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NATIONAL JEWISH COALITION

ON

JUDGE ROBERT BORK

OCTOBER, 1987

Texas Jewish Post

17

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National Jewish Coalition Supports Bork Nomination

By Joseph Polakoif
Chief Correspondent
TJP Washington Bureau

WASHINGTON — Division within the organized American Jewish community over President Reagan's nomination of Judge Robert Bork to the Supreme Court became formalized with the announcement by the National Jewish Coalition that it supports the nomination.

Saying it "commends" Reagan's "historic decision" to nominate Bork, the coalition said he is "superbly qualified" for the court, noting "none of his more than 100 majority opinions written" for the U.S. Circuit Court of Appeals of which he is a member has been overturned by the Supreme Court. Bork has been on the circuit court five years.

"Those who oppose Bork are seeking to change the norms that for two centuries have been followed in confirming presidential judicial nominations," the coalition said in a press statement. "The challenge to the Bork nomination comes from a desire to retain a politicized court. By exploiting the Bork nomination for these narrow political and ideological reasons, liberals and Democrats are undermining the confirmation process."

The position by the coalition, whose leadership includes prominent activists in national Jewish life and in support of Israel, contrasts with the calls by several other Jewish organizations for the Senate to reject his nomination. The Senate Judiciary Committee is to open hearings on Bork Sept. 15, a week after Congress returns from its summer recess.

Three of the leading Jewish women's organizations Hadassah, the B'nai B'rith Women and the National Council of Jewish Women — have urged his rejection as has the Jewish War Veterans of the U.S.A., the oldest American veterans' grouping. The opponents expressed their concerns about Bork's views in the area of women's rights to choose on abortion and contraception; affirmative action on women and minorities, and separation of church and state. The JWV noted that it hasn't opposed a court nomination in recent years.

Most of the major Jewish organizations have not taken a stand. The American Jewish Committee's office here said it was "traditional" for the committee not to take a stance on Supreme Court appointments, although it noted it had opposed two recent nominations for the circuit court "strictly" on competence. The Anti-Defamation League, Hadassah and the American Jewish Congress were reported studying his opinions.

JEWISH WORLD / September 11-17, 1987

National

Pro-Bork Jews

By Alexander Wohl

After President Ronald Reagan nominated Judge Robert Bork to fill the Supreme Court vacancy, many prominent Jewish groups were quick to oppose him. Now, as the president gears up for a hard-sell drive to confirm Bork, a conservative Jewish group is working diligently to give him all the help it can.

The National Jewish Coalition last week brought together 27 politically conservative rabbis to gather support and disseminate pro-Bork information to congregations around the country. The Coalition treated the rabbis to a morning briefing at the White House with talks by top administration conservatives such as Secretary of Education William Bennett. According to Mark Neuman, political director of NJC, Bennett spoke on a variety of domestic issues, including "value-free education."

Nation

Official says left, right wrong on Bork

By Michael Fumento
THE WASHINGTON TIMES

Deputy Attorney General Arnold Burns yesterday criticized conservatives as well as liberals for giving what he called a distorted view of Supreme Court nominee Robert Bork.

In a speech to the National Jewish Coalition meeting at the Grand Hyatt Hotel, the second-ranking official in the Justice Department said Judge Bork was a mainstream judge who would provide balance to the Supreme Court, rather than a shift to the right.

The National Jewish Coalition last week endorsed the Bork nomination and, according to spokesman David Chodrow, will probably be the only

national Jewish organization to do so.

Mr. Burns told the group that liberals are so used to relying on the courts for political judgments that they may incorrectly assume President Reagan wants to do the same through his appointment of Judge Bork.

But he added, "There are in fact a goodly number wearing the conservative label who want the Supreme Court to make political decisions. 'They, too, paint a distorted picture of Robert Bork,' he said, describing the portrait as that of a man who favors implementing a conservative agenda.

The speech prompted criticism both from Bork critics and supporters.

"Burns is plainly wrong; [Judge

Bork] is not at all in the mainstream," said Nan Aron of the Alliance for Justice, a liberal lobbying group opposing Judge Bork's confirmation.

"The best evidence of Mr. Bork's views emanate from his record and his writings, from his speeches and opinions themselves, and no one is painting a more colorful or extreme picture," Miss Aron said.

Dan Casey, director of the American Conservative Union, said, "I agree with everything [Mr. Burns] said except . . . I'm unaware of any conservative spokesman who said Bork would implement the conservative agenda.

"Bork advances the Reagan social agenda only to the extent that it allows us to act in the political realm,"

Mr. Casey said.

"It's Bork's judicial philosophy allowing us a level playing field," said Mr. Casey. "We need the Supreme Court to be neutral, as we hope they will be with Bork on board."

Ralph Neas, executive director of the Leadership Conference on Civil Rights disagreed, adding, "There's a 25-year paper trail that cannot be changed."

Mr. Neas characterized Mr. Burns' speech by saying, "the [Reagan] administration has been waging a campaign of disinformation, trying to repackage Bork consistent with the polling data.

"But Bork is a judicial activist with a right-wing agenda," said Mr. Neas, "and I think the campaign will backfire on the White House because it's inconsistent with reality."

Long Island
Jewish World
Washington
Jewish Week

Why Bork should be confirmed



Robert Bork

By Marshall J. Breger

Good laws alone do not make a just society. You need expert, well-rounded judges as well. So important is the judicial selection process that the Biblical precept, "Justice, Justice shall ye pursue," has been interpreted by the rabbis as a directive, no matter what the sacrifice, to seek out the most qualified judges in the community.

The directive to seek out quality is central to resolving the debate over Robert Bork's confirmation to the Supreme Court. Indeed, all parties applaud Judge Bork's unparalleled legal resume. They differ only on the appropriateness of Bork's conception of the judicial role.

Three central features of the judge's craft stand out.

- First, judges exercise power. As a direct result of their decrees, books may (or may not) be banned from public schools, soldiers may (or may not) be permitted to wear yarmulkes while in uniform, protesters may (or may not) assemble and demonstrate before a foreign embassy.

- Second, judges must write to persuade, not only other judges and

attorneys, but ultimately the citizenry at large. Their decrees, then, are not naked commands.

- Third, judges decide individual cases or disputes. They deal with the particular litigants before them, and with the particular facts and arguments which those litigants urge in support of their claims. While they must invoke broad rules in deciding these claims, their business is to interpret and apply these rules and not to originate them. We expect them to recognize the limits of their role—that is, to display a suitable modesty.

Few individuals possess the attributes of a distinguished judge as fully as Judge Robert Bork. Bork's writings as a professor at Yale on antitrust regulation and constitutional law command widespread respect. His judicial decisions serve as textbook examples of opinion writing. Moreover, he has been no cloistered academic or untried doctrinaire, but has been tempered by practical experience—as a partner in a major law firm, as solicitor general of the United States, as acting attorney general, and as a sitting judge on a court most legal observers believe to be second in influence only to the Supreme court. Finally, and perhaps most importantly, he has an enormously sophisticated self-consciousness about the judicial role.

Bork's basic idea is that, in a republic like ours, the business of governing should be left, by and large, to the elected bodies—to the president and Congress. This is nothing more than the democratic belief that the people should govern themselves. It proves how dangerously far we have come from the belief in government by the people that so many critics of Bork should condemn this view.

Bork's opponents claim that his judicial modesty conceals rigid ideological blinders which, in Rabbi David Saperstein's words, "diminishes the court's capacity to determine each case on its merits, substituting ideological litmus tests for judicial reasoning." This allegation belies the very core of Bork's judicial philosophy—that legislatures not judges should make the major policy choices; that judges should hew to a process of principled reasoning, not engage in a search for predetermined results.

Bork's decisions show that he is in no sense a rigid ideologue. As a judge he has staked out new First Amendment ground for press freedom, supported broad readings of the Voting Rights Act and upheld union prerogatives in labor cases. He wrote over 100 majority opinions and not one has been reversed by the Supreme Court.

If Bork were really the result-oriented ideologue his critics have charged, would he have protected the First Amendment rights of an artist who sought to lease subway space to display a poster mocking Ronald Reagan? Bork described the DC transit authority's decision to deny poster space as "an attempt at censorship." What ideological litmus test here?

Some of the wilder claims about a Bork confirmation would have him roaming through the Bill of Rights, rolling back years of constitutional jurisprudence. Again the truth differs markedly. Bork's position on the importance of precedent could not be clearer. He testified in 1982 that "the value of precedent and of certainty and of continuity is so high that I think a judge ought not to overturn prior decisions unless he thinks it is absolutely clear that prior decision was wrong and perhaps pernicious."

Along these lines his critics have presumed that Bork would instantly overturn *Roe vs. Wade*. Again the truth must out. He has never decided an abortion case, although he has, along with many attorneys and legal scholars, criticized the Supreme Court's reasoning in *Roe*. Nonetheless, he testified in 1981 against a human life bill which would have had Congress declare that human life begins at conception. Such a declaration he viewed as unconstitutional. Once again we see a restless and searching intellect focused on reasoned debate not preordained results.

If Bork's vision of judicial modesty has any precursor on the Supreme Court, it is surely Felix Frankfurter. For Bork, like Frankfurter, believes in judicial deference to legislative commands, not judicial usurpation of legislative responsibilities; he understands the importance of process, not result, in jurisprudential debate; and he appreciates that law is an enterprise that should, indeed must, be separate from politics.

In exploiting the Bork nomination for narrow political and ideological reasons, liberals have come dangerously close to politicizing the judicial selection process. This cannot but damage the moral authority of the "Third Branch." That would be a tragedy for the country. It is quality, not politics, that we should seek in our judiciary. And for quality, one need go no further than Judge Robert Bork.

Mr. Breger served as President Reagan's liaison to the Jewish community and is currently chairman of the Administrative Conference of the United States.

The Democrats and Judge Bork

CHRIS GERSTEN

The Democrats smell blood. After recapturing the Senate in November, they have, for eight months, been attempting to exploit the Iran-"contra" affair in order to weaken the administration during the last years of the Reagan presidency.

It was against this highly-politicized backdrop that Robert Bork was named to the Supreme Court. There is no question that Bork possesses the necessary intellectual powers and professional experience to serve on the nation's highest court. A former law professor at Yale, Bork received the American Bar Association's highest rating—"exceptionally well qualified"—to serve as a federal judge. And during his five years on the federal bench he has distinguished himself as a thoughtful and respected jurist.

And yet, despite his undoubted competence to serve on the Supreme Court, Bork is coming under attack by opponents of the administration who are seeking to defeat his nomination in the Senate. The grounds for these attacks are ideological: Judge Bork, his detractors claim, is a "conservative" jurist who will "turn back the clock" on all sorts of "rights" granted by the court to minorities, women and others over the past two decades.

It is curious that these opponents—liberals to a man—should raise the spectre of an ideological justice in their effort to defeat the Bork nomination. While Bork is criticized as a conservative, his judicial philosophy is one which rejects the introduction of a justice's personal political views into his decisions from the bench. Instead, Bork's approach is one of ideological neutrality, in which the law, not personal prejudices, provides the rationale for judicial decisions.

It is precisely this opposition to the introduction of ideology into judicial decisions that concerns Bork's democratic opponents. The liberal justices, who until recently dominated the Court, have been quite willing to permit their own political and ideological views to influence their decisions. By appointing Bork, and denying liberals their majority on the court, President Reagan hopes to end years of ideologically-motivated decisions, dating back to the days of Chief

Justice Earl Warren.

Congressional liberals have sought to create an image of Bork as a man who would do terrible things to minorities and women. The truth is that the legal rights enjoyed by Americans will not change because of Bork's nomination. What may change, though, is the extent to which the court can create new rights and special privileges that reflect liberal politics more than provisions of the law or the Constitution.

Such a court would no longer give carte blanche protection to such liberal policies as affirmative action. Thus, although it is unclear how far a court would go in rolling back these practices, Democrats fear that Bork's confirmation could indicate that the days of the liberalism they espouse are numbered.

As a result, many of these Democrats are seeking to change the norms that for two centuries have been followed in confirming presidential judicial nominations. Under these norms, a nominee recognized to possess integrity and to be professionally competent is granted Senate approval, regardless of his judicial or political philosophy. The Democrats' challenge to Bork's nomination, a challenge mounted in spite of his honesty and high degree of competence, can only be explained by their desire to politicize the court and its members.

One reason for this politicization is the opportunity that liberals believe the nomination presents to advance their own interests. Liberal groups, from the National Association for the Advancement of Colored Persons (NAACP) and the National Organization for Women (NOW), have seized the nomination as an issue that can help generate support for their agendas. At the same time, congressional Democrats recognize that their acquiescence to the demands of these groups can help bolster their own political agendas.

One such congressional Democrat is Sen. Joseph Biden (D-Del.), who is chairman of the Judiciary Committee which is considering the Bork nomination. When the nomination was first announced, Biden stated that he would not allow himself to be steamrolled into opposing it. However, Biden was then a can-

*F. Louderdale
Jewish Journal,
Northern California
Jewish Bulletin*

didate for his party's presidential nomination, and when pressure from liberal groups threatened to jeopardize his campaign prospects, he quickly shifted ground and announced his opposition to Bork.

In exploiting the Bork nomination for narrow political and ideological reasons, liberals and Democrats are undermining the confirmation process. Judge Bork is highly qualified to serve in the post to which he has been named; neither ideology nor political opportunism should prevent him from doing so.

Chris Gersten is executive director of the National Jewish Coalition.

Hard Sell on Bork

BY ALEXANDER WOHL

After President Ronald Reagan nominated Judge Robert Bork to fill the Supreme Court vacancy, many prominent Jewish groups were quick to oppose him. Now, as the president gears up for a hard-sell drive to confirm Bork, a conservative Jewish group is working diligently to give him all the help it can.

The National Jewish Coalition this week brought together 27 politically conservative rabbis to gather support and disseminate pro-Bork information to congregations around the country. The Coalition treated the rabbis to a morning briefing at the White House with talks by top administration conservatives such as Secretary of Education William Bennett. According to Mark Neuman, political director of NJC, Bennett spoke on a variety of domestic issues, including "value-free education."

Later, at a luncheon at the Washington Grand Hyatt, the group heard from Deputy Attorney General (and NJC member) Arthur Burns, who told the group that the descriptions of Judge Bork by Sens. Edward Kennedy (D-Mass.), Joe Biden (D-Del.) and the AFL-CIO, among others, were "grotesque caricatures" of the real Bork. If Bork were such a judge, Burns said, referring to those descriptions, "he would be way out of the mainstream, and should not be

confirmed."

The deputy attorney general told the *Washington Jewish Week* that those Jewish groups that have opposed Bork's nomination are "grossly mistaken," and are "just looking to find fault. Perhaps the president is an idealist, but he just wants to take politics out of the [Supreme] Court. These groups are creating a false polarization."

Confusion in the Ranks?

For those liberals who find it

little effect. This is simply misleading, Fein said. "Although the vast majority of the time he will be voting for the majority opinion, many times he will be deciding issues at the cutting edge such as affirmative action, abortion, church-state and First Amendment. On these issues, Bork will clearly make a difference."

Rabbinic Sentiment

Most of the rabbis who attended the conservative function seemed

pronouncements before his congregation, many of the things he says probably reflect his conservative thinking. Yellin says he finds the Republican Party more appealing because it "speaks to him as an American, while the Democrats treat him only in terms of his Jewishness."

Still, many Jewish organizations not only oppose Bork but consistently support many other liberal causes as well. One simple explanation as to why this is so comes from another attendee of the conservative gathering, Rabbi Aryeh Spero of Canton, Ohio. "Jewish organizations like to feel they are part of progressive movements. It is the avant-garde and chic thing to do." He explained that although Jews used to work for "leftist or liberal causes" to further a person's individual liberties, they now want to

achieve these ends for "egalitarian reasons, to instill these values in everyone taking away their choice."

Capitol Line

difficult to stomach the notion that Bork is a moderate and that his appointment is not political, company surprisingly comes from the right as well.

Bruce Fein, visiting fellow for constitutional studies at the conservative Heritage Foundation, believes that it is "almost childish in naivete" to think that the appointment is not political. "Of course it's a political appointment. Ronald Reagan was elected with the public's knowledge that he might be able to add members to the Supreme Court. It's nothing to be embarrassed about."

Fein was also disappointed by the White House's portrayal of Bork as a moderate who will have

pleased to be there, if not completely satisfied with everything the speakers said. Rabbi David Lincoln of New York City found the White House outlook refreshing. "It's not fair to say there is a 'Jewish' stand on the gay community or abortion or many other political issues." Lincoln said that while he does not make an overt effort to put conservative politics into his sermons, he is sure his congregation is aware of his views. And considering that *Commentary* editor Norman Podhoretz is one member of that congregation, it might be well received.

Rabbi Richard Yellin of Newton, Mass., noted that although he is "officially neutral" in all of his

Post & Opinion

August 26, 1987 Page National 14

Indianapolis

Rabbis invited to Washington to hear '88 election issues

By JEAN HERSCHAFT

More than 60 rabbis are expected to attend an all-day White House Conference for Rabbinic Leadership Wednesday, Aug. 26, sponsored by the Republican National Jewish Coalition whose honorary chairman is Max Fisher of Detroit and whose co-chairmen are George Klein of New York and Gordon Zacks of Columbus. Richard Fox, Philadelphia, is chairman.

Issues of concern to the Jewish community will highlight the agenda.

Religion and politics in the '88 election, one of the primary topics, will be a panel discussion featuring Marshall Breger, a former Jewish Liaison at the White House, Rabbi Joshua Haberman of Washington, Ed Dobson, editor, Fundamentalist Journal and Robert P. Dugan, Jr., executive director of The Evangelicals.

William Bennett, Secretary of Education, will open the session with an address which is expected to touch base on religion's role in education, if any.

"The President's Final Year, Quotas and Affirmative Action, Central America

and Social Agenda" are some of the topics aides of the President will present.

But by far the most pressing issue for the Administration now, the confirmation of the President's nomination of William Bork to the Supreme Court, will be championed by Arnold Burns, Deputy Attorney General, at the luncheon session at the Grand-Hyatt Hotel.

Presidential aides Frank Lavin, June O'Neill, Ken Cribb and Josea Sorzno will be discussants at other sessions. A reception for the rabbinic guests will conclude the day's program which begins at 9:30 a.m., and concludes at 6 p.m.

On April 29 the Coalition hosted a forum for Republican presidential candidates: Vice President George Bush, Sen. Robert Dole, Rep. Jack Kemp, Gen. Alexander Haig, and Rev. Marion "Pat" Robertson at the Four Seasons Hotel which was attended by 150 Jewish leaders. It was a forum to address issues of concern to the Jewish community in separate meetings. The event marked the first time that so many Jewish

leaders had gathered in a formal setting to meet with Republican candidates for the presidency, George Klein had told The P-O.

Mainly, the NJC Rabbinic Conference expects to deal with issues of concern to Jews as Americans from the vantage point of President Reagan's final months in office, Chris Gershen, NJC executive director, said.

Among the clergymen who are expected to attend are Rabbis Seymour Siegel (Jewish Theological Seminary) and Jacob Neusner (Brown University).

SEPTEMBER 4, 1987

IN BRIEF

Rabbis hear of the 'real' Bork

WASHINGTON (JTA) — Deputy Attorney General Arnold Burns told a group of rabbis last week that opposition within the Jewish community and elsewhere to Judge Robert Bork is based on "misinformation" about President Reagan's nominee to the vacant seat on the U.S. Supreme Court.

A "false" image of Bork has been presented by people who want "to achieve political goals of their own," Burns said at an Aug. 26 luncheon for 28 Orthodox, Conservative and Reform rabbis from 13 states.

The luncheon, sponsored by the conservative National Jewish Coalition, was part of a daylong series of briefings for the rabbis by members of the Reagan administration. While most of the briefings were closed to the press, Burns' speech was open, apparently in an effort to counter the growing opposition to the Bork nomination in the Jewish community.

Burns, the second highest-ranking official in the Justice Department and a member of the National Jewish Coalition, said a "fictional" Bork has been portrayed as an extremist who is opposed to civil rights, labor union and women's rights, among other things.

He said the "real" Bork believes that "a judge's views on what is a desirable matter of policy have no place in a judge's decision."

When a rabbi asked about Bork's views on abortion, Burns replied that it was "wholly irrelevant" to his nomination to the Supreme Court. He said Bork has said he is bound by decided cases and therefore accepts the Roe vs. Wade decision, which legalizes abortions. However, Burns conceded that if a new abortion case came to the Supreme Court, the decision could be reversed.

Detroit Jewish News

NEWS

Jews 'Misinformed' About Bork

Washington (JTA) — Deputy Attorney General Arnold Burns told a group of rabbis last week that opposition within the Jewish community and elsewhere to Judge Robert Bork is based on "misinformation" about President Reagan's nominee to the vacant seat on the U.S. Supreme Court.

A "false" image of Bork has been presented by "some people" who want "to achieve political goals of their own," wholly unrelated to the nomination, Burns said at a meeting for 28 Orthodox, Conservative and Reform rabbis from 13 states, sponsored by the National Jewish Coalition.

Jews split on Bork nomination

By **JOSEPH POLAKOFF**
IJN Washington Bureau

Judge Robert Bork has been reported by a top-ranking Reagan Administration lawyer as having usually agreed in decisions with his liberal colleagues on the District of Columbia Circuit Court of Appeals and that at one time he successfully reversed a derogatory action against a Jewish law student.

Arnold I. Burns, US deputy attorney general, addressing the National Jewish Coalition which has endorsed President Reagan's nomination of Bork to the Supreme Court, scored the descriptions of Bork by senators and organizations urging the Senate to reject the confirmation.

Among the first to reject his nomination was the American Jewish Congress which issued its statement the day after the White House

announcement. Burns did not name Jewish national organizations which have criticized Bork. His address was distributed by the Department of Justice.

by an incident early in his career, Burns said when Bork was a young associate at a major Chicago law firm, the application of an outstanding University of Chicago law



RNS photo

Judge Robert Bork with President Reagan, when the President presented the nomination.

"In five years on the bench, during which Judge Bork heard hundreds of cases, he has written only 10 dissents and seven partial dissents," Burns said. "He was in the majority 94% of the tie, and only rarely parted company with other so-called 'liberal' judges on the DC Circuit, such as Ruth Bader Ginsburg and Abner Mikva. For example, Judge Bork and Judge Ginsburg have agreed on 90 per cent of the cases before them."

When Mikva was serving in Congress as a Democrat from Illinois, he was described as the "quintessential liberal."

Offering "a true picture" of Bork

student — Howard Krane — was briefly considered and then rejected.

"One associate overheard a partner saying that Krane was passed over because he was Jewish, and mentioned this to Bork," Burns continued. "Even though only an associate, Bork went to see several senior partners and said, according to one of his colleagues, 'we have a larger stake in the future of this firm than you do. We want this man considered on his merits.' The partners agreed to take a second-look, and today Krane is managing partner of the firm."

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Boston Jewish Times
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Week

JEWISH WORLD / August 21-27, 1987 3A



Supreme Court nominee Robert H. Bork
AP/Wide World Photos

Jewish opposition to Bork nomination mounting

WASHINGTON — Opposition to the nomination of Judge Robert Bork to a seat on the Supreme Court is mounting in the Jewish community. The Jewish War Veterans last week became the fifth Jewish organization to voice its protest.

"Contrary to the administration rhetoric surrounding Bork's nomination, the issue is one of ideology and the Supreme Court is not well-served by extremist positions," said the statement issued by Edwin Goldwasser, the group's national commander.

The statement by the Jewish War Veterans, a mainstream organization, suggests the extent to which Bork's nomination is meeting opposition in the Jewish community. Worried about Bork's stand on minority and women's rights and church/state issues, some Jewish groups which do not

traditionally oppose presidential appointments, consider this one fight where they can not remain on the sidelines.

Along with the Jewish War Veterans, the Union of American Hebrew Congregations (UAHC), American Jewish Congress, B'nai B'rith Women, National Council of Jewish Women and New Jewish Agenda are opposing the Bork nomination.

The National Jewish Coalition, a Republican group, has come out in support of the nomination maintaining that Bork is "eminently qualified" to serve on the court and that "neither ideology no political opportunism should prevent him from doing so."

But sources are saying that other Jewish groups will have to oppose Bork if the Jewish community is going to have an impact on the nomination. The Jewish World recently reported that three senators invited several Jewish organizations to send representatives to a closed door meeting to urge them to take a stand on this issue.

Sen. Alan Cranston (D.-Calif.), reportedly told them that by opposing Bork, Jewish groups could show that they are interested in issues besides Israel. Sens. Carl Levin (D.-Mich.) and Howard Metzenbaum (D.-Ohio) also reportedly attended the meeting.

Rabbi David Saperstein, executive director of the UAHC's Religious Action Center, said that some senators who will be swing votes on the Bork nomination could be influenced by the Jewish community's stand on this issue.

But some Jewish organizations invited to the meeting are still debating whether to oppose the nomination and say they might decide to remain neutral. The Anti-Defamation League of B'nai B'rith is currently reviewing Bork's decisions and writing. "We're just trying to be objective about it. That's why they're having a hearing. Why have a hearing if everyone's taken a position on this?" said David Brody, ADL Washington representative.

The American Jewish Committee has a tradition of not commenting on Supreme Court and Cabinet nominations which are presidential prerogatives, explained David Harris, the group's Washington representative. But he added: "We'll be watching the hearings closely and we reserve the right to reconsider."

—JTA Wire Report

Long Island Jewish
World, Los Angeles Jewish
Journal, Palm Beach Jewish
World

Most Jewish Organizations Oppose Bork

BY STEWART AIN

On the eve of Senate confirmation hearings into the nomination of Robert H. Bork for justice of the U.S. Supreme Court, many Jewish organizations—particularly Jewish women's groups—are actively opposing his nomination for fear that he will turn back the clock on such issues as women's and minority rights, abortion and the separation of church and state.

Harold Jacobs, president of the National Council of Young Israel, an organization of Orthodox synagogues, calls such opposition an "outrage."

Jacobs said that if the Jewish women's organizations wish to protest Bork's nomination, they should "take the name Jewish out of their protest. It is not a Jewish issue and their protest could create ill feeling [against Jews] among those who support him. I think it's a disservice to the Jewish community.

"If the groups wanted to express their views on the Supreme Court nomination," said Jacobs, "they should have called for the appointment of a Jew to the nation's highest court.

Theodore Mann, president of the American Jewish Congress, said that although Bork has the "legal and intellectual qualifications to sit on the court," his views make his nomination "regrettable.... In a series of law review articles and speeches over the years, he has expressed disagreement with a long series of significant precedents which are now deeply embedded in American law and which have significantly expanded the rights of citizens with respect to such crucial areas as privacy, free speech, civil rights and church-state separation.

"It would be a radical step indeed to overturn 50 or more years of constitutional development. But Judge Bork's writings and speeches appear to demand no less."

"The Senate has an obligation to chart the nominee's probable course on constitutional law and to determine whether it is wise for the country to adopt that course," Mann added.

Some Like Bork

One of the few Jewish groups publicly supporting Bork's nomination is the National Jewish Coalition, an outgrowth of Jewish efforts to support the 1980 Reagan-Rush campaign. Its organizers insist that "neither ideology nor political opportunism" should keep Bork from serving on the court because he is "eminently qualified."

Daniel Shapiro, co-chairman of a committee established by the National Jewish Community Relations Advisory Council to review the Bork nomination, said his committee will be meeting this month to "see where the Jewish community is [on the issue of Bork's nomination] and to try to coordinate a Jewish position."

His group represents 113 agencies in the United States, including 11 national organizations, and is the national planning coordinating body for Jewish community relations in the country. ▲

Los Angeles

Bork nomination causes concern

By Hilary Saperstein

Judge Robert Bork's nomination to the Supreme Court, one of the most controversial nominations in recently memory, has been severely criticized by many national Jewish organizations as well as by area leaders. The Senate Judiciary confirmation proceedings began Sept. 16.

President Reagan nominated Bork to replace retiring Justice Lewis Powell on July 1. Bork, a graduate of the University of Chicago Law School, was the Solicitor General of the United States from 1973-77.

Stanley Preiser, an attorney for 37 years and considered one of the nation's top lawyers, said if Bork is confirmed as a Supreme Court Justice, "It would be a tremendous step back in history."

Preiser, a Boca Raton resident, said, "If Bork is nominated, women, blacks and those who pray to a different G-d will no longer have

broad rights. The clock will be turned back to 100 years ago; our rights will be trampled upon and narrowed."

Because of the tremendous amount of controversy surrounding the nomination, Preiser said, "I don't think the Senate will be that insensitive (and confirm the nomination). They don't want to see the demolition of the Bill of Rights."

Much of the debate about Bork's nomination centers around the impact Bork may have in reversing a number of Supreme Court decisions in the area of a number of constitutional rights including abortion, school prayer, privacy, federal aid to parochial education and civil rights.

Jewish opposition to Bork is based mainly on his philosophy, which is generally considered to be conservative. Herb Magidson, Jewish Labor Committee president, said, "The United States has not only the right but the obligation to consider a

nominee's judicial philosophy as well as his technical qualifications.

"Robert Bork's views would lead to a judicial climate in which the rights of Americans of all walks of life, especially minorities, would be threatened."

Several major Jewish organizations have opposed the nomination including the American Jewish Congress, B'nai B'rith Women, the National Council of Jewish Women, the Union of American Hebrew Congregations and the Jewish Labor Committee. B'nai B'rith International has remained uncommitted.

One Jewish organization, the National Jewish Coalition, has endorsed the nomination. Chris Gersten, the group's executive director, said, "We support the idea that the president has the constitutional right to appoint a Supreme Court Justice.

"The Senate's role traditionally has been, if the per-

son has integrity and competence, then he shouldn't be opposed."

Gersten noted that the American Bar Association has given Bork it's highest rating twice and, "he's clearly mainstream, not radical right. He's voted in the majority opinion 94 percent of the time."

Gersten theorized that many Jewish organizations and individuals are opposed to Bork because they are not aware of all the facts and because of "an hysterical outburst from the liberal side of the aisle."

The National Jewish Coalition, formed in 1985, is a group of conservative Jewish leaders who have supported many of the Reagan administration policies. Gersten said opposition to Bork is "an effort by Democrats and special interest groups to defeat the president and put themselves in a position to control the Supreme Court.

The Bork Confirmation

Marshall Breger

Good laws alone do not make society: expert, well-rounded judges are needed too. So important is the judicial selection process that the Biblical precept, "Justice, justice shall ye pursue," has been interpreted by the rabbis as a directive, to find the most qualified judges, whatever the sacrifice.

This directive is central to resolving the debate over Robert Bork's confirmation to the Supreme Court. All parties applaud Judge Bork's unparalleled legal resume; they differ only on the appropriateness of his conception of the judicial role.

Three features of the judge's craft stand out.

First, judges exercise power. As a result of their decrees, books may (or may not) be banned from public schools, soldiers may (or may not) be permitted to wear yarmulkes while in uniform or protestors demonstrate before a foreign embassy.

Second, judges must write to persuade, not only other judges and attorneys, but ultimately the citizenry at large. Their decrees then, are not naked commands.

Third, judges decide individual cases. They deal with the particular litigants before them, and with the particular facts and arguments raised. While they must invoke broad rules in deciding these cases, their business is to interpret and apply these rules, not to originate them. We expect them to recognize the limits of their role and to display a suitable modesty.

Few possess the attributes of a distinguished judge as fully as Robert Bork. As a professor at Yale, Bork's writings on anti-trust regulation and constitutional law won widespread respect. Moreover, he is no cloistered academic or untried doctrinaire, but has been tempered by practical experience — as a partner in a major law firm, as U.S. Solicitor General, as Acting Attorney General. And as a judge on the court most legal observers believe to be second only to the Supreme Court, his judicial decisions serve as textbook examples of opinion writing. Finally, and

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perhaps most importantly, he has an enormously sophisticated self-consciousness about the judicial role.

Bork's basic idea is that, in a republic like ours, the business of governing should be left, by and large, to elected representatives — President and Congress. This is nothing more than the democratic belief that the people should govern themselves.

Few possess the attributes of a distinguished judge as fully as Bork.

That so many of Bork's critics condemn this view shows how far we have come from the democratic ideal.

Bork's opponents claim that his judicial modesty conceals rigid ideological blinders which, in Rabbi David Saperstein's words, "diminishes the court[s] capacity to determine each case on its merits, substituting ideological litmus tests for judicial reasoning." This allegation belies the very core of Bork's philosophy — that legislatures, not judges, should make the major policy choices.

Bork's decisions show he is no rigid ideologue. If he were, would he have protected the First Amendment rights of an artist who sought to lease subway space to display a poster mocking Ronald Reagan? Would he have described the transit authority's decision to deny poster space as "an attempt at censorship"?

Some of the wilder claims about Bork have him roaming through the Bill of Rights, rolling back years of constitutional jurisprudence. In fact, Bork's position on the importance of precedent could not be clearer. He testified in 1982 that "the value of precedent and of certainty and of continuity is so high that I think a judge ought not to overturn prior decisions unless he thinks it is absolutely clear that that prior decision was wrong and perhaps pernicious."

Bork's critics presume that he would instantly overturn *Roe vs. Wade*. Yet he has never decided an abortion case, although he has, along with many attorneys and legal scholars, criticized the Supreme Court's reasoning in the case. Nonetheless, he testified in 1981 against a Human Life Bill which would have had Congress declare that human life begins at conception, believing it to be unconstitutional.

Time and again we see a restless and searching intellect focused on reasoned debate, not preordained result. If Bork's vision of judicial modesty has any precursor on the Court, it is surely Felix Frankfurter. For Bork, like Frankfurter, believes in a judicial deference to legislative commands, not judicial usurpation of legislative responsibilities; he understands the importance of process, not result, in jurisprudential debate; and appreciates that law is an enterprise that should, indeed must, be separate from politics.

In exploiting the Bork nomination for narrow political and ideological reasons, liberals have come dangerously close to politicizing the judicial selection process. This cannot but damage the moral authority of the Third Branch. That would be a tragedy for the country. It is quality, not politics, that we should seek in our judiciary. And for quality, one need go no further than Judge Robert Bork.

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