closing-off of debate.

A filibuster could be a way out acceptable all around, showing blacks that the southern Democrats understand—and showing whites that they are preserving the southern way of life.

THE WHITE HOUSE

WASHINGTON

September 10, 1987

MEMORANDUM FOR ADMINISTRATION SPOKESPERSONS

FROM: TOM GIBSON *TG*  
DIRECTOR OF PUBLIC AFFAIRS

SUBJECT: Talking Points on Judge Bork and Criminal Justice

Attached for your information and use are talking points that discuss in detail the record of Judge Robert H. Bork on criminal justice issues.

Thank you.



**WHITE HOUSE TALKING POINTS**

---

JUDGE BORK AND CRIMINAL JUSTICE

- o Judge Robert H. Bork, the President's nominee for the Supreme Court, has demonstrated a clear understanding of the problems facing today's law enforcement professionals.
- o President Reagan has described Judge Bork as a "tough, clear-eyed" jurist whose goal is "to assure real justice for all citizens, not to foster never-ending sparring matches between lawyers."
- o "It's time we reassert the fundamental principle that the purpose of criminal justice is to find the truth -- not coddle criminals," President Reagan has said. "The constitutional rights of the accused must be protected, but so must the rights of law-abiding citizens."
- o Nearly one-third of the Supreme Court's time is taken up with matters of criminal justice, and yet there has been little focus in the current debate about Judge Bork's views in this area.
- o Judge Bork's nomination presents a crucial opportunity to continue our progress in the war against crime.

Record as Solicitor General

- o From 1973 to 1977, Judge Bork served as the Solicitor General of the United States, the federal government's chief spokesman and litigator before the Supreme Court.
- o Solicitor General Bork advanced commonsense readings of the Constitution that would help -- not hinder -- the search for truth in criminal trials.
- o As Solicitor General, Judge Bork argued for a broad view of consent as a valid basis for a police search, and that the Exclusionary Rule should not apply where police officers reasonably believed they had consent (U.S. v. Matlock, 1974).
- o In U.S. v. Edwards (1974), Judge Bork argued that the Fourth Amendment did not necessitate a warrant to search an individual who is already lawfully in custody.
- o And in U.S. v. Watson (1976), Solicitor General Bork successfully argued that the Fourth Amendment's warrant requirement does not require police officers to obtain a warrant to make an arrest in a public place, so long as they have probable cause that the suspect has committed, or is committing an offense.

## WHITE HOUSE TALKING POINTS

---

- o Solicitor General Bork argued and won the major death penalty cases of the 1970s. In the 1976 case of Gregg v. Georgia, Bork argued in a "friend-of-the-court" brief that the death penalty was not a violation of the Eighth Amendment's prohibition of cruel and unusual punishments. The Supreme Court agreed, in a decision supported by Justice Lewis Powell.
- o It is worth noting that those who employ the "balance" argument against Bork rarely mention the margin by which the death penalty has been held constitutional in recent years. Last term, for example, the constitutionality of capital punishment in cases of especially brutal murders was reaffirmed by a single vote -- that of Justice Powell, whose seat Judge Bork would fill.

### As a Federal Judge

- o As a member of the most important federal appeals court in the Nation since 1982, Judge Bork has built a strong record on criminal justice issues.
- o For example, Judge Bork's opinion in U.S. v. James (1985), upholding a conviction for narcotics possession, held that the federal "knock and announce" statute allows the police to enter and prevent destruction of evidence in situations where the accused is well aware of the purpose of the police visit.
- o In another decision, Judge Bork affirmed a conviction for possession of a controlled substance and held that the government had properly refused in a criminal trial to reveal the location of an undercover police surveillance post (U.S. v. Harley, 1982).
- o While Judge Bork has opposed expansive interpretations of procedural rights that would enable apparently culpable individuals to escape justice, he has not hesitated to overturn convictions where constitutional or evidentiary conclusions compelled such a result.

# WHITE HOUSE TALKING POINTS

---

## Judge Bork Endorsed by Law Enforcement Groups

- o Groups representing over 350,000 law enforcement professionals have endorsed Judge Robert H. Bork's nomination for the Supreme Court, including:
  - National District Attorneys Association;
  - International Association of Chiefs of Police;
  - National Sheriffs' Association;
  - National Association of Police Organizations;
  - Major City Chiefs association;
  - National Troopers Coalition;
  - International Narcotics Enforcement Officers Association; and
  - The Fraternal Order of Police.

It is in the best interests of the citizens of the United States and all law enforcement officers that Judge Bork be confirmed to the Supreme Court.

--- Fraternal Order of Police  
Resolution

THE WHITE HOUSE

WASHINGTON

10/5/87

I have attached a series of excerpts of testimony favorable to Judge Bork which was given by witnesses before the Senate Judiciary Committee. There is a long version and a short version; every excerpt in the short version is included in the long version.

Peter Keisler

## EXCERPTS FROM TESTIMONY FAVORABLE TO JUDGE BORK

### TESTIMONY OF EDWARD LEVI

Former Attorney General of the United States  
(September 21, 1987)

- In my experience with him, I would say that Judge Bork is an able person of honor, kindness, and fairness, and I would say with practical wisdom, which he has shown as an outstanding Solicitor General, and an outstanding and eloquent judge, and for the sake of our country, I very much hope he will be confirmed. (p. 218)

- He works with the cases. He worries about those cases that his great predecessor judges all worried about, and I think he tries very hard to see how they can be worked into that kind of a structure where the law can be applied equally, which is, after all, an important part of justice. So I think there is an inner consistency to what he has done, but I also think that his views have changed. And I am not sure that his discussion with this rather strange assembly, if I may call you that, may not have had -- may not have given him some thoughts, too. (p. 221)

### TESTIMONY OF WILLIAM FRENCH SMITH

Former Attorney General of the United States  
(September 21, 1987)

- Five years ago, Robert Bork was superbly qualified to sit on the Supreme Court. His distinguished judicial service on the Court of Appeals has only served to enhance his qualifications. Former Chief Justice Burger recently stated that there has not been a better-qualified Supreme Court nominee than Judge Bork over the past 50 years. And Justice Stevens has echoed those sentiments, as do I. (p. 234)

- In my view, there is no one better -- qualified to sit on the Supreme Court. (p. 234)

- In sum, Judge Bork is a highly distinguished, fair-minded jurist and scholar of the highest professional integrity. He has all the earmarks of a great Supreme Court Justice. (p. 234)

### TESTIMONY OF WILLIAM ROGERS

Former Attorney General of the United States  
(September 21, 1987)

- Having listened with care to these hearings and, unlike

some of the previous witnesses, I actually have listened to them, and after looking at Judge Bork's record of accomplishments, I do not believe that President Reagan could have found a more qualified man or woman to nominate for this job. (p. 300)

- Certainly, I can think of no nominee during my professional life who has been better qualified. As has been stated here, Robert Bork has had four distinguished careers, first as a lawyer in private practice, where he was very successful, as a holder of two endowed chairs at one of the Nation's most prestigious law schools, as the government's chief advocate before the Supreme Court for four years -- and I have talked to a lot of people about the quality of his advocacy and it was superb -- and he served for five years as a respected Federal judge in what is probably the second most important court in country. (p. 300)

TESTIMONY OF CARLA HILLS

Former Secretary of HUD  
(September 22, 1987)

- Given my deeply held views of Judge Bork's splendid character and capacity, I was startled and saddened by the proliferation of reports from interest groups contending that his presence on the Court threatens that group's particular interest. Rather than reason with his considerable intellect, too many have used highly selective quotations from his writings and skewed tabulations of his opinions to brand him "anti-labor," "anti-First Amendment," "anti-feminist," and, in particular, "anti" the social objective of the writer. (p. 116)

- I am very comfortable that Judge Bork's jurisprudence will not harm, but, rather, will help women achieve equality. That his judicial restraint enables nuance differences to be created in our State and Federal legislative bodies, and it is there that women have achieved their gains in this century. (p. 151-52)

MICHAEL MCCONNELL

Assistant Professor of Constitutional Law  
University of Chicago  
(September 22, 1987)

- Almost without exception, the Justices who had the most controversy at the time of their nomination have proven to be the greatest Justices in this century. I speak of Louis Brandeis; I speak of Charles Evans Hughes; I speak of Harlan Fiske Stone. (p. 121)

GARY BORN

Adjunct Professor of Law  
University of Arizona  
(September 22, 1987)

- A fair and objective reading of the historical record shows that Judge Bork's civil rights views are squarely within the mainstream of U.S. legal thinking. The same record shows that Judge Bork has personally made substantial contributions to the civil rights of minorities and women in this country. (p. 129)

THOMAS CAMPBELL

Professor of Antitrust Law  
Stanford University  
(September 22, 1987)

- Just focusing on the privacy question, Judge Bork is a careful scholar and a careful jurist, and he says let's take this concept and be careful when we expand it. Professor Tribe has referred to the expansive concept of privacy going on even to the question, not that he supports it, but to the question of the right to use drugs in privacy of your own home. (p. 179)

DONALD BALDWIN

National Law Enforcement Council  
(September 22, 1987)

- That view, that one's own personal view of the application of the law should prevail, misses the whole point of our republic form of government. Ours is a government of the people, by the people, and for the people, not a government of special-interest groups. Our Founding Fathers, in writing the Constitution decided -- and I believe rightly so -- that our nation should be a nation governed by co-equal branches of the government: the legislative, executive, and judiciary. The legislative branch writes the laws, the executive carries them out, and the judiciary branch interprets our laws -- they do not write our laws. The country is quite clearly a nation governed by laws, not by men. (p. 249)

- As representatives of the vast majority of law enforcement and others who are charged with upholding the laws of our land, I think my colleagues here will agree that Judge Bork has demonstrated that he is committed to the idea that judges should confine themselves to interpreting the laws rather than advocating their ideas of what some might think is wise public policy. (p. 250-51)

TESTIMONY OF ROBERT FUESAL

President, Federal Criminal Investigators Association  
(September 22, 1987)

- [L]ike others, we believe that throughout his career, Judge Bork has demonstrated a real concern for the problems of lawlessness and violence in our society, with a marked sensitivity to the concerns facing today's law enforcement professionals. (p. 270)

JOHN L. HUGHES

National Troopers Coalition  
(September 22, 1987)

- Judge Bork has, we believe, struck the appropriate balance between protecting the rights of society to enforce its laws, on the one hand, and upholding the constitutional rights of an accused on the other hand. (p. 280)

THE HONORABLE WARREN BURGER

Former Chief Justice of the United States  
(September 23, 1987)

- It would astonish me to think that he is an extremist any more than I am an extremist. (p. 15)

- I simply do not understand the suggestion that he is not in the mainstream of American Constitutional doctrine. (p. 22)

- This man is thoroughly qualified on every count that I would consider if I were sitting as a Senator. (p. 30)

- I was so concerned about the disinformation in some of these full page ads that I glanced at, that I felt as a member of the Bar, as a citizen, I had an obligation really to say what I believe. (p. 48)

WILLIAM LEUCHTENBURG

Professor of History, University of North Carolina  
(September 23, 1987)

- Question by Senator Spector: Is there not a place for a nominee to the Court who articulates the view of the majority,



Madisonian majoritarianism, as he writes about it, and as learned constitutional scholars have written to talk about the rights of the majority, and to have that in the balance as you apply the rights of the minority to maintain this tension and to have some sort of balance? State it specifically. Is there not a place for that kind of a doctrine of that kind of philosophy on the Court?

Answer of Professor Leuchtenburg: Well, I would say in response, Senator Specter, that that attitude is very well represented on the present Supreme Court; that in the views of Chief Justice Rehnquist, of Scalia and others, that there is no doubt that a view is going to be expressed at many times with respect to balancing. It is not that that kind of attitude is not voiced at all. (pp. 111-12)

TESTIMONY OF LLOYD CUTLER

Counsel to President Carter  
(September 23, 1987)

- In virtually every Supreme Court decision that the Committee staff has attacked Judge Bork for criticizing, one, two, or three of these distinguished Justices [Hugo Black, John Marshall Harlan, Potter Stewart, Byron White, Lewis Powell, and John Paul Stevens] dissented, placing himself on the same side of the issue as Judge Bork. Indeed, Judge Bork's criticisms usually endorse the criticisms set forth in the dissents of these dissenting Justices. I have included their names and the case citations in an attachment to my statement. (p. 124)

- In my view, his confirmation would not shift the so-called balance of the Court nearly as much as the appointment of Hugo Black to succeed Willis Van Devanter, or of Arthur Goldberg to succeed Felix Frankfurter, or of Thurgood Marshall to succeed Tom Clark. (pp. 126-27)

- On the whole, I think he would come much closer, particularly as a sitting Justice if he is confirmed, to a Justice like Justice Powell and Justice Stevens -- and I remind you that that is precisely what Justice Stevens himself said, that "you will find in Judge Bork's opinions a philosophy similar to that you will see in the opinions of Justice Stewart, Justice Powell, and some of the things that I, Justice Stevens, have written."

That is his opinion, and he is probably in a much better position to judge than I. (p. 135)

TESTIMONY OF JAMES THOMPSON

Governor of Illinois  
(September 23, 1987)

- I believe Robert Bork would be a fine Justice on the Supreme Court; and more, I believe he would do equal justice under the law, the words carved on the Court, which I passed to come here to testify. I believe he has fine inquiring mind, and I believe he is a fair-minded person who will listen. (p. 194)

TESTIMONY OF THOMAS SOWELL

(September 25, 1987)

- Mr. Bork has rejected the idea that judges should engage in heroic adventures in policymaking, as he calls it. The renunciation of power, he has said, is the morality of the jurist, not the assumption of power in the name of morality. (p. 81)

- Obviously I wouldn't be here if I believed any of that. The landmark civil rights cases which Robert Bork initiated or joined as Solicitor General have been dismissed by his critics because, supposedly, he was only the mouthpiece of the Administration. But surely no one believes that someone with Robert Bork's marketable skills was so desperate that he had to hang on to a job that required him to perform duties which conflicted fundamentally with what he believed and wanted to do. (p. 83)

TESTIMONY OF PROFESSOR MEADOR

Professor of Law  
University of Virginia  
(September 25, 1987)

- First, I would ask this; Is confirmation of the nominee supported by a substantial array of lawyers and legal scholars who are themselves well regarded and who come from various parts of the country and diverse legal settings?

Second question: Do the nominee's views about various legal doctrines and task and approach to interpreting the Constitution have substantial support among other judges, lawyers and legal scholars; that is, does he have some professional company in his various legal views?

On both of those questions, it seems to me the evidence before this Committee has a lead to an affirmative answer.

Third question: Where the nominee is judge already on a lower court . . . has he been a lone wolf, an eccentric continual dissenter with very little company among his judicial colleagues, and has he been reversed a significant number of times by a higher court? Here again, though, the evidence is to the contrary with Judge Bork.

TESTIMONY OF PROFESSOR GEORGE PRIEST

Professor of Law, Yale Law School  
(September 25, 1987)

- Robert Bork was a major academic prior to this appointment as Solicitor General, and later as judge, but I believe Robert Bork would never have achieved the academic prominence that he did if he had not mastered the academic style that I have described. Robert Bork's most important academic contributions in the field of antitrust law have generated a total rethinking of the field, which the Supreme Court has largely adopted.  
(p. 244)

TESTIMONY OF PROFESSOR SIMON

Professor of Law, Yale Law School  
(September 25, 1987)

- In the long run, Judge Bork's attributes of courage and candor will serve the Court and the country well. From time to time, it is of importance that a Justice be willing to resist prevailing passions. It is too bad, for example, that more Justices didn't support the plaintiffs' rights in the Japanese-American internment case of 1944. Judge Bork called this decision a constitutional disaster, and he would, I believe, have the courage to buck the tide should history present the Court with another such test of its mettle. (p. 247)

TESTIMONY OF PROFESSOR ROTUNDA

Professor of Law, University of Illinois  
(September 25, 1987)

- I've heard a lot of Judge Bork's testimony. I've read a lot of his writings. I've reviewed his cases. I haven't been surprised by any of the testimony because I think I read his earlier writings and have seen the rhythm in context, I think with care without bias. We should look at what Judge Bork actually says in context rather than what others claim he said. Very often, other people seem to put their words in his mouth,

and I think that's not only unsanitary but very unfair. (p. 252-53)

TESTIMONY OF CHARLES S. RHYNE

Former President of the American Bar Association  
(September 25, 1987)

- While any Solicitor General takes with him an argument in the Supreme Court, the great respect the Court traditionally has shown for that great office and its views on the case to be decided, I have never noted that the Supreme Court in any way did not treat Solicitor General Bork with the utmost respect; and I have found that his arguments, even in supporting Federal legislation which I was challenging and which the Court declared unconstitutional, were fair, vigorous and well-grounded in the precedents I was seeking to change and did change. (p. 359)

TESTIMONY OF JOHN SHEPHERD

Former President of the American Bar Association  
(September 25, 1987)

- It's interesting to note, as I did some of my research, that some of the people who have appeared before this committee also appeared, or their organizations appeared, in the confirmation hearings, for example, of Lewis Powell.

In opposing his 1971 nomination, noted civil rights lawyer Henry L. Marsh, who while he was testifying on behalf of the Old Dominion Bar, castigated Justice Powell's record -- and this is a quote -- "record of continued hostility to the law. His continual war on the Constitution." In deference to the hour, I will not cite the other people who had such comments to make not only about Lewis Powell, who I think we can all agree is a distinguished past president of the American Bar, and a distinguished jurist, but the same type of comments were urged upon the confirmation about John Paul Stevens. (p. 379)

TESTIMONY OF WALLACE RILEY

Former President of the American Bar Association  
(September 25, 1987)

- At the last annual meeting of the American Bar Association, out in San Francisco in August, and just last week at the meeting of the State Bar of Michigan in Grand Rapids, Michigan, I talked to a lot of lawyers. And I found that a great majority of the lawyers with whom I spoke were of the belief that Judge Robert Bork was a good choice for the Supreme Court.

These people are practicing lawyers who are impressed by the outstanding academic credentials, by the military and public service record, by the law firm practice, and by the appellate judicial experience of Judge Bork. Most would settle for Judge Robert Bork's success in any one legal career. He has distinguished himself in four. (p. 371 - 72)

TESTIMONY OF JAMES T. BLAND, JR.

President of the Federal Bar Association  
(September 25, 1987)

- I want to stress that I am speaking only on behalf of our nationally-elected officers, not our entire membership, which is composed of more than 15,000 lawyers and judges in government service, in private practice, and in our Federal judiciary.

We did, however, conduct a poll of our nationally-elected leaders several months ago, when the Administration requested our input as to the qualifications of Judge Robert Bork. We were not asked if we liked Judge Bork. We were not asked if we would like to see Judge Bork on the Supreme Court. We were merely asked if, in our professional opinions, we believed Judge Bork was qualified to sit on the Supreme Court of the United States. The answer? It was overwhelmingly "yes." (p. 373-74)

TESTIMONY OF GRIFFIN BELL

Former Attorney General of the United States  
(September 28, 1987)

- [I]f I was in the Senate I would vote for him. I think he is a conservative, but he is principled, he is rational, and I think that he would not wear anyone's collar. I doubt President Reagan knows what he would do, and I like that. I like to see a man go on the Court who is going to be his own judge, be his own man, and I think that is the way it is going to turn out.  
(p. 64-65)

- He is going to do whatever he thinks the Constitution means, and he is searching all the time. He has grown from the time he was a young law professor to now. He has grown a great deal. He has changed his mind about things. I like that. (p. 65)

HONORABLE RICHARD THORNBURG

Former Governor of Pennsylvania  
(September 28, 1987)

- I came to know Bob Bork as an extremely able and intelligent lawyer. I also came to know Bob Bork to be a man of personal integrity and a man of commitment to the rule of law. I know that Bob Bork shares with me a deep concern in ensuring that the criminal laws of this country are enforced through effective investigation and fair trials conducted in keeping with Constitution of this nation. (p. 156)

TESTIMONY OF A. RAYMOND RANDOLPH

Former Deputy Solicitor General  
(September 28, 1987)

- I have been practicing law before the Supreme Court for seventeen years. I don't want a Justice who is predictable. I want a Justice who is open-minded, fair, can be persuaded, and is not bound and controlled by sympathy. I want someone who is neutral, because otherwise my role as an advocate before the Court is not of any use. Robert Bork would make that kind of Justice. (p. 161)

TESTIMONY OF JEWELL LAFONTANT

Former Deputy Solicitor General  
(September 28, 1987)

- All of my life I have been involved in civil rights organizations, having served for many years as secretary of the Chicago branch of the NAACP, on the board of directors of the American Civil Liberties Union and its legal redress committee, and as chairman of the Illinois Advisory Committee of the United States Civil Rights Commission, as well as being a commissioner of the Martin Luther King Holiday Commission. I have no hesitancy in supporting Judge Bork's nomination to the Supreme Court. (p. 165)

- As a woman and a black woman, I have no fear of entrusting

my rights and my privileges to Robert Bork as an Associate Judge of the Supreme Court. I believe in him. (p. 165)

TESTIMONY OF STUART SMITH

Former Deputy Solicitor General  
(September 28, 1987)

- During my time at the Department of Justice, I argued almost 50 cases in the Supreme Court and more than 60 cases in the various circuit courts of appeals. I have worked with many fine lawyers over a very productive professional career, both in Government and in private practice, but I can tell the Committee that I have never encountered anyone who has been the equal of Bork in terms of his intellectual integrity and absolute professionalism. (p. 170)

TESTIMONY OF PAUL BATOR

Professor of Law  
University of Chicago  
(September 28, 1987)

- My own view, Mr. Chairman, is that the country will be better off with a Robert Bork on the Supreme Court than without him because he is a person of surpassing intellectual distinction, because of his outstanding integrity and intellectual honesty, and because of his commitment to the rule of law. (p. 187-88)

TESTIMONY OF HENRY MONAGHAN

Professor of Law  
Columbia University  
(September 28, 1987)

- In my view, no more than a score of persons has ever been nominated to the Supreme Court with such surpassing credentials. (p. 191)

- Judge Bork's nomination should have been met with acclamation. But, from the beginning, this nomination has been the occasion for a wide ranging referendum on the Reagan Presidency and on various specific Supreme Court decisions. In that controversy, Judge Bork's qualifications, indeed Judge Bork himself has been wholly submerged. (p. 191)

- Judge Bork is criticized from the far right, from the left.

I would like to think that he is at least in the mainstream. (p. 237)

TESTIMONY OF LILLIAN BEVIER

Professor of Law  
University of Virginia  
(September 28, 1987)

- In short, when Judge Bork practices judicial restraint, he neither abdicates the judicial obligations to protect individual and minority rights nor does he shrink from appropriate opportunities to expand those rights. (p. 199)

TESTIMONY OF LEO LEVIN

Professor of Law  
University of Pennsylvania  
(September 28, 1987)

- The Judge Bork that I know has absolutely no resemblance whatsoever to the Judge Bork that is being caricatured in many places. This person does not have an ounce of prejudice, racial, ethnic, religious, sexual, in his body, and I have no hesitation whatever on that score. (p. 200)

TESTIMONY OF DALLIN OAKS

Dean, Brigham Young University Law School  
(September 28, 1987)

- He is a man of integrity who has adhered to the highest standards of the legal profession. I have been saddened as some respected persons and organizations have characterized Judge Bork as an extremist, an enemy of legal rights that are vital to some citizens, and valued by all. These assertions are not well-founded and do not serve the cause of thoughtful discourse on the qualifications of this nominee. (p. 204)

TESTIMONY OF HOWARD KRANE

Partner, Kirkland & Ellis  
(September 28, 1987)

- I have, in short, the measure of the man. With the authority of personal knowledge, I can and do reject any suggestion that Bob Bork has misstated his views or falsely professed to have changed his views in order to enhance his



chances of being approved by this Committee and confirmed by the Senate. (p. 265)

TESTIMONY OF REED G. CARLOCK

Attorney at law, Phoenix, Arizona  
(September 28, 1987)

- Judge Bork has to a remarkable degree the qualities of intellect and character necessary to this task. His insistence on determining how and where an idea fits into the framework of our Constitution gives a principled continuity to his thinking and enhances judicial determinations and opinions.

STATEMENT OF ELLIOT L. RICHARDSON

Former Attorney General of the United States  
(September 29, 1987)

- Robert Bork's actions in the aftermath of the Cox dismissal contributed to the continuation and ultimate success of the Watergate investigation. He took immediate steps to keep the Watergate Special Prosecution Force together and insisted that it retain responsibility for the investigation. (p. 3)

STATEMENT OF GERHARD CASPER

Professor of Law, University of Chicago  
(September 29, 1987)

- It is my view that Judge Bork has a more profound understanding of the essential nature of American constitutionalism than has been reflected by many of his critics. Contrary to the impression created by these hearings -- which have already done a great amount of harm -- this country is held together by the rule of law, not by the rule of judges. As Judge Learned Hand once said: "[I]n a society which evades its responsibility by thrusting upon the courts the nurture of [the spirit of moderation], that spirit in the end will perish." (p. 3-4)

STATEMENT OF RONALD R. DAVENPORT

Former Dean, Duquesne Law School  
(September 29, 1987)

- I am confident that if Judge Bork is confirmed, he will not treat his elevation to the Supreme Court as a roving commission

to rewrite the Constitution. In fact, to do so would do violence to his deep respect for the concept of judicial restraint. Judge Bork is a warm and sensitive man who, in my judgment, will bring to the Court a deep respect and concern for the rights of all citizens. (p. 3)

STATEMENT OF STEVEN P. FRANKINO

Dean, Villanova Law School  
(September 29, 1987)

- I have on a number of occasions attended lectures and speeches Judge Bork has delivered on the nature of the judiciary. There is nothing radical or unusual in his approach -- in fact, he is in accord with what I have understood to be the traditions of the common law and the positions of many great American jurists. There are other approaches to the judicial function but to characterize Judge Bork's as outside of current legal thinking is in my opinion simply not accurate. (p. 3)

STATEMENT OF MAURICE J. HOLLAND

Dean, University of Oregon School of Law  
(September 29, 1987)

- Judicial philosophy as it pertains to judicial review and the role of the Supreme Court is a house of many mansions. It encloses a broad range of differing views within the confines of honorable and thoughtful opinion. Judge Bork's views place him well within those confines, and indeed place him within a great tradition which includes many of America's finest jurists, including Supreme Court justices. It would be a tragic mistake for the Senate, in voting on this nomination, in effect to proclaim that mere fidelity to the great tradition of judicial restraint is a sufficient reason to withhold its consent to confirmation of a nominee so eminently qualified by virtue of personal integrity and professional distinction as is Judge Bork. (p. 7)

TESTIMONY OF THOMAS D. MORGAN

Dean, Emory University School of Law  
(September 29, 1987)

- [Judge Bork's] record as a judge and advocate is clearly outstanding, as would be his work as a Justice. It has been asked how the committee can be sure that a person with Judge Bork's critical views of the reasoning of many Supreme Court cases would nonetheless adhere to those cases when on the Supreme

Court. I can only answer that the fundamental principle he has always asserted about judging is that judges themselves should be bound by the law. That is his point about the need to ground Constitutional decisions fairly in the language of the Constitution. (p. 3)

- If we look at his whole approach, then, not just the criticism of individual decisions, we find no basis to doubt that his performance as an advocate and judge is the "real" Robert Bork. (p. 3)

- There are few deeper ironies in this hearing that the portrayal of Robert Bork as opposed to liberty. His whole career is consistent with the view that concepts of limited government and human freedom run throughout the substance and structure of the Constitution; they are not even limited to the Bill of Rights.

- What Judge Bork properly fears, however, is that a Supreme Court which does not consider itself bound by the limits of a fair reading of the Constitution is a Court that potentially can do more harm than good. It may make up the law in a way that you and I like today, but it could restrict our rights as easily tomorrow if we fail to insist that courts operate within legal standards which are fairly traceable to the Constitution or a valid statute. (p. 6)

STATEMENT OF EUGENE V. ROSTOW

Former Dean of Yale Law School  
(September 29, 1987)

- In my view, your hearings have not raised a serious issue about Judge Bork's rectitude or his intellectual qualifications for the post. The sole question before you is whether Bork's judicial philosophy so offends the Senate as to justify its refusal of consent. You will note that I did not say that the issue is whether you agree with his judicial philosophy and record, or find it congenial or even comfortable. The question, as I see it, is quite different. Many of you, I know, have concluded, as I have, that Judge Bork should be confirmed on the merits. Some are opposed or doubtful. To you, I say particularly, the Constitutional issue is whether you can honorably conclude that Judge Bork's jurisprudence is so outrageous as to fall outside the zone of the President's Constitutional discretion in making nominations. In making that decision, I appeal to you to recall that some of the most influential and useful judges in the history of the Court were not full members of what has been called here "the mainstream" of Constitutional opinion, but dissenters, often lonely voices in the wilderness, whose views prevailed in the long run. Holmes,

Brandeis, and the elder Harlan all belonged to this precious and remarkable group. (p. 4)

STATEMENT OF TERRANCE SANDALOW

Professor of Law  
University of Michigan  
(September 29, 1987)

- The record thus provides no more foundation for the claim that Judge Bork's testimony is opportunistic than it does for the contention that he is a conservative ideologue. Both assertions are, rather, evidence of the regrettable tendency in recent years for opponents of controversial nominees to seek ways of besmirching the latter's character rather than resting their case, openly and honestly, on disagreement with a nominee's judicial philosophy. (p. 8)

- In taking the position that public policy is properly made by politically responsible officials unless they violate constitutional values, Bork joins justices, both liberal and conservative, who are among the most distinguished figures in the Court's history, including Justice Holmes, Frankfurter, Black, Jackson, and the second Harlan. To be sure, no one of these justices approached the task of constitutional interpretation in precisely the way that Judge Bork does. They wrote at a different time and faced different issues and arguments than he has had to confront. It is, nevertheless, beyond question that, with respect to constitutional philosophy, they are his intellectual ancestors. Only those who fundamentally reject the tradition of judicial restraint with which these justices are associated can regard Judge Bork as "an extremist." (p. 13-14)

- Judge Bork's testimony in these hearings, and more significantly his record as a judge, make clear that his constitutional philosophy would lead him to enforce vigorously the limits that our constitutional tradition imposes on legislative power. But it would lead him also to defer to Congress and state legislatures when such limits cannot be found in our constitutional tradition. Those who oppose his appointment on the ground that it would "unbalance" the Court should tell us what balance they prefer.

STATEMENT OF DONALD I. BAKER

(September 29, 1987)

- I was exposed first hand to Robert Bork as Solicitor General. I found him an impressively thoughtful person; he

brought originality and insight -- sheer intellectual power -- to difficult situations. (p. 1)

STATEMENT OF JAMES T. HALVERSON

Partner, Shearman & Sterling  
(September 29, 1987)

- As I have said earlier in a letter to the Editor of The Washington Post, the fact that six of the nine present Justices have cited Judge Bork's book, and that all of them have joined opinions citing it, demonstrates clearly that the claims of Judge Bork's critics that his antitrust views are not in the mainstream or somehow "extreme" are just plain wrong. (p. 5)

- Therefore, Judge Bork's critics, and not Judge Bork, are out of touch with the center of legitimate judicial and economic thought about the proper direction of antitrust analysis. As I said in my earlier letter, the mainstream view, which no one has helped promote more than Judge Bork, is that the proper antitrust policy is one which encourages strong private and government action to promote consumer welfare rather than unnecessary government intervention to protect politically favored competitors. (p. 6)

STATEMENT OF THOMAS E. KAUPER

Professor of Law, University of Michigan Law School  
(September 29, 1987)

- Judge Bork has been a major figure in the antitrust field for three decades. His views, expressed primarily in his scholarly writings during a very creative and productive period in academic life, have been highly influential in the evolution and reformulation of antitrust doctrine. He has been influential precisely because his ideas have been accepted, in whole or in part, by academics, policy makers and judges (including Justices of the Supreme Court) in large numbers. Many in academic life aspire to have such an impact simply through what we write. Few ever achieve it. That Judge Bork has done so is grounds for praise, not condemnation. He has put forth a simple but powerful set of ideas, ideas which have influenced the law of their own force. (p. 2)