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Note on Judge Bork's 1971 Article in Indiana Law Journal,
"Neutral Principles and Some First Amendment Problems"

In the course of a lengthy article in the Indiana Law Journal in 1971, then-Professor Bork concluded that the First Amendment protected only explicitly political speech. In his 1982 confirmation hearings before the Senate Judiciary Committee and again in a February 1984 letter to the ABA Journal, Judge Bork discussed the evolution of his views on this issue:

I do not think...that First Amendment protection should apply only to speech that is explicitly political. Even in 1971, I stated that my views were tentative and based on an attempt to apply Prof. Herbert Wechsler's concept of neutral principles. As the result of the responses of scholars to my article, I have long since concluded that many other forms of discourse, such as moral and scientific debate, are central to democratic government and deserve protection. I have repeatedly stated this position in my classes. I continue to think that obscenity and pornography do not fit this rationale for protection.

70 Feb. 1984 ABA J. 132.

Within the speech area, I was dealing with an application of Prof. Herbert Wechsler's concept of neutral principles, which is quite a famous concept in academic debate. I was engaged in an academic exercise in the application of those principles, a theoretical argument, which I think is what professors are expected to do.

It seems to me that the application of the concept of neutral principles to the First Amendment reaches the result I suggested. On the other hand, while political speech is the core of the...First Amendment, the Supreme Court has clearly expanded the concept well beyond that. It seems to me in my putative function as a judge that what is relevant is what the Supreme Court has said, and not my theoretical writings in 1971.

Confirmation Hearings, 1982.

On the appellate court, Judge Bork has repeatedly issued or joined broad opinions extending First Amendment protection to nonpolitical speech, such as commercial speech (FTC v. Brown & Williamson Tobacco Corp.), scientific speech (McBride v. Merrell Dow Pharmaceuticals, Inc.) and cable television regulations that affected many forms of speech (Quincy Cable Television v. FCC).

These opinions make clear that Judge Bork believes that the First Amendment itself, as well as controlling Supreme Court precedent, requires the vigorous protection of both non-political and political speech.

Civil Rights—A Challenge

by Robert Bork

Passions are running so high over racial discrimination that the various proposals to legislate its manifestations out of existence seem likely to become textbook examples of the maxim that great and urgent issues are rarely discussed in terms of the principles they necessarily involve. In this case, the danger is that justifiable abhorrence of racial discrimination will result in legis-

lation by which the morals of the majority are self-righteously imposed upon a minority. That has happened before in the United States—Prohibition being the most notorious instance—but whenever it happens it is likely to be subversive of free institutions.

Instead of a discussion of the merits of legislation, of which the proposed Interstate Public Accommodations

Act outlawing discrimination in business facilities serving the public may be taken as the prototype, we are treated to debate whether it is more or less cynical to pass the law under the commerce power or the Fourteenth Amendment, and whether the Supreme Court is more likely to hold it Constitutional one way or the other. Hereafter, however, it may sound to the constitutional lawyer, neither the Constitution nor the Supreme Court ~~are~~ seen as a first principle. The discussion we wish to have is of the cost in freedom that must be paid for such legislation, the morality of enforcing moral principles by law, and the likely consequences for law enforcement of trying to do so.

Few proponents of legislation such as the Interstate Public Accommodations Act seem willing to discuss either the cost in freedom which must accompany it or why this particular departure from freedom of the individual to choose with whom he will deal is justified. Attorney General Kennedy appears to recognize but to wish to avoid these questions, for, in speaking on behalf of the bill before a congressional committee, he went so far as to state that the law would create no precedent. That of course is nothing less than an admission that he does not care to defend the bill on general principles.

There seems to be a strong disposition on the part of proponents of the legislation simply to ignore the fact that it means a loss in a vital area of personal liberty. That it does is apparent. The legislature would inform a substantial body of the citizenry that in order to continue to carry on the trades in which they are established they must deal with and serve persons with whom they do not wish to associate. In part the willingness to overlook that loss of freedom arises from the feeling that it is irrational to choose associates on the basis of racial characteristics. Behind that judgment, however, lies an unexpressed natural-law view that some personal preferences are rational, that others are irrational, and that a majority may impose upon a minority its scale of preferences. The fact that the coerced scale of preferences is said to be rooted in moral order does not alter the impact upon freedom. In a society that purports to value freedom as an end in itself, the simple argument from morality to law can be a dangerous non sequitur. Professor Mark DeWolf Howe, in supporting the proposed legislation, describes southern opposition to "the nation's objective" as an effort "to preserve ugly customs of a stubborn people." So it is. Of the ugliness of racial discrimination there need be no argument (though there may be some presumption in identifying one's own hotly controverted aims with the objective of the nation). But it is one thing when stubborn people express their racial antipathies in laws which prevent individuals, whether white or Negro, from dealing with those who are will-

ing to deal with them, and quite another to tell them that even as individuals they may not act on their racial preferences in particular areas of life. The principle of such legislation is that if I find your behavior ugly by my standards moral or aesthetic, and if you prove stubborn about adopting my view of the situation, I am justified in having the state coerce you into more righteous paths. That is itself a principle of unsurpassed ugliness.

Freedom is a value of very high priority and the occasions upon which it is sacrificed ought to be kept to a minimum. It is necessary that the police protect a man from assault or theft but it is a long leap from that to protection from the insult implied by the refusal of another individual to associate or deal with him. The latter involves a principle whose logical reach is difficult to limit. If it is permissible to tell a barber or a rooming house owner that he must deal with all who come to him regardless of race or religion, then it is impossible to see why a doctor, lawyer, accountant, or any other professional or business man should have the right to discriminate. Indeed, it would be unfair discrimination to leave anybody engaged in any commercial activity with that right. Nor does it seem fair or rational, given the basic premise, to confine the principle to equal treatment of Negroes as customers. Why should the law not require not merely fair hiring of Negroes in subordinate positions but the choice of partners or associates in a variety of business and professional endeavors without regard to race or creed? Though such a law might presently be unenforceable, there is no distinction in principle between it and what is proposed. It is difficult to see an end to the principle of enforcing fair treatment by private individuals. It certainly need not be confined to racial or commercial matters. The best way to demonstrate the expansiveness of the principle behind the proposed legislation is to examine the arguments which are used to justify it.

Perhaps the most common popular justification of such a law is based on a crude notion of waivers: insistence that barbers, lunch counter operators, and similar businessmen serve all comers does not infringe their freedom because they "hold themselves out to serve the public." The statement is so obviously a fiction that it scarcely survives articulation. The very reason for the proposed legislation is precisely that some individuals have made it as clear as they can that they do not hold themselves out to serve the public.

A second popular argument, usually heard in connection with laws proposed to be laid under the Fourteenth Amendment, is that the rationale which required the voiding of laws enforcing segregation also requires the prohibition of racial discrimination by business licensed by any governmental unit because "state action" is involved. The only legitimate thrust of the

state action characterization however, is to enable courts to see through governmental use of private organizations to enforce an official policy of segregation. There is a fundamental difference between saying that the state cannot turn over its primary election process, which is actually the only election that matters, to the private and allow the Democratic Party and saying that a state board cannot refuse a Negro patient because a state board has examined him and certified his competence. The state action concept must be confined to discerning state enforcement of policy through a nominally private agency or else it becomes possible to discern the hand of the state in every private action.

One of the shabbiest forms of "argument" is that endorsed by James Reston when he described the contest over the public accommodations bill as one between "human rights" and "property rights." Presumably no one of "liberal" views has any difficulty deciding the question when so concisely put. One wishes nonetheless, that Mr. Reston would explain just who has rights with respect to property other than humans. If A demands to deal with B and B insists that for reasons sufficient to himself he wants nothing to do with A, I suppose even Reston would agree that both are claiming "human rights" and that this is in no way changed if one of the humans is colored and the other white. How does the situation change if we stipulate that they are standing on opposite sides of a barber chair and that B owns it?

A number of people seem to draw a distinction between commercial relationships and all others. They feel justified, somehow, in compelling a rooming house owner or the proprietor of a lunch counter to deal with all comers without regard to race but would not legislate acceptance of Negroes into private clubs or homes. The rationale appears to be that one relationship is highly personal and the other is just business. Under any system which allows the individual to determine his own values that distinction is unsound. It is, moreover, patently fallacious as a description of reality. The very bitterness of the resistance to the demand for enforced integration arises because owners of many places of business do in fact care a great deal about whom they serve. The real meaning of the distinction is simply that some people do not think others ought to care that much about that particular aspect of their freedom.

One of the Kennedy administration's arguments for the bill is that it is necessary to provide legal redress in order to get the demonstrators out of the streets. That cannot be taken seriously as an independent argument. If southern white racists - or northern ones, for that matter - were thronging the streets, demanding complete segregation of commercial facilities, it is to be hoped that no responsible politician would suggest passing a law to enable them to enforce their demands



in court. In this connection, it is possible to be somewhat less than enthusiastic about the part played by "moral leaders" in participating in demonstrations against private persons who discriminate in choice of their patrons. It feeds the danger of the violence which they are the first to deplore. That might nevertheless be tolerable if they were demonstrating against a law that coerced discrimination. They are actually part of a mob coercing and distributing other private individuals in the exercise of their freedom. Their moral position is about the same as Carrie Nation's when she and her followers invaded saloons.

Though the basic objection is to the law's impact upon individual liberty, it is also appropriate to question the practicality of enforcing a law which runs contrary to the customs, indeed the moral beliefs, of a large portion of the country. Of what value is a law which compels service to Negroes without close surveillance to make sure the service is on the same terms given to whites? It is not difficult to imagine many ways in which barbers, landlords, lunch counter operators, and the like can nominally comply with the law but effectively discourage Negro patrons. Must federal law enforcement agencies become in effect public utility commissions charged with the supervision of the nation's business establishments or will the law become an unenforceable symbol of hypocritical righteousness?

It is sad to have to defend the principle of freedom in this context, but the task ought not to be left to those

THE NEW REPUBLIC

col. For example, Albers, the European, is not with interest that "autumn" leave a certain color when an American experimenter tried to not pursue the color as a background for this, but simply comes with the idea that we Americans are not to be "dazzled" with our eyes and that he points out some of the color features in regard to the interior of the room. The approach is not to find a theory, provided by Nature, but rather to use a theory to increase our perception of Nature.

In the old days when classical logic was taught as a preparation for Aristotelian philosophy, there was a stock instance of the apprentice logician going home to dazzle his younger siblings with the baffling behavior of the logical paradox. More than any artist or any teacher, Josef Albers has explored and come to command the anagogous field of visual paradox and has used that command to teach color. The apprentices are dazzling the youngsters with the tools the master has made.

Despite its farcical reductions to a whole series of absurdities, the Bauhaus remains one of the great achievements of our time; its greatness is affirmed not

by the lakeside apartments in Chicago, but by one's sudden exposure to such a mind as that of Albers. The old academic title, Doctor of Humane Letters, often misused, retains still something of the aspiration of those who devised it. In that sense Josef Albers has been a doctor of humane colors. As with many of his colleagues, we have been enriched by the disaster that brought him to us.

FRANK GETLEIN

Correspondence

Civil Rights - A Rejoinder

Sirs:

Your editorial reply to my article on the public accommodations bill ("Civil Rights - A Challenge," August 31) does not reveal whether you perceive in this case a principle which takes precedence over that of individual liberty, what it is, or why it should prevail. I gather that you feel strongly, but that is not enough. Until one is shown a competing principle, he may be excused his reluctance to sacrifice freedom.

A principle is required because a society which values freedom as well as democracy must face the task of defining those aspects of life in which the majority may properly coerce the individual through law and those in which it may not. Though your reply would indicate it, I find it hard to believe that you are really among those who require no license for coercion other than their own preferences (read "intense moral convictions," if you like). That would make numbers and strength of passion the sole principles of legislation. I think some better standard is both required and attainable. Its precise statement may be beyond our present capabilities, but I suggest that the proposed legislation, which would coerce one man to associate with another on the ground that his personal preferences are not respectable, represents such an extraordinary incursion into individual freedom, and opens up so many possibilities of governmental coercion on similar principles, that it ought to fall within the area where law is regarded as improper.

Your reply on the basis of "experience"

also seems deficient. The historical existence of common law duties and local statutes paralleling the proposed federal law does not in any way demonstrate their wisdom, or that their principle ought to be extended. Even wider of the mark is your suggestion that personal freedom is not really involved because if it were "we would need legislation allowing individual waitresses, hotel clerks and charwomen to decide whom they would serve and whom they would not." In fact, such persons have precisely that freedom. Your suggestion that they do not can only be supported by equating the individual employer, for whom the waitress need not work, with the government, which no citizen can escape. To employ such an equation is to confess inability to see the difference between a contract and a statute.

Insistence that title to property is involved in the right to discriminate with respect to its use advances the argument not one whit. One must certainly own a barber chair in order to refuse to let another man sit in it. But the discovery of something called "property" in the situation does not of itself render the desires of the titleholder inferior to those of every person lacking title. A question of personal freedom is inescapably involved and cannot be exercised by calling it an "economic privilege" - not even if you say it three times.

Robert H. Bork
 Yale Law School

Dropouts and the Draft

Sirs:

On August 17 you published a note, "Dropouts and the Draft." Let me start by analyzing some of the more dubious statements therein:

"Unlike schools, the Army is organized on the assumption that its recruits are dimwits."

Well, I don't know how long it has been since whoever dreamed that sentence up has been subjected to Army training but as of now the Army is organized for training on the basis that its average recruit has the intellectual level of a median high school sophomore or junior. Now while those are admittedly not Olympian heights, they are somewhat

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The American Jewish Committee

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August 28, 1987

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Senator H. John Heinz, III
277 Russell Senate Office Bldg.
Washington, D.C. 20501

Dear Senator Heinz:

I thought you ought to have this story which appeared in the Jewish Exponent in Philadelphia dealing with the deep divisions within the Jewish Community on the Bork nomination.

Cordially,

Murray Friedman,
Regional Director

MF:k

BC: ~~MAX GREEN~~ mf
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Senator Arlen Specter
253 Russell Senate Office Bldg.
Washington, D.C. 20510

Dear Arlen:

I thought you ought to have this story which appeared in the Jewish Exponent in Philadelphia dealing with the deep divisions within the Jewish Community on the Bork nomination.

Cordially,

Murray Friedman,
Regional Director

MF:k

BC: MAX GREEN ✓ MF
DICK FOX ←

Groups state views on Bork

By STEVE FELDMAN
Exponent Staff

Two Jewish groups that participate in the activities of the Black-Jewish Coalition of Greater Philadelphia have decided not to back a statement issued by the coalition calling for the Senate to reject the nomination of Judge Robert H. Bork to the Supreme Court.

The American Jewish Committee and the Anti-Defamation League of B'nai B'rith, both members of the coalition, declined to endorse the anti-Bork coalition statement sent to Pennsylvania Sens. Arlen Specter and John Heinz.

AJCommittee did not take part in the statement because it never takes a stance regarding nominees to the Supreme Court.

ADL did not back the coalition's statement since it has taken no official position on the Bork nomination.

The coalition, in its statement, said it is "deeply troubled by President Reagan's nomination" of Bork, charging Reagan with "attempting to achieve by judicial appointment that which he has been unable to accomplish legislatively."

The statement said that "Bork was nominated because of ideological reasons, and thus ideology must be one of the factors by which he should be evaluated. It is from this perspective that minorities should have considerable anxiety about his nomination."

The statement continued, "Bork, in the application of a mythological concept of 'original intent,' understands the Constitution to provide only narrow protections to individuals and minorities against the power of the state.

"We believe that such a careful examination by the Senate of Judge Bork's record will indicate more than sufficient evidence to reject his nomination to the U.S. Supreme Court," the coalition statement concluded.

Other Jewish groups constituting the coalition of area civic and religious leaders are the Jewish Community Rela-



Judge Robert Bork (left) is introduced as President Reagan's Supreme Court nominee.
Religious News Service Photo

tions Council, American Jewish Congress, Board of Rabbis of Greater Philadelphia, the Jewish Labor Committee and the Union of American Hebrew Congregations. Individuals are also members of the loosely organized coalition.

Since 1982, Bork has been a judge in the U.S. Court of Appeals for the District of Columbia. He was unanimously approved by the Senate for that post.

At least six national Jewish groups have gone on record opposing the Bork nomination to the nation's highest court. They are the Jewish War Veterans, the Union of American Hebrew Congregations, the American Jewish Congress, B'nai B'rith Women, the National Council of Jewish Women and the New Jewish Agenda.

Edwin Goldwasser, JWV national commander, said in a statement that the issue of the Bork nomination "is one of ideology, and the Supreme Court is not well served by extremist positions."

"The appointment of Judge Bork would seriously jeopardize important gains made by women in recent years," noted Irma Gertler, national president of

BBW. "His public position on public funding of religious schools threatens the separation of church and state, a matter of deep concern to our 120,000 members throughout the United States."

The national president of AJCongress, Theodore Mann, called Reagan's choice of Bork "regrettable. We urge the Senate Judiciary Committee to reject this nomination.

"Judge Bork obviously has the legal and intellectual qualifications to sit on the court. Nevertheless, . . . he has expressed disagreement with a long series of precedents, which are now deeply embedded in American law and which have significantly expanded the rights of citizens with respect to . . . areas such as privacy, free speech, civil rights and church-state separation."

The Jewish Labor Committee, a member of the coalition, is in full agreement with the coalition's statement, according to JLC co-chairman John Fox.

The National Jewish Coalition, a con-

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AUGUST 28, 1987

GROUPS

from page 6

servative group with close ties to the Reagan administration, is apparently the only Jewish group that has stated its support for Bork, noting that he is "eminently qualified" to be a Supreme Court justice and that "neither ideology nor political opportunism should prevent him from doing so."

Some organizations are still in the process of deciding whether they will take any position on the Bork nomination.

According to Mort Naiman, executive director of B'nai B'rith District Three, BBInternational will make the ultimate decision regarding the group's stance.

Naiman said that BBI is being democratic in deciding on Bork. He noted that BBI President Seymour Reich has sent a questionnaire to all members of the international board of governors asking if the organization should take a position on the matter at all, and if it does, what it should be.

"It's a political nomination, and B'nai B'rith has been an apolitical organization," said Naiman, who noted that a similar poll will be conducted in the September issue of the BBI magazine, *International Jewish Monthly*.

Another apolitical organization is Women's American ORT. Ina Green, regional director for the group, said ORT's constitution prohibits her group from engaging in political affairs.

The JCRC, which did not dissent from the Black-Jewish Coalition stance on Bork, "is in the process of determining its own position" on the nomination, said Dr. Lawrence Rubin, the group's executive director. He added that JCRC will consider the issue at two of its commission meetings and probably will reach a decision by the end of September.

Barry Ungar, JCRC president and co-chairman of the coalition, said he wrote most of the statement, which was issued this far in advance of the Senate hearing "to gain momentum" in opposition to Bork.

The move by the coalition to actively oppose the nomination is contrary to ADL's policy. Barry

Morrison, regional director for the ADL, told the Exponent that "as a matter of course, we do not take positions on judicial candidates or presidential appointees."

Morrison said that no position should be taken until the Senate hearings are held.

"In a preliminary review, we have not seen him [Bork] as an enemy of the Jewish people," he said.

AJCommittee, which also balked at the coalition statement, "has traditionally never taken a position on Supreme Court appointments," said Bertram Gold, national director. "We will be watching the hearings, and, if necessary, we will rethink our position."

Like JCRC, the Board of Rabbis at this time is supporting the Black-Jewish Coalition though it has yet to reach a decision on its own.

Rabbi David Wortman, executive director of the Board of Rabbis, his group has "felt we need to examine" the issue further before issuing a statement. He noted the group will hold a forum Monday which members will discuss Bork. Brith Sholom is another group that has yet to decide on the nomination. "I'm sure there are strong opinions," said National Executive Director Mervin Krieger, adding, "I would suspect there will be a position taken in the future."

November 1, 1987

MEMORANDUM FOR REBECCA RANGE

FROM: MAX GREEN *ms*

I am certain you will find the enclosed of interest, unless you have already seen it. It will be interesting to see if we can rally the same amount of academic support for Judge Ginsburg.

Max
This is good stuff
can we get them
on Ginsburg.

B. — Kohn
1.8

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for
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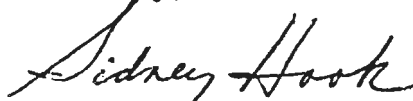
September 28, 1987

The Honorable Joseph R. Biden, Jr.
Chairman
Senate Judiciary Committee
224 Senate Dirksen Office Building
Washington, DC 20510

Dear Senator Biden:

The signers of the attached statement who are of varied political persuasions have different views on the substantive issues discussed by Judge Bork. But all are convinced that Judge Bork's position on judicial restraint is an integral part of the mainstream of American jurisprudence, and that he is well qualified to serve as a justice of the United States Supreme Court.

Sincerely,



Sidney Hook
Hoover Institution

Enc.

cc: Senate Judiciary Committee Members

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for
PRINCIPLED DISCUSSIONS OF CONSTITUTIONAL ISSUES

410 Riverside Drive - 82A * New York, New York 10025

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STATEMENT OF SUPPORT

SECRETARY
Miro M. Todorovich

We are witnessing an incredible assault on a distinguished nominee to the Supreme Court, unparalleled perhaps since the battle to prevent Justice Brandeis' confirmation seventy years ago. The undersigned feel that reasoned analysis is needed as an antidote to emotions which may have affected even those Senators who should guide their colleagues towards a wise judgment.

Judge Bork is assaulted for being outside the "mainstream" of American constitutional interpretation and for threatening liberties and rights confirmed by previous decisions of the Supreme Court and by federal and state legislation. This is nothing less than an effort to impose one controversial theory of constitutional interpretation as the only legitimate one, and to exclude as beyond the pale all who challenge it. For the last 15 years or more we have witnessed many 5 to 4 or 6 to 3 decisions on important issues, with majorities and minorities split in their reasoning two or three ways. What is the "mainstream" in such split decisions? It is specious to argue the 5 or 6 Justices in the majority in these decisions represent the mainstream of constitutional interpretation, and that if the decisions were to have gone 5 to 4 or 6 to 3 the other way the Republic and our liberties would be in danger.

Judge Bork stands within a legitimate mainstream of constitutional interpretation, one which includes Justice Brandeis and Justice Frankfurter and other eminent jurists, and which asserts that when the Constitution is silent the legislatures, federal and state, the democratically elected representatives of the people, have the right to speak. It is deceptive to argue that a more restrained interpretation of the liberties protected by the Constitution threatens those liberties. Our liberties have been extended as much by state legislative and congressional action in the past few decades as by

interpretations of the Constitution by the Supreme Court. Our liberties, in the large, are secure, and it betrays scant confidence in the American people -- who are after all the final guarantors of our liberty -- to insist hysterically that one appointment to the Supreme Court, of a scholarly judge, a former professor in one of our most distinguished law schools, a man already once confirmed unanimously by the Senate for the second most important court in the country, threatens those liberties.

We do not know how Judge Bork, were he a member of the Supreme Court, would rule on the issues that seem to arouse the most anxiety: on whether the states have the right to require notice to parents on abortions for children, or whether states may require a moment of silence in school, or how far affirmative action under the Fourteenth Amendment and the relevant statutes can extend, and on other issues. But however he would rule, and however these and other matters which arouse such concern in those fiercely opposed to him come out, the major structure of our liberties will be secure with Judge Bork on the Supreme Court. The mainstream of interpretation of the Constitution includes both those who would give it the most expansive interpretation and allow judges to exercise a wide power to redress wrongs and expand rights as they see fit, and those who see a more limited role for the Court, closer to the text and intention of the framers of the Constitution and the Amendments, and who support a larger role for the democratic branches of government. To read out of the "mainstream" the latter is to shortcircuit what should be a debate over principles, and pronounce an unjustified edict of excommunication from the democratic political community.

Henry J. Abraham
University of Virginia

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SUNY, New Paltz

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Fred Baumann
Kenyon College

Aldo S. Bernardo
SUNY, Binghamton

Walter Berns
American Enterprise Institute

Brand Blanshard
Yale University

Thomas E. Borcharding
Claremont Graduate School

Yale Brozen
University of Chicago

Stanley C. Brubaker
Colgate University

R. C. Buck
University of Wisconsin

Nicholas Capaldi
CUNY, Queens College

James S. Coleman
Univ. of Chicago

Harold Demsetz
Univ. of CA, Los Angeles

Gray Dorsey
Washington University

William A. Earle
Emeritus, Northwestern University

Ross D. Eckert
Claremont McKenna College

Ward Elliott
Claremont McKenna College

Charles Evans
CUNY, City College

Solomon and Bess Fabricant
New York University

Robert K. Faulkner
Boston College

Milton Friedman
Hoover Institution

Lowell Gallaway
Ohio University

L. H. Gann
Hoover Institution

Jules B. Gerard
Washington University

Hilail Gildin
CUNY, Queens College

Nathan Glazer
Harvard University

William C. Green
Boston University

C. Lowell Harriss
Columbia University

Louis G. Heller
CUNY, City College

Gertrude Himmelfarb
CUNY, Graduate Center

Jack Hirshleifer
UCLA

Sidney Hook
Hoover Institution

K. D. Irani
CUNY, City College

Erich Isaac
CUNY, City College

Robert Kagan
Univ. of California at Berkeley

Howard Kaminsky
Florida International U.

Thomas Kando
CA State Univ., Sacramento

Benjamin Klebaner
CUNY, City College

Benjamin Klein
Univ. of CA, Los Angeles

Fred Kort
University of Connecticut

Robert P. Kraynak
Colgate University

Paul Oskar Kristeller
Columbia University

Nino Languilli
St. Francis College

- 4 -

Charles Lofgreen
Claremont McKenna College

Herbert I. London
New York University

Joseph A. Mazzeo
Columbia University

John McCarthy
Stanford University

Paul McGouldrink
SUNY, Binghamton

Bernard D. Meltzer
University of Chicago

Marvin Meyers
Brandeis University

Stuart Miller
San Francisco State University

Katharina Mommsen
Stanford University

Aurelius Morgner
Univ. of Southern California

Allan Nelson
University of Waterloo

Rev. Richard John Neuhaus
Rockford Inst./Ctr. on Religion in Society

W. V. Quine
Harvard University

Steven Rhoads
University of Virginia

Ralph A. Rossum
Claremont McKenna College

Eugene V. Rostow
Yale University

Arnold M. Rothstein
Emeritus - CUNY, City College

Halley D. Sanchez
Univ. of Puerto Rico at Mayaguez

Wolfe W. Schmokel
University of Vermont

George Schwab
CUNY, City College

Paul Seabury
Univ. of California at Berkeley
John R. Searle
Univ. of California at Berkeley

Frederick Seitz
Rockefeller University

Malcolm Sherman
SUNY, Albany

Charles Sherover
CUNY, Hunter College

David Sidorsky
Columbia University

Philip Siegelman
San Francisco State University

Gerald Sirkin
CUNY, City College

Thomas Sowell
Hoover Institution

Edward Taborsky
University of Texas, Austin

Miro M. Todorovich
CUNY, Bronx Community College

Stephen J. Tonsor
University of Michigan

Richard K. Vedder
Ohio University

Arthur Vigdor
Emeritus - CUNY, City College

George Weigel
Catholic Theologian

Judy Wubnig
Cambridge, MA

Cyril Zebot
Georgetown University

Marvin Zimmerman
SUNY, Buffalo

William R. Beer
CUNY, Brooklyn College

John H. Bunzel
Stanford University

Werner Dannhauser
Cornell University

Affiliations for identification only.

AD HOC COMMITTEE
for
PRINCIPLED DISCUSSIONS OF CONSTITUTIONAL ISSUES

410 Riverside Drive - 82A * New York, New York 10025

FOR RELEASE - 12 NOON, MONDAY, SEPTEMBER 28, 1987

CO-CHAIRMEN
Nathan Glazer
Sidney Hook

SECRETARY
Miro M. Todorovich

Contact: Prof. Miro M. Todorovich
(212) 391-3835, 220-6482 or 220-6209

ACADEMICS FROM 48 COLLEGES AND UNIVERSITIES TESTIFY:
"OUR LIBERTIES WILL BE SECURE WITH JUDGE BORK"

Eighty-eight academics from leading colleges and universities have sent a statement to the members of the Senate Judiciary Committee emphasizing that "the major structure of our liberties will be secure with Judge Bork on the Supreme Court."

The statement was prompted by what the professors perceived as "an incredible assault on a distinguished nominee to the Supreme Court, unparalleled perhaps since the battle to prevent Justice Brandeis' confirmation seventy years ago."

The academics also felt the need for "reasoned analysis ... as an antidote to emotions which may have affected even those senators who should guide their colleagues towards a wise judgment."

Among the noted academics who signed are: philosophers Sidney Hook, Paul O. Kristeller, and W. V. Quine; sociologists Nathan Glazer and James Coleman; economists Jack Hirshleifer, Milton Friedman and Thomas Sowell; legal scholars Gray Dorsey, Bernard Meltzer and Eugene Rostow; political scientists Walter Berns, Philip Siegelman and Paul Seabury; historians Gertrude Himmelfarb and Marvin Meyers; scientists R. Creighton Buck, John McCarthy and Frederick Seitz; and theologians Richard John Neuhaus and George Weigel.

Answering Bork critics, the signers point out that he "stands within a legitimate mainstream of constitutional interpretation, one which includes Justice Brandeis and Justice Frankfurter and other eminent jurists, and which asserts that when the Constitution is silent ... the democratically elected representatives of the people have the right to speak."

"The mainstream of interpretation of the Constitution," the statement concludes, "includes both those who would give it the most expansive interpretation ... and those who see a more limited role for the Court, closer to the text and intention of the framers To read out of the 'mainstream' the latter is to shortcircuit what should be a debate over principles, and to pronounce an unjustified edict of excommunication from the democratic political community."

#

Another large Mexican-American organization, the American G.I. Forum, is willing to wait on announcing its decision until after meeting with an administration official.

The Mexican-American Opportunity Foundation, the largest Mexican-American organization in California, has announced it will support Judge Bork. A copy of its statement is on its way.

Ken Bialkin

- The United States Hispanic Chamber of Commerce has written a statement of support for Judge Bork that we will receive by 3:00 p.m., 8/13. Copy of statement is attached.
2. The Ibero-America Chamber of Commerce and its president, Armando Lago, have expressed support for Judge Bork. Their Board will meet Sept. 6, to make a final determination. Mr. Lago indicated to me that he foresees a positive statement in support of Judge Bork. I would recommend a meeting with some of the key Board members and White House staff to buttress Mr. Lago's efforts.
 3. The Mexican-American Foundation and its president, Dionicio Morales have expressed their support for Judge Bork. I am expecting to receive by 8/14 a copy of their statement in support of Judge Bork and will send that to you. The Mexican-American Foundation is the largest Hispanic organization in California.
 6. The Hispanic Businessmens Council of Southern California and its president, Manuel Sepulveda, have expressed support for Judge Bork. This group is the most influential Hispanic business group in Southern California. Letter of support coming by 8/18.
 7. The Mexican American Organization of Texas and its President, Eli Rodriguez, are in support of Judge Bork. This is the largest and most influential Mexican American community based group in Texas. Letter by 8/19.
 8. Carlos Perez, President of Concerned Citizens for Democracy, is in full support of Judge Bork. He is willing to utilize his radio station for broadcasts in support of Judge Bork. Mr. Perez is a very prominent Cuban-American in Florida and he is mobilizing other Cuban leaders in supporting Judge Bork.
 9. Tony Valencia, President of the San Diego based Mexican American Foundation is in support of Judge Bork. The organization will provide a letter of support by this Friday, 8/14.

August 13, 1987

MEMORANDUM FOR CARL A. ANDERSON, SPECIAL ASSISTANT TO THE
PRESIDENT AND ACTING DIRECTOR OF PUBLIC LIAISON

THROUGH: LINAS KOJELIS, SPECIAL ASSISTANT TO THE PRESIDENT,
OFFICE OF PUBLIC LIAISON

FROM: RUDY BESERRA, ASSOCIATE DIRECTOR, OFFICE OF PUBLIC
LIAISON

SUBJECT: Status report on Hispanic support for Judge Bork

Obtaining Hispanic support for Bork requires a multifaceted approach, one which we are pursuing vigorously. We fully expect unprecedented Hispanic support for Judge Bork.

Following is a partial list of major Hispanic groups in support of Judge Bork:

1. The United States Hispanic Chamber of Commerce has written a statement of support for Judge Bork that ~~we will receive by~~ *was* 3:00 p.m., 8/13. ~~Copy of statement is attached.~~ *received by* ~~its~~ *to 100,000 members - Also Press Release was*
2. The Ibero-America Chamber of Commerce and its president, Armando Lago, have expressed support for Judge Bork. Their Board ~~will meet~~ *met* Sept. 6, to make a final determination. Mr. Lago indicated to me that he foresees a positive statement in support of Judge Bork. ~~I would recommend a meeting with some of the key Board members and White House staff to buttress Mr. Lago's efforts.~~
3. The Mexican-American Foundation and its president, Dionicio Morales ~~have expressed their support for Judge Bork. I am expecting to receive by 8/14 a copy of their statement in support of Judge Bork and will send that to you. The Mexican-American Foundation is the largest Hispanic organization in California. A press release was~~ *received and also disseminated to Hispanic Press*
4. The Latino Peace Officers Assn. in Los Angeles and its president, Manuel Gaitan have expressed support for Judge Bork. This group is the largest Hispanic Peace Officers association in the country. We expect a letter of support by 8/19.
5. The Hispanic Officers Command Assn. in Los Angeles and its president, David Gomez, have also expressed support for Judge Bork. This group is comprised of peace officers at the command level. Again, we expect a letter of support by 8/19.

given to W/H for operation for distribution to Hispanic Media

6. The Hispanic Businessmens Council of Southern California and its president, Manuel Sepulveda, ~~have~~ expressed support for Judge Bork. This group is the most influential Hispanic business group in Southern California. ~~Letter of support coming by 8/18.~~ *Mr. Sepulveda wrote an editorial and sent it to the L.A. Times yet was not published.*
7. The Mexican American Organization of Texas and its President, Eli Rodriguez, are in support of Judge Bork. This is the largest and most influential Mexican American community based group in Texas. ~~Letter by 8/19.~~ *They have sent out a press release to their 10,000 members.*
8. Carlos Perez, President of Concerned Citizens for Democracy, is in full support of Judge Bork. He is willing to utilize his radio station for broadcasts in support of Judge Bork. Mr. Perez is a very prominent Cuban-American in Florida and he is mobilizing other Cuban leaders in supporting Judge Bork.
9. Tony Valencia, President of the San Diego based Mexican American Foundation is in support of Judge Bork. The organization ~~will~~ provide a letter of support ~~by this~~ *to us* Friday, 8/14.

Just as importantly are the groups which are undecided or are neutral on the nomination. (In many cases, a draw is as valuable as a win). The following is a status on those groups:

1. The National Puerto Rican Coalition and its president, Louis Nunez ~~will~~ *not* come out neutral on the nomination issue.
2. The Latin American Manufacturers Assn. ~~will be~~ *is* neutral on the issue.
3. The National Assn. of Latino Elected Officials ~~will come out~~ *is* neutral on the issue.
4. Due to my efforts, the American G.I. Forum will not issue a statement until they can meet with you or Ken Cribb in early September. My attendance at their national convention in Seattle this past weekend was crucial in convincing them of the need to give the Administration an opportunity to air its views.
5. ~~The same holds true for the National Council of La Raza, one of the largest Mexican American groups in the country.~~

Additionally, several prominent Hispanics have come on board in support of Judge Bork and I will be forwarding that list to you by close of business tomorrow.

The momentum is on our side and we will continue to keep on top of this important issue. A follow-up memo will be prepared tomorrow.

The National Hispanic Association of Construction Enterprises sent a letter to the President in support of Judge Bork - They also conveyed it to their 27,000 members.

THE WHITE HOUSE

WASHINGTON

August 28, 1987

MEMORANDUM FOR KENNETH T. CRIBB, JR., ASSISTANT TO THE PRESIDENT
FOR DOMESTIC AFFAIRS

FROM: MAX GREEN, ASSOCIATE DIRECTOR, OFFICE OF PUBLIC
LIAISON *mg*

SUBJECT: Defense and Foreign Policy's Update on Bork

- The executive director of Young Israel, an organization of modern orthodox synagogues will send a letter urging 800 affiliated rabbis to work for confirmation.
- Arnold Burns spoke in favor of Bork at two National Jewish Coalition events. On Wednesday, he spoke to a group of 25 rabbis and on Thursday to the NJC's officers and executive board. I expect support action from both groups.
- The National Hispanic Association of Construction Engineers expressed support in a letter to the President (see copy attached). They will inform their constituency of the group's support of Bork through their newsletter.
- Rudy Beserra, Associate Director, OPL, spoke to Raul Yzaguirre, the president of the National Council of La Raza. He would like to meet with you, Carl, and Rudy to discuss the Bork nomination. Right now the Council is leaning against Bork, but Rudy feels that a meeting at the White House may convince them to remain neutral.

THE WHITE HOUSE

WASHINGTON

August 21, 1987

MEMORANDUM FOR KENNETH T. CRIBB, JR., ASSISTANT TO THE PRESIDENT
FOR DOMESTIC AFFAIRS

FROM: MAX GREEN, ASSOCIATE DIRECTOR, OFFICE OF PUBLIC
LIAISON

SUBJECT: Bork Update: Defense and Foreign Policy Division,
OPL

JEWISH

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No significant news to report. I have been in touch with orthodox leaders. I believe that the ultra-orthodox Agudath Israel will support. We also have much support in the moderate Orthodox community, eg. Norman Lamm, the President of Yeshiva University and Sidney Kwestel, President of the Union of Orthodox Jewish Congregations. Our problem is finding someone prominent who is willing to author an article or sign a statement. I will continue to work on that. I have also been talking with Will Ball and leaders of the Community about a N.Y.C. meeting on the Bork nomination.

HISPANIC.

--

NACHE (National Association of Hispanic Business Contractors) have expressed their support of the Bork nomination. They will issue a press release to the hispanic media today. NACHE is the largest Hispanic contractors association in the U.S.; it represents 40,000 Hispanic-owned construction businesses.

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The Asian American Voters Coalition under the leadership of Dr. Kyo Jhin will issue a press release in support of Bork.

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The National Federation of Asian Indian Organizations under the leadership of Mr. Thomas Abraham will also issue a press release in support of Bork.

- The Chamber of Commerce of Hialeah, Florida will issue a press release in support of Bork. (Hialeah is one of the largest cities in Florida. The group is composed of influential Cuban American businessmen.)
- The Latin Chamber of Commerce of Florida Luis Sabines, President, endorsed Bork. A press release will soon follow.

OTHER ETHNIC

- The Ukrainian National Information Service will issue a press release in support of Bork. (The Ukrainian American papers have had at least one editorial in support of Bork.)



M.A.
fyi

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Bok

RABBI ALEXANDER M. SCHINDLER • UNION OF AMERICAN HEBREW CONGREGATIONS
PRESIDENT 838 FIFTH AVENUE NEW YORK, N.Y. 10021 (212) 249-0100

August 16, 1987

19 Av 5747

The Honorable Howard Baker
Chief of Staff
The White House
Washington, D.C.

Dear Mr. Baker:

It was very pleasant being with you and Mr. Carlucci this past Wednesday. Toward the end of the meeting, as you may recall, you urged me to give Judge Bork an opportunity to meet with the leadership of the Jewish community. Jack Stein has agreed to arrange for such a meeting and he will doubtlessly be in touch with William Ball to settle the details.

Many thanks to you for giving us so much time and the opportunity for an informal give and take discussion.

Cordial greetings.

Sincerely,

Alexander M. Schindler

CC: Mr. Jacob Stein

C rts

THE WHITE HOUSE

Office of the Press Secretary
(Los Angeles, California)

For Immediate Release

August 25, 1987

STATEMENT BY THE PRESIDENT

We mourn the loss of Bayard Rustin, a great leader in the struggle for civil rights in the United States and for human rights throughout the world. He will be sorely missed by all those who shared his commitment to the twin causes of peace and freedom. As few men have, Mr. Rustin understood that the struggle for the two is inseparable; either we achieve them both or neither. Mr. Rustin held to this belief all his adult life.

This took great physical, intellectual, and, most of all, moral courage. He was denounced by former friends because he never gave up his conviction that minorities in America could and would succeed based on their individual merit. But, Mr. Rustin never gave an inch. Though a pacifist, he was a fighter to the finish. That is why over the course of his life he won the undying love of all who cherish freedom.

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