THE WHITE HOUSE

WASHINGTON

July 8, 1987

MEMORANDUM FOR C. CHRISTOPHER COX
PETER D. KEISLER
PATRICIA M. BRYAN

FROM: BENEDICT S. COHEN BSC

SUBJECT: Judge Bork's Decisions

As reported in the Washington Post today, Judge Bork, together with Judge Douglas Ginsburg, joined an opinion by liberal D.C. Circuit Judge Abner Mikva reversing the conviction of nine members of the Black Hebrews religious sect. The court unanimously ruled that the district court's dismissal of a juror who questioned the sufficiency of the government's evidence violated the defendant's constitutional right to a unanimous verdict. Judge Bork's vote to void nearly 400 separate verdicts in what is believed to be the longest and most expensive trial ever held in district court here highlights his devotion to vindicating the constitutional rights of criminal defendants.

THE WHITE HOUSE

WASHINGTON

July 9, 1987

MEMORANDUM FOR HOWARD H. BAKER, JR.
CHIEF OF STAFF TO THE PRESIDENT

KENNETH M. DUBERSTEIN
DEPUTY CHIEF OF STAFF

WILLIAM L. BALL III
ASSISTANT TO THE PRESIDENT FOR LEGISLATIVE AFFAIRS

FROM: ARTHUR B. CULVAHOUSE, JR.
COUNSEL TO THE PRESIDENT

SUBJECT: White House Working Group on Judge Bork's Confirmation

During the next four months, no Presidential initiative will have higher priority than the confirmation of Robert Bork. Arguably, nothing on the White House agenda during the remainder of the Reagan Presidency is of more lasting importance.

The opposition to Judge Bork is already organizing. It is essential that the forces in support of the President's nominee be rallied immediately. This requires an organized, nationwide effort. While our ultimate goal is of course a favorable vote in the Senate Judiciary Committee and at least sixty votes on the Senate floor, a great deal is needed to support our legislative liaison. Research, editorials, speeches, liaison with interest groups, identification of surrogates and spokesmen, work with the bar groups and more are necessary to generate the climate in which our legislative lobbying efforts can succeed.

For reasons we have all discussed, the White House, not the Department of Justice, must take the public lead on all aspects of this effort. The existing White House organization is potentially well-suited to the task, but currently lacks a direct focus. What is needed to coordinate the entire White House apparatus is a working group, modeled along the lines of the NSPG, that would link together representatives of all the relevant White House offices. While the magnitude and importance of the task suggests that the Assistants to the President and heads of offices all be involved, participants in this group should be those from each office who can devote near-full time to the Bork effort. Specifically, I propose that the heads of each of the following offices each designate a representative to the White House Working Group on Judge Bork's Confirmation:

- Counsel to the President (Coordinator)
- Legislative Affairs
- Public Affairs
- Media Relations
- Public Liaison
- Speechwriting and Research
- Political Affairs
- Intergovernmental Affairs
- Scheduling
- Office of the Vice President
- Cabinet Affairs

In addition to the foregoing representatives, all other Administration departments and agencies would be involved through the Office of Cabinet Affairs. Because of its special role, the Department of Justice would be represented directly on the Working Group.

This organization will greatly enhance our ability to mount a sophisticated and coordinated effort in support of Will's people on the Hill. Through weekly meetings and more frequent all-hands memoranda, the several parts of the whole will be always informed of the mission's progress.

Several of the offices slated for inclusion in the Working Group have already indicated their willingness -- indeed, anxiousness -- to become constructively involved in getting Judge Bork confirmed. If you all agree, my office will work on getting this underway immediately.

[redacted]

THE WHITE HOUSE
WASHINGTON

Date: 07.10.87

TO:
Jay B. Stephens
C. Christopher Cox
Patricia M. Bryan
Benedict S. Cohen
Peter D. Keisler

FROM: **ARTHUR B. CULVAHOUSE, JR**
Counsel to the President

FYI: /Bork File

COMMENT: _____

ACTION: _____

[redacted]

[redacted]

THE WHITE HOUSE

Office of the Press Secretary

Embargoed for Release Until 11:00 a.m. EDT July 9, 1987

REMARKS BY SENATOR HOWARD H. BAKER, JR.
TO THE NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE

New York Hilton Hotel
New York, New York

Thursday, July 9, 1987

My good friend, Ben Hooks, Chairman of the Board, Dr. William F. Gibson, President McMillan, Chairman of the Special Contribution Fund Board, Mr. Colley, my fellow Tennesseans, Sarah Greene, Jesse Turner, and Maxine Smith, members and friends of the Nation's oldest civil rights organization:

I am honored to join you today as you conclude your 78th annual convention.

Let me pay my respects, first of all, to the distinguished executive director of this organization, Ben Hooks, whom I've been proud to call my friend for more than 20 years.

Ben Hooks has probably done more good for more people -- individually and collectively -- than anyone else that I know, and I believe his union with this venerable and vital organization is a marriage made in heaven.

Let me hasten to add I feel the same way about his marriage to the remarkable Frances Hooks, in whose debt I shall always be for her leadership in advancing my political career in our home state of Tennessee.

And let me pay special tribute, as well, to the First Lady of the civil rights movement, Coretta Scott King.

Mrs. King and I have known each other a long time, and I recall with special fondness her frequent visits to my office in the United States Senate a few years ago when we were engaged in a joint venture of some consequence to this gathering.

I count it as one of the highlights of my legislative career to have worked with this gracious and tenacious lady to establish a national holiday honoring the Reverend Dr. Martin Luther King.

Over the past 78 years, the NAACP has been in the vanguard of the changes in civil rights that have occurred in this Nation.

Let me tell you something about my beliefs. Since I first came to public life, I have believed, and I still believe, that to be compassionate and caring and concerned the government need not be large, anonymous, and unresponsive. Indeed, a little government goes a long way, and we ought not to have any more government involvement in our national life than we absolutely need.

I believed, and I still believe, that a fundamental obligation of this government and any government is to provide ultimately for the protection of our citizens against the elements of discrimination, injustice, and threats from abroad. But I also believe that the government is the keeper of the public purse; that government ought not to spend more money than it receives in taxes; and taxes ought to be as low as possible. I believed when I came to Washington, and I still believe, that the best insurance of peace in this dangerous world is the strongest defense for our country. I believed, and I still believe, that the United States should not be a diplomatic doormat for the rest of the world and that it should stand firmly for its rights and interests.

I believe that these obligations and opportunities to the citizens of this great land are best served by an understanding of the adversarial nature of politics and its essential contribution to the formulation of public policy. And yet to be a public servant in this system means being part of a system of ideas and beliefs that swirl and rush and sometimes threaten to overwhelm -- about the most one can hope for is the approval of the majority of the people in the resolution of these conflicting ideas. So in my public career I have tried to understand the point of view of those who disagree with me, to assist those things that I believe are best for the Nation, and to face difficult and unpopular issues with the courage to believe that the country will understand.

And it is in this belief that one of the most important votes I gave in the United States Senate was a vote in favor of the Fair Housing Act that granted the government extraordinary powers to impose national standards of fairness throughout the land. I did it because I thought it was the right thing to do, and I did it proudly. As I began my second term in the Senate in 1973, I was called upon to investigate the scandal we know today as Watergate, to follow the facts of that tragic case wherever they led, to ask the central troubling question that ultimately removed a man I respected from an office I revered.

And then as I was campaigning for a third time in the Senate, the issue arose as to whether or not the United States should re-negotiate the treaty governing its rights and responsibilities with respect to the Panama Canal.

I weighed both sides of this contentious issue for a very long time, and finally decided that the right thing to do was to re-negotiate those treaties and ensure that our rights were

I ask you not to commit the power and prestige of this organization to defeating the nomination of an honorable man who has demonstrated so clearly in his own life the power of redemption.

Now, beyond the Court we must together find ways to eliminate all forms of discrimination against persons regardless of race, creed, color or gender.

Let me pay special tribute to the NAACP that, since 1909 when you were founded here in New York, has kept watch on the ramparts of freedom for all Americans.

We must together find ways to end the vicious cycle of poverty that plagues too many of our citizens. We must together work to build a society where our senior citizens are secure in retirement and where our young people's mental skies are not clouded by stunted growth and the denial of hope.

My friends, the agenda before us is one that requires every able-bodied man, woman, and child to labor assiduously for a new day and "the bright sunlit uplands" of an America without racism or discrimination. I am optimistic that both conservatives and liberals will benefit by the creation of a society where opportunity is our creed and justice is an obtainable goal.

I want you to know -- as Ben and Frances Hooks have known for a long time -- that I am a soldier with you in the struggle that gives this convention its theme and this movement its life.

I hope the time will come when this power is manifest more fully in our Nation.

I hope the time will come when the divisiveness and discord and discrimination of our time will yield to greater understanding in a more perfect union.

That is easier than it sounds in a country like ours, for by our very nature we can never expect -- and should never even hope -- to be all one thing or all another.

People of every color, every religion, every nationality, every point of view have found a home and a haven here, and it is the glory of our Nation that this is so.

But for all our differences, there are strong ties that bind us together as Americans, and none is stronger than our fundamental national belief in liberty and justice for all.

That is a promise we have not yet fully kept, but it is a struggle worthy of a great people.

I am proud to be a soldier with you in this struggle.

And I share with you the confidence and the commitment that we shall someday overcome.

# # #

THE WHITE HOUSE

WASHINGTON

July 12, 1987

MEMORANDUM FOR TOM GRISCOM
CHRIS COX

FROM: TOM GIBSON

SUBJECT: Status Report on Bork Advocates

In canvassing our sources for the names of possible surrogates who might help promote Bork's nomination, it appears that a number of prominent individuals representing labor, minorities, women, academia, business, special interest groups, etc. are reserving judgement on Bork in the absence of credible (non media) information on his record. Nonetheless, the Department of Justice is working to assemble a group of prominent surrogates for Bork, and other departments and agencies are surveying their resources. We are working with these and others to provide a more thorough list of surrogates to be available in the near term.

The following list includes names of individuals whose names have appeared in print supporting Bork and may be considered as surrogates:

Daniel Popeo, Washington Legal Foundation
Diane Wood, University of Chicago Law School
Ernest van den Haag, Fordham University
Richard Epstein, University of Chicago Law School
Raoul Berger, former Berkley professor and self-confessed liberal
Bernard Bobranski, dean, University of Detroit Law School
Leon Lyscght, University of Detroit Law School
Geoffrey R. Stone, dean, University of Chicago Law School
Daniel Casey, American Conservative Union
Pat McGuigan, Coalition for America
Richard Viguerie
Elliott Richardson
Bill Ruckelshaus
Senator Alan Simpson
Senator Orin Hatch
Senator Dan Quayle
Senator Gordon Humphrey
Senator Paul Trible

A few other individuals have been suggested as possible considerations:

James D. "Mike" McKevitt
Attorney with Webster, Chamberlin, Bean & McKevitt. Former Member of Congress; served with Bork; now Washington counsel for NFIB.

Bill Coleman
Attorney. Former Secretary of Transportation under Nixon.

Andrew Bremmer
Consultant. Former member of Federal Reserve Board.

Edward Brook, Former Senator

Also, the attached list of Federalist Society Chapter Heads represents a ready-made network of additional possible surrogates.

Federalist Society Chapter Heads and School Contacts. (continued)

Maryland	Mr. John Devine, 167 Green St., Apt. 4, Annapolis, MD 21401	301-268-9072
Maryland	Mr. Jim Wright, 1209 Stonewood Ct., Annapolis, MD 21401	301-757-3949
Michigan	Ms. Ann Coulter, 420 Hill Street, #9, Ann Arbor, MI 48104	313-995-0777
Michigan	Mr. Joe Cosbey, The Lawyers Club, 551 S. State Street, Ann Arbor, MI 48109	
Minnesota	Mr. Jon Norberg, 2100 County Road E., Box 302, New Brighton, MN 55112	612-588-0779
Mississippi	Mr. Jeff Condra, P.O. Box 2428, University, MS 38677	601-236-2438
Missouri	Mr. Randy Baker, 1508 West Lexington Cr., Columbia, MO 65203	314-445-0504
Montana	Mr. Jeffrey Even, 1814 Dixon Ave., Missoula, MT 59801	406-543-5662
Monterey	Mr. Timothy Cleary, Sears Savings Bank, 7827 Soquel Drive, CA 95003	
North Carolina	Mr. Terry Truax, 321 Country Club, Chapel Hill, NC 27514	919-967-9932
Notre Dame-Lon	Mr. Mark Hinckley, N.D. Law, 7 Albermarle St., London WIX 3HF, England	
Nebraska	Prof. John Lenich, University of Nebraska, College of Law, Lincoln, NE 68583	402-472-1231
Nebraska	Mr. David Cyger, 3619 N. 60th Street, #4, Lincoln, NE 68507	402-467-3171
Northwestern	Mr. Scott D. Himsel, Lake Shore Center, #850 N. Lake Shore Drive, Chicago, IL 60611	312-440-1548
Notre Dame	Mr. Thomas Dahlberg, 2632 Powderhorn Cir., South Bend, IN 46628	219-277-1045
NY Law	Mr. Ralph W. Carmichael, 404 E. 55th St. #5-D, New York, NY 10022	212-759-9565
New York	Mr. David Zacharisen, 323 9th St., 3rd Floor, Brooklyn, NY 11215	718-788-8385
Ohio St	Mr. Douglas Sladoje, Apt. 3F, 1170 Summit St., Columbus, OH 43201	614-291-6323
Ohio State	Mr. Kevin Conners, 233 Thurman Ave., Columbus, OH 43206	614-443-0881
Oregon	Prof. Maurice Holland, University of Oregon School of Law, Eugene, OR 97403	503-686-3852
Pacific	Mr. Richard Mersereau, 8247 Kilmer Ct., Sacramento, CA 95820	916-423-1252
Pennsylvania	Mr. Tom Odom	215-289-6576
Pepperdine	Mr. Theodore Kanavas, Pepperdine University Law School Apts., Box #66, Malibu, CA 90265	213-317-3911
San Diego	Ms. Meridith Alcock, 3485 Ruffin Rd., Apt. 1-E, San Diego, CA 92123	619-292-6082
Stanford	Mr. Brian Brille, Federalist Society, Stanford Law School, Stanford, CA 94305	415-723-1551
Stetson	Mr. Al Gomez, Jr., 6219 1/2 11th Ave., S, St. Petersburg, FL 33707	813-345-4821
Syracuse	Mr. Daniel Gentges, 6202 Robin Ln., Crystal Lake, IL 60014	815-455-1272
Temple	Mr. John Caprara, 708 Buckley Road, Penllyn, PA 19422	215-646-4684
Tennessee	Mr. Gary Cruciani, 513 Morrell Road, Apt. F90, Knoxville, TN 37919	615-694-5091
Texas	Mr. Brian Martin, 5202 Guadalupe, Austin, TX 78751	512-459-6727
Texas Tech	Mr. Dan Ogden, 3314 23rd St., Lubbock, TX 79410	806-793-8639
Tulsa	Mr. R. David Humphreys, 3120 East Fourth Place, Tulsa, OK 74104	918-299-3461
UCLA	Mr. Frank Benton, UCLA School of Law, 405 Hillgard, Los Angeles, CA 90024	213-559-3552
USC	Ms. Laurie Roos, 2710 Severance St., #108, Los Angeles, CA 90007	213-745-2943
Utah	Mr. James D. Gilson, 1803 East 4500 South, Salt Lake City, UT 84117	801-272-9767
Virginia	Mr. Scott Pattison, 1982 Arlington Blvd., #12 A, Charlottesville, VA 22901	804-293-8326
Valpariso	Mr. Jeffrey Ahlers, 603 Union Street, Apartment #1, Valpariso, IN 46383	219-464-3367
Wash. & Lee	Mr. Mark Obenshain, P.O. Box 50, Lexington, VA 24450	703-463-9512
Wm. & Mary	Mr. John Buckley, 177 Merrimac Trail, Apt. #1, Williamsburg, VA 23185	804-253-0495
W. Mitch.	Mr. Craig Kitchen, 2036 Kenwood Parkway, Minneapolis, MN 55405	701-232-4821
Wake Forest	Mr. George Law, 2300 Faculty Dr., #105-A, Winston-Salem, NC 27106	919-722-8928
Washington	Mr. Steve Tock, 6430 Alamo Ave., Clayton, MO 63105	314-727-0615
Washington	Mr. Norman Thompson, 4259 8th Ave., NE, Apt. 6, Seattle, WA 98105	206-547-8901
Wisconsin	Mr. Michael Hokenson, 606E Eagle Heights, Madison, WI 53705	608-233-6804
Yale	Mr. George Conway, Yale Federalist Society, 401-A Yale Station, New Haven, CT 06520	203-432-9196

ederalist Society Chapter Heads and School Contacts.

Alabama	Mr. Winthrop Johnson, 2408 University Blvd. E, Tuscaloosa, AL 35404	205-553-0789
American	Mr. Dirk Roggeveen, P.O. Box 33996, Washington, DC 20033	202-633-3204
Arizona State	Mr. Len Munsil, 2605 E. 10th Street, AZ 85281	602-890-0035
Baltimore	Mr. David Bolgiano, 111 Charlesbrooke Road, Baltimore, MD 21212	301-377-0845
Berkeley	Mr. Eric Scholz, 38 Sirard Lane, San Rafael, CA 94901	415-457-1310
Boston	Mr. Thomas Mason, 1 Frost Road, Lexington, MA 02173	617-862-7974
Boston	Mr. John Vasco, 135 Inman St., #12, Cambridge, MA 02134	617-491-2471
Brooklyn	Ms. Geraldine Zidow, 120-12 91st Avenue, Richmond Hill, NY 11418	212-867-6000
Buffalo	Mr. Martin Pelcin, Box 40, Room 305, O'Brien Hall, Amherst, NY 14260	716-688-8087
Brigham Young	Mr. Steve Wiggs, 2D-114 S. Weymount, Provo, UT 84604	801-377-3671
Campbell	Mr. Eric E. Jackson, P.O. Box 1191, Buies Creek, NC 27506	
Catholic	Mr. Joseph Corradino, 3350 Chillum Rd., #200, #202, Mt. Rainier, MD 20712	301-277-4729
Catholic	Mr. Grant Wilkinson, 4324 Varnum Place, Washington, DC 20017	202-635-5157
CBN	Mr. Richard Huenefeld, c/o Terry Morgan Bic, Pr., CBN, Virginia Bea., VA 23463	804-424-7000
Chicago	Ms. Janice Calabresi, 5050 S. Lakeshore Drive, Apt. 3106 S., Chicago, IL 60615	312-288-6142
Cincinnati	Mr. Robin Smith, U. Cinn. College of Law, Ctr. Studies & Pro. Skls., Cincinnati, OH 45221	513-475-4896
Colorado	Mr. Mitch Murray, 855 38th Street, Boulder, CO 80303	303-442-1994
Columbia	Mr. Paul Lambert, H704 East Campus, Columbia University, New York, NY 10027	212-662-5714
Connecticut	Ms. Joan Baird, 193 Long Meadow Rd., Fairfield, CT 06430	203-866-2390
Cooley	Mr. Nick Caruso, 800 W. Lenawfe, #19, Lansing, MI 48915	517-371-3111
Cornell	Mr. Leonard Leo, Cornell Law School, Ithica, NY 14853	607-253-5794
Creighton	Mr. Tom Cleary, 509 N. 62nd St., Omaha, NE 68132	402-556-1304
Cumberland	Mr. Chris Willard, Cumberland School of Law, Samford University, Birmingham, AL 35209	
Delaware	Mr. Richard Mazzei, 200 Brandywine Blvd., Apt. A-10, Wilmington, DE 19803	302-478-5649
Denver	Mr. Lawrence Harrod, 911 S. Gaylord St., Denver, CO 80209	303-733-9797
Detroit	Mr. Kerry L. Morgan, 20601 Sumner, Redford, MI 48240	313-533-9590
Dickson	Mr. Dann S. Johns, 303 S. Ridge Road, Boiling Spgs., PA 16417	717-258-3110
Duke	Mr. Gregory Neppl, Box 6188 College Station, Durham, NC 27708	919-383-4852
Emory	Mr. John Spotts, 308 Glenleaf Dr., Norcross, GA 30092	404-446-8641
Florstat	Mr. Jerry York, Box 10265, Tallahassee, FL 32302	904-681-9714
Florida State	Mr. Peter Gioia, 1128 Ocala Rd., Apt. F-2, Tallahassee, FL 33012	
George Mason	Mr. James Trice, III, P.O. Box 4089, Arlington, VA 22204	703-941-3602
Georgetown	Mr. Jay Feaster, 3801 Connecticut Ave., NW, Apt. 525, Washington, DC 20008	202-537-0071
Georgia	Mr. Ralph Aubuchon, 11 Lagos Mobile Homes, 2500 Hardeman Rd., Winterville, GA 30683	404-548-9717
Goldengate	Mr. Glenn Buries, 520 Geary Street, Apt. 504, San Francisco, CA 94102	415-441-2544
Geo. Wash.	Mr. Kenneth Brothers, 3020 Washington Blvd., #5, Arlington, VA 22201	703-524-3257
Harvard	Mr. David Frum, Harvard Journal of Law, Harvard School of Law, Cambridge, MA 02138	617-367-0884
Idaho	Mr. Joseph Filicetti, 202 E. 2nd, Moscow, ID 83843	208-882-7974
Illinois	Mr. Steven Verr, 506 E. Green St., #5, Urbana, IL 61800	217-384-3966
Iowa	Mr. Charles Thomson, 1014 Oakcrest, #6, Iowa City, IA 52240	
Indiana-B	Mr. Ian Mclean, 415 Smith Ave., Bloomington, IN 47401	812-331-0354
Kansas	Mr. Bryan Daniel, 850 Avalon, #1, Lawrence, KS 66044	913-749-4569
Lewis & Clark	Ms. Enid Boles, 2770 SW Patton Lane, Portland, OR 97201	503-228-0606
Loyola-LA	Mr. James Ryals, 15212 Shadybend Dr., No. 47 Hacienda Hts., CA 91745	
Louisiana St.	Mr. Vernon Pulliam, 206 East Factory, Amite, LA 70422	504-748-9629

LAWYERS DIVISION CHAPTER HEADS

CHICAGO

Thomas Bearrows
Winston & Strawn
1 First National Plaza
Suite 5000
Chicago, IL 60603
312-558-5826

WASHINGTON, D.C.

Stephen J. Markman
The Federalist Society
1625 Eye Street, N.W.
Washington, D.C. 20006
202-822-8138

LOS ANGELES

Dennis F. Mullins
Jones, Day, Reavis & Pogue
2029 Century Park East
Suite 3600
Los Angeles, CA 90067
213-553-3939

NEW YORK

Michael Weinberger
80 Wall Street
New York, NY 10005
212-509-2125

Efforts are currently underway to develop new chapters in Denver, Philadelphia, Indianapolis, Dallas, Houston, Seattle, Richmond, and Detroit as well as in the states of Louisiana and New Mexico.

THE WHITE HOUSE

WASHINGTON

July 14, 1987

MEMORANDUM FOR ARTHUR B. CULVAHOUSE, JR.
JAY B. STEPHENS
C. CHRISTOPHER COX
PATRICIA MACK BRYAN
PETER KEISLER

FROM: BENEDICT S. COHEN BSC

SUBJECT: Judge Bork and Chairman Biden

In my earlier memo to you I suggested that a series of speeches at this point on the Bork nomination would be useful in setting the tone of debate. I referred to Senator Biden's planned series of speeches from the Senate floor, to be delivered in the immediate future, outlining his reasons for opposing the Bork nomination.

The attached Legal Times article of July 13 has interesting details of this. It says that the speeches will set forth (a) Biden's views of the Senate's role in the confirmation process; (b) "the ideological nature of Reagan's nominees to the bench"; and (c) "the danger the Bork nomination poses to the balance of the Court."

The article states that "Biden will construct the case for rejecting Bork around the claim that if a President makes ideology the controlling factor in a nomination, then the Senate can reject the nominee for the same reasons. 'Whether a senator will take philosophy into account should depend to a large degree upon whether the President has done so in making the nomination,' [Duke University law professor Walter] Dellinger says."

The article also states, incidentally, that Biden's advisers include Clark Clifford; Dellinger; Philip Kurland of the University of Chicago Law School; Floyd Abrams; Susan Prager, Dean of UCLA Law School; and Kenneth Bass III, the Carter Justice Department's special counsel for intelligence policy.

We and Justice are able to generate some speeches or talking points on Biden's three issues on very short notice. More important is the question of when and where preemptive or retaliatory speeches should occur and - in particular - who should give them. I suggest that you consider raising these tactical questions at the Senior Staff meeting this morning.

THE WHITE HOUSE
WASHINGTON

[redacted]

Date: July 15, 1987

TO:
JAY STEPHENS
CHRIS COX
PETER KEISLER
PAT BRYAN
BEN COHEN

FROM: **ARTHUR B. CULVAHOUSE, JR.**
Counsel to the President

FYI: _____

COMMENT: _____

ACTION: _____

[redacted]

[redacted]

With Compliments

For: JBS
CCC
PJC
P. Bryan
B. Cohen

MORRIS I. LEIBMAN

SIDLEY & AUSTIN

ONE FIRST NATIONAL PLAZA
CHICAGO, ILLINOIS 60603

DIRECT LINE: 312/853-7511

Enclosed are some materials which I have collected bearing on the Bork appointment with particular reference to the role of the Senate as an equal partner with the President in passing on the appointment. Consideration and rejection for political or ideological reasons has been considered appropriate since President Washington's nomination of John Rutledge was rejected in 1795 and has continued up to the present date with the rejection of Abe Fortas. Senator Paul Simon, who is opposing the nomination, has said that he thinks the nomination can be stopped in the Senate as it was with Carswell and Haynesworth.

Lawyers whom I have talked to feel that members of the bar should go on record in opposition to this appointment and a Chicago lawyers group tentatively called "Lawyers for a Balanced Supreme Court" is in the process of formation. Please let me know if you would like to join in this effort.

Sincerely,

John E. Clay

Enclosures

CHICAGO TRIBUNE, Wednesday, July 8, 1987

Tribune photo by Steve Hanks

Sen. Paul Simon says he will likely oppose Robert Bork's Supreme Court nomination.

Simon says Bork will be blocked

DES MOINES (AP)—Sen. Paul Simon of Illinois predicted Tuesday that the Senate will block the nomination of Robert Bork to the U.S. Supreme Court and said he is inclined to vote against confirming him.

"Certainly my tilt at this point . . . is to say this man should not be on the court," said Simon, a Democratic presidential candidate who sits on the Judiciary Committee, which is studying the nomination.

President Reagan's nomination of Bork, a federal appeals court judge, caused a furor because the Supreme Court is evenly split between liberal and conservative factions and Bork is a staunch conservative who could tip the balance. Bork would replace Justice Lewis Powell, who will retire.

Confirmation requires a simple majority vote in the Senate, in which Democrats outnumber Republicans 54-46. But Bork's opponents could mount a filibuster to keep the issue from ever coming to a vote, and his supporters would need 60 votes to overcome that tactic.

"I don't think they'll (Bork's supporters) have the votes to stop a filibuster on the floor," Simon said in an interview with Des Moines television station KDSM. "The odds are against approval."

He said Bork was "mentally qualified, no question, academically qualified." But he added, "When you say close-minded, there is a serious question."

"I do not want someone who is a rigid ideologue and this man appears to fit that mold," Simon said. "I haven't made an absolute commitment. I have to say I have very serious reservations about that nomination."

The Senate's Right To Reject Nominees

THE NEW YORK TIMES, FRIDAY, JULY 3, 1987 5.19

By Herman Schwartz

WASHINGTON

Every President tries to shape the United States Supreme Court to realize his special constitutional vision. The Constitution authorizes him, and his oath virtually obliges him, to do so. And this is what President Reagan is trying to do by nominating Judge Robert H. Bork for the Court's latest vacancy.

But the Constitution entitles the President only to try, not necessarily to succeed. The Framers divided the appointment power between the President and the Senate, just as they divided the treaty power. This sharing, which in the late Senator Sam Ervin's words, made "the Senate's role ... plainly equal to that of the President," was one of the many hard-fought compromises that made the Constitution possible.

Accordingly, if a Senator thinks a nominee will undermine his conception of the Constitution, the Senator has exactly the same right and duty as the President to protect his conception. It is not just a question of whether the candidate had high grades in law school or is a good and honorable lawyer. As Chief Justice William H. Rehnquist said almost 30 years ago, a candidate's views of the equal protection and due process clauses are equally important.

That this is precisely what the Framers intended was made clear right from the start and by those who probably knew best — those present at the creation.

On June 29, 1795, John Jay, Chief Justice of the United States, resigned to become Governor of New York. President George Washington offered the Chief Justiceship to South Carolina's John Rutledge, one of the most distinguished lawyers in America. With a popular President behind him, and a Federalist Senate, confirmation should have been easy.

And it would have been but for one thing. The controversial Jay Treaty with England had been ratified by the Senate just a few weeks earlier, and support for the treaty had become a litmus test of true Federalism. Mr. Rutledge, however, had attacked the treaty. Angry Federalist leaders urged the President to drop Mr. Rutledge. The President refused. Nevertheless, the Senate rejected the nominee, 14-10.

Three of the 14 no-votes were signers of the Constitution, including Oliver Ellsworth, a key figure at the Philadelphia convention, familiarly known as the father of the Federal judiciary, and a future Chief Justice himself. He surely knew a Senator's proper constitutional role.

The Rutledge episode is not unique. The Senate has rejected almost 20 percent of Presidential Supreme Court nominees, and an even higher proportion before 1900.

Ideology and politics often played a role in these rejections. In 1968, for example, 19 Republican Senators, including Howard H. Baker Jr. and Strom Thurmond of South Carolina, declared they would vote against President Lyndon B. Johnson's nomination of Abe Fortas as Chief Justice because Mr. Johnson was in his final year of office and they thought a new President — a Republican, they hoped — should be allowed to make that choice.

Equally important in the attack on Mr. Fortas was his liberalism. Conservatives like Sam Ervin of North Carolina, Mr. Thurmond, John L. McClellan of Arkansas and Everett M. Dirksen of Illinois lambasted Mr. Fortas for his views on law enforcement, obscenity, free speech, capital punishment, Federalism and many other issues.

They were constitutionally entitled to do so, whether they acted wisely or not. Constitutional experts of all persuasions agree with Prof. Charles L. Black Jr. of Columbia Law School that "in a world that knows that a man's social philosophy shapes his judicial behavior, that philosophy is a factor in a man's fitness" to be a judge.

Of some 27 rejections or withdrawals under fire, more than one-third were for ideological reasons. James Madison's nomination of Alexander Wolcott in 1811 was rejected, 24-9, because Mr. Wolcott was considered too partisan. James Polk's nomination of George Woodward in 1845 failed, 29-20 (despite a 21-month vacancy on the Court), because of Mr. Woodward's anti-immigrant attitudes.

Similarly, several of Ulysses S. Grant's appointments were turned down for their views on such issues as civil service. A nominee's views on slavery were crucial in at least two instances. In 1930, the Senate rejected Chief Judge John Parker of North Carolina because of antiunion rulings and antiblack remarks.

None of these failed candidacies was challenged for lack of professional or ethical qualifications. In recent years, however, Senators have tended to overlook all but the most extreme ideological aberrations. The very conservative Antonin Scalia and Sandra Day O'Connor were virtually unopposed. No one ever seriously thought that either threatened to subvert the Constitution.

The nomination of Judge Bork poses just such a threat, however. In almost every context — remedies for racial discrimination such as busing and affirmative action, access to the courts, abortion, contraception, women's rights, state neutrality in religion, protection for free expression, constitutional protections for the accused — Judge Bork has condemned the Supreme Court's efforts. His conception of the judicial function as controlled by the original intent of the Framers would keep the Constitution in knee breeches and livery.

President Reagan, of course, shares Judge Bork's views, and that is one powerful reason why he nominated Judge Bork. Others, however, believe that this ideology threatens what Associate Justice Lewis F. Powell Jr. — whose retirement created the vacancy — called the "irreplaceable value" of judicial review in a democratic society: "Protection [for] the constitutional rights and liberties of individual citizens and minority groups."

Each Senator must decide independently whether confirming Judge Bork will preserve that "irreplaceable value." For two centuries, Senators have consistently made such judgments and for good reason — the Constitution demands it.

A history of 'no' to Court appointees.

Herman Schwartz is professor of constitutional law at the American University and editor of a recent book on the Supreme Court under Chief Justice Warren E. Burger.

7/24/87 Y

IN THE NATION | Tom Wicker

Judging Robert Bork

Hundreds of people in an audience at Chautauqua, N.Y., laughed out loud when Attorney General Meese told them President Reagan would apply no ideological test in choosing a replacement for Justice Lewis Powell of the Supreme Court.

Senators considering the nomination of Robert Bork — who in 1973 delivered the hit on Archibald Cox for Richard Nixon — have reason to laugh, too, when they hear advice like that of Daniel Popeo of the conservative Washington Legal Foundation:

"I don't think it's responsible ... if [judicial nominees] are found qualified, that the ideological disagreement with them is the sole basis for saying that they should not sit on the bench."

What rot. Mr. Popeo and other deep thinkers of the right would be singing an entirely different tune if Jimmy Carter were still in office and had nominated a flaming and inflexible liberal to the Supreme Court. (Mr. Carter, unfortunately, had no opportunity to nominate any kind of justice.)

In fact, the flaming and inflexible right did sing a different tune in 1968 when President Johnson nominated Abe Fortas to be Chief Justice. The song was called "Filibuster," it prevented Mr. Fortas's confirmation, and it was orchestrated by the tireless and timeless Strom Thurmond of South Carolina, who's still around to be on the other side this time.

As is his wont, Senator Thurmond put the matter plainly in 1968: Mr. Fortas wouldn't do because he not only was "content with the Court's trend ..." but was "willing to take these trends to further extremes." No doubt he now could say exactly the same thing about Judge Bork — but with intent to *justify* this nomination.

That is precedent enough for any senator to laugh off the self-serving argument of the right that any Reagan nominee with a law degree and no jail record *ipso facto* should be confirmed by a Democratic Senate without regard to ideology. But if precedent isn't enough, here are some other reasons:

- Since Mr. Reagan already has named two associate justices and elevated another to the chief justiceship, and before leaving office will have named more than half of all Federal judges — including such dim lights as Daniel Manion — it can hardly be said that a conservative President has been denied the opportunity to influence the judiciary.
- In giving the Senate the power to confirm or reject a Presidential nomination for what is, after all, a third and co-equal branch of government, the Framers surely had the "original intent" of giving the Senate equal responsibility with the President in determining the Court's membership.
- If, therefore, and despite Mr. Meese's boffo disclaimer, Mr. Reagan has made an unacceptably ideological nomination, members of the Senate so disposed have every right to mount an opposition on ideological grounds.
- That is doubly applicable to this case, because the record shows that Justice Powell was the present Court's "swing man" — an open-minded conservative whose support on some important matters occasionally enabled the Court's liberal bloc to prevail; hence, to replace him with a justice of fixed conservative views might drastically change the nature of the Court and its constitutional rulings.

> The Senate's right to a 'litmus test.'

Why should any senator who would honestly abhor that change acquiesce in it merely because the nominee, like Judge Bork, has otherwise acceptable credentials?

This is not a question of "conservativism" or "liberalism" or even of ideology *per se*. If, for instance, the present Senate were about to consider the name of Lewis Powell, rather than that of his successor, there can be little question that Mr. Powell would and should be confirmed. His conservatism was not so ritual and rigid that it could be feared legitimately that he would do damage to the Constitution as even the most liberal senator might view it.

Is Robert Bork a conservative of such open-mindedness? Or might his accession to the Supreme Court pose an unrelenting threat to the values and beliefs of millions of Americans, represented by something near a majority of the Senate? The Judiciary Committee and the entire Senate are *obligated* to seek the answer — each member arriving at it for him or herself, in accordance with that senator's own view of the Constitution and of judicial responsibility.

CHICAGO MAGAZINE

October, 1985

God Save This Honorable Court: How the Choice of Justices Can Change Our Lives

by Laurence H. Tribe

Random House, $17.95

On ABC-TV's *Nightline* last summer, in a discussion about the United States Supreme Court, Laurence H. Tribe said: "If Ronald Reagan has his way, he may pack the Court with right-wing ideologues who will indeed follow the election returns in a way I think framers [of the Constitution] would be deeply distressed by." He then announced: "I am going to urge the Senate to play its historic role of keeping the Court true to the Constitution and not just to the majority will."

Tribe, who holds the Harvard Law School's chair in constitutional law and has successfully argued many "hopeless cases" before the Supreme Court, deftly presents the basis of his quest in this 167-page book which both attorneys and laymen will find highly readable and fascinating.

Tribe's book comes at a time when the majority of our Supreme Court justices are older than 76. Within a year we will have the oldest Supreme Court in our history. Clearly, there is a very real possibility that President Reagan will have the opportunity to appoint one or more new justices. Tribe is also aware that the prevailing attitude in the Senate, as well as within the general legal community, is that this political body should reject a Presidential nominee to the Federal courts only if the nominee is incompetent or tainted by scandal.

According to Tribe, "picking judges is too important a task to be left to any President; unless the Senate, acting as a continuing body accountable to the nation as a whole, plays an active and thoughtful part — something we have seen it do through much of our history — the way we and our children live and die will be shaped more powerfully by a single official's vision than any electoral mandate on any Tuesday in November could possibly justify."

He also makes the point that "seats on the Court should not be viewed as slots in an American cabinet — as policy making roles .... Unity *within* the executive branch may be essential; unity *between* the two political branches, especially when the issue is the shape and direction of the judiciary, is not."

Most important, Tribe traces the somewhat stormy history of the Senate's rejection on political and ideological grounds of several nominees to the Supreme Court, including one of George Washington's nominees. Using various techniques of voting, stalling, and even temporarily reducing the size of the Court, the senate has rejected one in five nominees to our highest court.

Interestingly, Tribe strengthens the Senate's constitutional power of "advice and consent" by tracing its legislative history. "One of the original drafts of the Constitution envisioned the Congress itself actually electing the Justices," he writes. "And the Constitutional Convention adopted a draft that had the Senate alone choose the members of the Supreme Court. This scheme, in fact, remained in the draft until the final days of the Convention, after the idea of appointment by presidential nomination with Senate consent was twice voted down. Finally, the current provision was accepted as a compromise between those who desired a stronger President and those who envisioned a weaker one."

Tribe also successfully knocks down what he calls "The Myth of the Surprised President": A President may pick a Supreme Court justice because he believes that he or she will decide key cases in a certain way, but once a justice is appointed for life, he or she will act independently. To the contrary, Tribe shows that Presidents almost always got exactly what they wanted in the decisions of the justices they appointed. Even the well-known exceptions, such as "moderate" Eisenhower appointments Earl Warren and William Brennan, who became "liberals" on the Court, or Nixon's appointees who ordered him to turn over the Watergate tapes, are explained. Tribe points out that Warren and Brennan were appointed for political reasons and not after consideration of their judicial philosophies. Nixon chose his justices because of their adherence to "law and order." He never dreamed that he would be before the Court as a lawbreaker.

In fact, Nixon *was* successful in changing the Court to fit his philosophy. According to a recent statistical study of Supreme Court decisions by Geoffrey Stone, a professor of constitutional law at the University of Chicago, in 1963 the Warren Court upheld constitutional claims in 86 percent of its decisions, but, by the time the Nixon appointees had settled in, the Burger Court upheld such claims in only 50 percent of its cases.

Even President Reagan, with only one appointment so far, has had great impact, according to both Stone and Tribe. Stone's statistics show that the replacement of "moderate" Justice Potter Stewart with "conservative" Sandra Day O'Connor has resulted in constitutional claims being upheld in only 19 percent of the cases in the 1983-84 session. This represents a complete reversal of the record of the Warren Court in only 20 years.

In his Presidential campaign, Walter Mondale made the charge that if Reagan were re-elected, the Reverend Jerry Falwell and

The New York Times

Founded in 1851

ADOLPH S. OCHS, *Publisher 1896-1935*
ARTHUR HAYS SULZBERGER, *Publisher 1935-1961*
ORVIL E. DRYFOOS, *Publisher 1961-1963*

Judge Bork, the Senate and Politics

There's no getting politics out of a nomination to the Supreme Court. Political justice and a politicized judiciary are to be avoided, but picking a justice is a political act. That's why President Reagan's nomination of Judge Robert Bork will test the Senate. It has not only a right but a duty to scrutinize Judge Bork's philosophy every bit as carefully as his credentials.

Presidents usually get their way with cabinet nominations and should. They are entitled to the assistance in the executive branch of people they trust and respect. But the Supreme Court is different. It's a separate branch of government, and the Senate's advice and consent is an integral part of the appointment process. Howard Baker, Mr. Reagan's chief of staff, acknowledges that sensibly when he says, "The President looks at this as a partnership venture between the executive branch and the Senate."

Just as a President reflects his political values by whom he nominates, the Senate needs to reflect its political values by whom it approves. The Supreme Court may follow the election returns; the fate of Supreme Court nominations surely does. The relevant elections are not only those of 1980 and 1984, when the operative word was landslide. The 1986 election put Democrats in control of the Senate and made the operative word lame duck.

When the very conservative Justice William Rehnquist was promoted to Chief Justice a year ago and Justice Antonin Scalia appointed and confirmed, the President was riding high. The Republicans not only controlled the Senate but also controlled the pace of Judiciary Committee proceedings. Now Mr. Reagan has not only lost control of the Senate but also public trust. Attorney General Meese, his prime counselor on judicial appointments, is under several investigations.

Meanwhile, the Supreme Court remains gingerly balanced on matters of civil rights, church-state relations and personal liberty, including a woman's right to choose abortion. One vote on the Court could make as big a difference on such issues as a change of President or control of Congress.

Robert Bork is a lawyer and judge of formidable intellect. His wit and charm made him a hit with Yale law students of all philosophical persuasions. As a member of the United States Court of Appeals in Washington, he has conspicuously shared Reagan Administration views on major legal issues.

Only a rigorous confirmation process, including careful review of his extensive written record and testimony from supporters and opponents, can determine whether his strengths, and views, qualify him. The Senate will need to inquire particularly into Judge Bork's illegal 1973 firing of Archibald Cox, the special Watergate prosecutor, notwithstanding the exoneration now offered by former Attorney General Elliot Richardson.

A President possesses no celestial or constitutional mandate to impose his political views on a whole branch of government for a decade or more. The Senate labors under no duty to accept even a capable nominee whose views it disagrees with, whether alone or taken together with those of other members of the Court.

Beyond partisanship, the Senate's constitutional and political duty is to examine and cross-examine this nominee with care and courtesy, inspecting his record thoroughly and deciding fairly whether it agrees with Mr. Reagan that Judge Bork is suited for this seat at this moment in history.

THE NEW YORK TIMES, TUESDAY, JULY 7, 1987

How to Judge Judge Bork

Americans hold the Supreme Court in such reverence that they are sometimes persuaded, haplessly, to try taking the politics out of politics. As President Reagan's nomination of Judge Robert Bork to the Court reverberates, it becomes clear that this is such a time.

The white marble and black robes radiate a virtue that transcends partisanship. That's exactly as it should be; Federal judges receive lifetime appointments in order to be free of any partisan debt or duty. Their unencumbered freedom to decide cases is, however, distinctly different from how the Senate should decide which nominees to approve for the Court.

As the history of Reagan nominations illustrates, that is a political question, properly and always. To claim that it is improper to examine a nominee's philosophical positions misses the point. The wholly proper test is to discover and weigh what those positions are.

•

Ronald Reagan pledged to change the Supreme Court's philosophy. At his early heights of popularity he filled his first vacancy with Sandra Day O'Connor, the first woman Justice. Nominated just six years ago today, she sailed through three days of hearings and was confirmed a week before the Court's fall term, unanimously.

Mr. Reagan won in 1984 by a landslide, but the 1986 elevation of William Rehnquist to Chief Justice met increased resistance from a Republican Senate, even though the companion appointment of Antonin Scalia brought little net change in the Court's outlook. This time there were four days of quarrelsome hearings, and the Senate eventually approved the promotion only by a vote of 65 to 33, seven more negative votes than any justice in history had received.

Now, the politics have changed dramatically. The Senate is controlled by the Democrats. The President's popularity has plummeted. And Judge Bork's extensive record as a lawyer, teacher, government official and member of the Court of Appeals strongly suggests that he would change the Court's delicate balance.

Is that a legitimate focus of concern? Yes; philosophy is every bit as relevant for the Senate as for the President who nominated him. For people who think of themselves as progressive on social issues, that record is not reassuring.

Senators may legitimately try to elicit whether his hostility to the 1973 abortion decision will influence Judge Bork to vote to overturn it. More particularly the Senate may inquire whether related decisions are in jeopardy. One is the 1965 ruling that Connecticut's ban on contraceptives was unconstitutional as applied to married couples. That decision set forth principles of privacy and personal liberty that Judge Bork has criticized because he can't find them in the text of the Constitution.

Of high interest also is how much the nominee's views about free speech and press have changed. In 1971 he wrote that the First Amendment protected primarily political speech from Government suppression. What kind of a country would this be if artistic expression were held to lack Bill of Rights safeguards?

Justice Rehnquist was alone, just two years ago, in arguing that the ban on establishing religion prevents only one thing: government sponsorship of a church. Now Justice Scalia announces his agreement — and Robert Bork might thus provide a third vote to overturn numerous decisions against state-sponsored school prayer.

The current controversy over independent prosecutors to investigate the Reagan Administration magnifies questions about Robert Bork's dismissal of the special Watergate prosecutor Archibald Cox in 1973. He carried out President Nixon's order despite Justice Department rules that had the force of law. Judge Bork later explained that he was free to carry out the order because only his superiors had personally promised not to do such a thing absent "extraordinary improprieties."

Are executive officials thus free to ignore commitments of law and honor? These and other questions warrant full Senate attention. Questions that might have been answered one way in 1973 or even 1986 may be answered differently this year. The Court's balance is different; the Senate is different; the politics are different.

That Old Brilliance Again

Once again Messrs. Reagan and Meese are working the old brilliant-mind scam on the Senate. Last time they used it the aim was to get Justice Rehnquist the title of Chief Justice of the United States. Now the beneficiary is to be Judge Robert Bork, possessor of a mind so brilliant, we are told, that no one who loves justice can decently oppose putting him on the Supreme Court.

Brilliance, of course, has little to do with what's going on. What Messrs. Reagan and Meese are up to is exorcising the ghost of Earl Warren, which has given them fits for 30 years.

There is a big part of their constituency that still remembers saluting "Impeach Earl Warren" billboards up and down the country. For most of the Reagan years, however, this group has got short shrift from the White House.

This was because the Administration's first priorities were to shake the money tree for the well-to-do and beef up the Pentagon. That didn't leave much time, energy or political capital to spend on undoing Earl Warren via Congressional action.

In any case Congress had little desire to reverse 30 years of Supreme Court history which had profoundly changed the nature of the United States. Congressmen tend to be more conservative than California politicians like Messrs. Meese and Reagan. This is because Congressmen like to get re-elected, something that can fail to happen to Congressmen who want drastic changes in the world's daily routine.

Reagan and Meese work their scam.

The Reagan alternative was to pounce whenever it saw opportunities to station righties on the Court. This is doubtless what Messrs. Meese and Reagan would tell you they're up to if you could question them under truth serum. And what's wrong with that?

Campaigning Presidential candidates commonly discuss the Court and the kind of justices they will appoint if elected. Mr. Reagan has always let everybody know that, given the chance, he would exult in creating a court to reverse the decisions of the past 30 years.

In short, that he would appoint justices who were in ideological agreement with him. When appointment time rolls around, however, the very mention of ideology is met with offended protests, and not only from the President's stewards.

Please, let no one be so boorish as to think the President of the United States would for one instant consider such a thing as — odious word! — ideology when choosing judges for the highest court in the land. Nor will the Democratic Party demean its great history by opposing a nominee on ideological grounds. And so on until the rubes fall for it.

To divert us the public from the wholesome reality of what ought to be a good, healthy political brawl, we are given a lot of malarkey about the brilliance of the nominee. Justice Sandra O'Connor escaped this humiliation, but the other Reagan appointees received no mercy.

Justice Rehnquist's brilliant mind was discussed ad infinitum after he was put up for promotion to Chief Justice. Antonin Scalia, nominated at the same time to fill a vacancy, had his brilliant mind praised by everyone from newspaper columnists to Washington cab drivers.

Judge Scalia wasn't so much confirmed as graduated onto the Court maxima cum lauda. Any senator who may have suspected Edwin Meese's real intent was not to elevate the Supreme Court's I.Q. but to drive a stake through the heart of the Warren Court was kept too busy applauding Judge Scalia's brilliance to mention it.

Now it is the brilliance of Judge Bork's mind that is everywhere marveled at. This time there are senators, Democrats, who say yes, brilliant mind perhaps, but it's time to talk ideology: Meese-Reaganism may have won by a landslide in 1984, but this is 1987 and last year it was Democrats who won.

In short, they threaten to commit bad taste by turning the Bork nomination into a political debate about what kind of government the country wants after Messrs. Reagan and Meese go home.

That would be healthy and valuable if there were great senators to lead the debate for both sides, but that is a daydreamer's if. Most senators nowadays are just people with too much money who know how to give socko performances in TV commercials.

This makes it probable that Judge Bork, instead of being the source of a great debate, will probably have to endure months of casual torment by people with cameras on their minds. That's democracy, judge. Heaven bless it, if you'll excuse the merger of state and Paradise.

JUSTICE DELAYED IS JUSTICE DENIED

Waiting For Senate Democrats to Render Advice and Consent

- When President Reagan nominated Judge Bork to the Supreme Court on July 1, the President took note of Justice Powell's belief that the courts should not be hampered by operating at less than full strength. That is why the President urged "the Senate to expedite its consideration of Judge Bork so the Court will have nine Justices when its October term begins. And I have every expectation that it will do so."

- The American people want and deserve a government that is fair, efficient and effective in carrying out the duties only government can perform.

- In the Nation's courts, where the rights of the people are at issue, justice delayed is justice denied to every American. Where the Senate deliberately delays confirmation hearings, it denies everyone the justice the Constitution guarantees. As Justice Powell put it, when the Court was not at full strength, as it was not during his illnesses, it "created problems for the court and for litigants."

- In the past 25 years, the number of cases before Federal courts increased fourfold, and the judiciary itself -- judges, law clerks, and administrative personnel -- more than doubled. In the 10 years between 1976 and 1986, the number of cases filed in the District Courts and in the Courts of Appeals increased by 74 percent -- from 190,025 cases in 1976 to 330,610 in 1986. As of March 31, 1987, more than 243,000 cases had been filed in the Nation's Federal District courts but had not yet been decided.

- The number of cases going to the Supreme Court increased steadily from 2,296 cases in 1960 to 4,289 in 1985.

Legislative Delays

- Since January 1987, the Senate Judiciary Committee has failed to seek timely hearings of judicial nominees.

  -- Between 1985 and 1986, the Judiciary Committee took an average of only 3 weeks to begin confirmation hearings after the President announced his nomination.

  -- Between 1979 and 1980, the last years of the Carter Administration, the Judiciary Committee took an average of 6 1/2 weeks to begin hearings.

  -- Thus far in 1987, it is taking the Senate Judiciary Committee an average of nine weeks to arrange confirmation hearings on judicial nominees.

- In the case of Judge Bork, the Democrat leadership of the Senate Judiciary Committee waited until September 15, almost 11 weeks after President Reagan announced the nomination, to begin hearings. That makes it virtually inevitable that the Court will open its next session on October 5 with fewer justices than the law requires.

- The efficiency of the entire judicial process has been undermined by excessive, needless, and openly partisan delaying tactics.

  -- In 1985, 32.8 days elapsed between the time the President nominated a U.S. attorney or U.S. marshal and hearings began.

  -- As of June 10, 1987, it was taking an average of 62 days for hearings to begin. Thirteen nominations have been pending for more than 3 months. And the reappointment of the Nation's first female marshal has been delayed since January 2.

  -- Thus far in 1987, 21 of the President's 39 nominees to the Nation's lower courts are still waiting for the Judiciary Committee to hold confirmation hearings.

The President's Nominees

President Reagan's nomination of Judge Bork to the Supreme Court, like the President's 314 appointees to Federal courts, have kept faith with the standard laid down by Alexander Hamilton in The Federalist papers:

> ". . . one man of discernment is better fitted to analyze and estimate the peculiar qualities adapted to particular offices, than a body of men of equal or perhaps even of superior discernment.
>
> "The sole and undivided responsibility of one man will naturally beget a livelier sense of duty and a more exact regard to reputation. He will, on this account, feel himself under stronger obligations, and more interested to investigate with care the qualities requisite to the stations to be filled, and to prefer with impartiality the persons who may have the fairest pretensions to them. He will have fewer personal attachements to gratify, than a body of men who may each be supposed to have an equal number; and will so much the less liable to be misled by the sentiments of friendship and of affection. A single well-directed man, by a single understanding, cannot be distracted and warped by that diversity of views, feelings and interests, which frequently distract and warp the resolutions of a collective body."

WHITE HOUSE TALKING POINTS

- As of July 1987, President Reagan appointed 314 judges to the Federal courts under Article III of the Constitution. That is 41 percent of the 762 sitting judges.
  - -- By the end of his term, President Eisenhower had appointed 61 percent of the Federal judges.
  - -- President Roosevelt appointed 77 percent of the judges.
  - -- President Wilson appointed 50 percent.
- President Reagan's nominees have been uniquely well qualified and the data confirm that. For 311 appointments to the lower courts, the ABA produced these ratings of President Reagan's appointees:
  - -- Exceptionally well qualified -- 24
  - -- Well Qualified -- 134
  - -- Qualified -- 153
  - -- Not Qualified -- 0
- President Reagan's appointees compare favorably with those of his predecessor.
  - -- A higher proportion of Reagan judicial appointees received the highest possible rating by the American Bar Association than did Carter appointees.
  - -- No Reagan appointee has been rated "Not Qualfified" by the ABA.
  - -- Three Carter appointees were rated Not Qualified and received rubber-stamp confirmation by a Democrat-controlled Senate. One Carter nominee was impeached.

THE CONSTITUTIONAL TRADITION AND THE ROLE OF JUDGES

> "Judges ought to remember that their office is jus dicere, and not jus dare, to interpret law, and not to make law, or give law."
>
> -- Francis Bacon
> 17th century English lawyer

> "It can be of no weight to say that the courts, on the pretence of a repugnancy, may substitute their own pleasure to the constitutional intentions of the legislature. . . . The courts must declare the sense of the law; and if they should be disposed to exercise WILL instead of JUDGMENT, the consequence would equally be of the substitution of their pleasure to that of the legislative body."
>
> -- Alexander Hamilton
> The Federalist No. 78

The authority of judges to interpret law, but not make law, lies at the heart of the American constitutional system. Our Founding Fathers insisted that the powers be separated between three branches of government. The distinction between the judiciary and the legislature was especially crucial.

- At the Philadelphia Convention, South Carolina delegate Charles Pinckney "opposed the interference of the Judges in the legislative business."

- Rufus King of Massachusetts joined Pinckney in his opposition to a blending of the two powers: "Judges must interpret the Laws, they ought not be legislators."

- And Roger Sherman of Connecticut "disapproved of Judges meddling in politics and parties."

- It is just as important for judges to be judges and not legislators in 1987 as it was in 1787. When members of the Federal judiciary -- who are unelected, unaccountable to the people, and who serve for life -- step over the judicial boundary line and start making law, they usurp the basic tenet of our constitutional system -- government by the consent of the governed. It is a form of tyranny for which there is no redress.

- Historically, critics of the Nation's courts -- both liberals and conservatives -- have objected to the tendency of some judges to make decisions on issues that are not properly within the scope of their authority. This phenomenon is called "judicial activism" and it is the excuse for those judges who would interpret the Constitution, or ignore it, according to their personal and private values. It amounts to what one scholar called "extra-constitutional judicial review."

- This adventurism is authorized by neither the Constitution, statute law, nor case law. In fact, the Constitution itself is legally supreme because it was ordained by the will of a sovereign people. As Chief Justice John Marshall put it, the Constitution was "established by the people themselves."

- Justice Frankfurter argued against what is now called judicial activism: "It is not for the Court to fashion a wholly novel constitutional doctrine. . . in the teeth of an unbroken judicial history from the foundation of the Nation."

- Legal scholar Raoul Berger noted that when the Court substitutes "its own value choices for those embodied in the Constitution [it] violates the basic principle of government by consent of the governed."

Justice Bork on The Role of Judges

During his 1982 confirmation hearings to be a U.S. circuit court judge for the District of Columbia Court of Appeals, Judge Bork was asked about the term "judicial activism."

> JUDGE BORK: "I think what we are driving at is something that I prefer to call judicial imperialism. . . . I think a court should be active in protecting those rights which the Constitution spells out. Judicial imperialism is really activism that has gone too far and has lost its roots in the Constitution or in the statutes being interpreted. When a court becomes that active or that imperialistic, then I think it engages in judicial legislation, and that seems to me inconsistent with the democratic form of Government that we have. . . .
>
> "In our time . . . by that I mean in the era of roughly 1955 or 1960 onward [to 1982] -- courts have been active or imperialistic in what is loosely referred to as a liberal direction, an egalitarian direction. Prior to 1936 or 1937, the Court was imperialistic or active in a conservative direction. I think both of those are equally improper."

In response to other questions during his 1982 confirmation hearing, Justice Bork expanded on his view of the role of a judge:

"One of the ways of construing the Constitution, as Chief Justice Marshall showed us so well in McCulloch v. Maryland, is to argue from its structure; What is the necessity of Government? Would the framers have done something that led to results like this?"

"I have long been opposed to judges who write their own views into the law rather than what they think, on the basis of principled interpretation, the law is."

"I think the value of precedent and of certainty and of continuity in the law 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."

". . . to be a good judge is to be obedient to precedent as it stands."

WHITE HOUSE TALKING POINTS

THE PRESIDENT'S NOMINEE TO THE SUPREME COURT ROBERT BORK

Overview

- On July 1, the President nominated Judge Robert Bork to replace retiring Justice Lewis Powell on the Supreme Court. Judge Bork has served great distinction on the U.S. Court of Appeals of the District of Columbia since 1982, when he was rated by the American Bar Association as "exceptionally well qualified" and confirmed with unanimous approval of the Senate.

> Mr. Bork...is a legal scholar of distinction and principle...Differences of philosophy are what the 1980 election was about; Robert Bork is, given President Reagan's philosophy, a natural choice for an important judicial vacancy.
>
> New York Times editorial, 1981

- There is a unanimous bi-partisan consensus that Judge Bork is an outstanding intellectual and legal scholar and a premier Constitutional authority. In 152 opinions from the D.C. Circuit, a Bork/majority opinion has never been overturned.

- As demonstrated in his decisions on the D.C. Circuit, Judge Bork is a mainstream jurist. When Judge Bork took his seat on the D.C. Circuit, 8 of the 10 other Judges on the bench were Democrats. Nevertheless, in five years on that court, Judge Bork has written only 9 dissenting opinions.

- Political views are not the issue here as already declared Democrats oponents have charged. The issue is whether the Judges and the Courts are called upon by the Constitution to rule upon laws passed by the Congress and the states -- the "Constructionist view" -- or whether judges and the courts should write orders and opinions that expand current laws or in effect write new laws -- the "Activist" view.

- Judge Bork believes that the Constitution leaves law writing up to legislative bodies and rulings upon those laws up the Judiciary. Bork opponents attack this view as conservative. Ironically, some in the media call it liberal, because it would let stand laws passed by legislatures of the last several decades instead of turning them back under an "activist" banner ascribed to the "Conservative movement."

- After 200 years of Constitutional precedent calling for an independant Judiciary, Democrats now insist that a political test is required for admission to the Supreme Court.

- The Supreme Court should have its full nine-member complement when it begins its October term. Unwarrented delays in hearings and confirmation proceedings will not serve justice.

WHITE HOUSE TALKING POINTS

BORK QUALIFICATIONS

Any of Judge Robert Bork's four positions in private practice, academia, the Executive Branch and the Judiciary would have been the high point of a brilliant career, but he managed all of them. As The New York Times stated in 1981, "Mr. Bork is a legal scholar of distinction and principle."

- Professor at Yale Law School for 15 years; holder of two endowed chairs; graduate of the University of Chicago Law School, Phi Beta Kappa and managing editor of the Law Review.
- ~~Arguably~~ One of the nation's foremost authority in on antitrust law and constitutional law. Author of dozens of scholarly articles, including The Antitrust Paradox, the leading work on antitrust law.
- Experienced practitioner and partner at Kirkland & Ellis.
- Solicitor General of the United States, 1973-77, representing the United States before the Supreme Court in hundreds of cases.
- Unanimously confirmed for the D.C. Circuit in 1982, after receiving the ABA's highest rating -- "exceptionally well qualified" -- which is given to only a handful of judicial nominees each year.
- No appellate judge in America has had a finer record on the bench: not one of his 152 majority opinions has been reversed by the Supreme Court.

WHITE HOUSE TALKING POINTS

BORK JUDICIAL PHILOSOPHY

> "...only by limiting themselves to the historic intentions underlying each clause of the Constitution can judges avoid becoming legislators, avoid enforcing their own moral predilections, and ensure that the Constitution is law."
>
> -- Robert Bork
> ~~San Diego Law Review~~, 1986

Judge Bork has spent more than a quarter of a century developing a powerful and cogent philosophy of law.

- o He is not a political judge: He has repeatedly criticized politicial, "result-oriented" jurisprudence of either conservative or liberal philosphies.

- o He has repeatedly rebuked academics and commentators who have urged conservative manipulation of the judicial process as a response to liberal judicial activism. He wants to get the courts out of the policy business -- not to make conservative policy.

- o He believes in neutral, text-based readings of the Constitution, statutes and cases. His expansive First Amendment and sex-discrimination jurisprudence and his opposition to jurisdiction-stripping legislation and to the Human Life Bill testify to his even-handedness and intellectual integrity.

- o He believes that it is the "task of the judge in this generation to discern how the framers' values, defined in the context of the world they knew, apply to the world we know."

The Role of "Precedent" -- No Radical Shifts in Policy

- o He believes in abiding by precedent: He testified in 1982 regarding the role of precedent within the Supreme Court:

> I think 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.

He also has said that even questionable prior precedent ought not be overturned when it has become part of the political fabric of the nation. He was hissed at a meeting of the conservative Federalist Society recently for making this point.

WHITE HOUSE TALKING POINTS

- Robert Bork is the best sort of judge for alll Americans. Neither liberals nor conservatives ought rely on unelected branchs of government to advance their agendas. Judge Bork believes that there is a presumption favoring democratic decision making, and he has demonstrated deference to liberal and conservative laws alike.

- As The New York Times said in endorsing his nomination to our most important appellate court in 1981:

> Mr. Bork...is a legal scholar of distinction and principle...One may differ heatedly from him on specific issues like abortion, but those are differences of philosophy, not principle. Differences of philosophy are what the 1980 election was about; Robert Bork is, given President Reagan's philosophy, a natural choice for an important judicial vacancy.
>
> -- New York Times, 12/10/81

WHITE HOUSE TALKING POINTS

"BALANCE" OR POLITICAL LITMUS TEST?

In America's 200 year Constitutional history there is no historical or constitutional basis for meauring the political makeup of the Supreme Court. Franklin Roosevelt appointed 8 out of 9 Supreme Court Justices. Why now, in June 1987, has a purely political standard been established by liberals, to which all future Courts must be held? (a very few)

- The Senate has always tried to look to the nominee's merits -- even when they have disagreed about them.

- No such standards were used to evaluate FDR's eight nominations to the Court in six years or LBJ's nominees to the Warren Court.

- No nominee in modern times has ever been rejected for any reason other than perceived personal inadequacies like alleged financial misconduct or racism (Parker, Fortas, Haynesworth, Carswell).

A Political Test Ends the Independance of America's Judiciary

The Constitutional reason for this is clear: If the Senate tried to preserve the narrow balances of the present court on, e.g., the death penalty or abortion, it would destroy the constitutionally-guaranteed independence of the Supreme Court.

- The Senate would have to interrogate any prospective nominee on his position regarding abortion, the death penalty, and dozens of other cases. This could completely politicize judicial selection.

  Senator Kennedy has, at times, agreed:

  "Supreme Court nominees...have properly refused to answer question put to them by the Senate which would require the nominee prematurely to state his opinion on a specific case likely to come before him on the bench."

If nominees are held hostage until they sign politcal promissory notes for future decisions, the nomination process will be paralyzed, and the Court and American justice will be crippled.

~~If other Presidents had agreed to "change in time"~~ denying us decisions such as Brown v. Board of Education

- ~~Freezing it at one time~~ the ideological balance of the Court, would ~~have~~

~~Freezing it at one time~~ If the "balance" test had been applied to past (static) nominations, the ideology of ~~the~~ Dred Scott and Plessy v. Ferguson would have been frozen

WHITE HOUSE TALKING POINTS

BORK AND THE FIRST AMENDMENT

During his five years on the bench, Judge Bork has been one of the judiciary's most vigorous defenders of First Amendment values. He has taken issue with his colleagues, and reversed lower courts, in order to defend aggressively the rights of free speech and a free press. Examples:

- In Ollman v. Evans and Novak, Judge Bork greatly expanded the constitutional protections accorded journalists facing libel suits for political commentary. Judge Bork expressed his concern that a recent and dramatic upsurge in high-dollar libel suits threatened to chill and intimidate the American press, and held that those considerations required an expansive view of First Amendment protection against such suits. Judge Bork justified his decision as completely consistent with

  > "a judicial tradition of a continuing evolution of doctrine to serve the central purpose" of the First Amendment.

  Judge Bork's decision provoked a sharp dissent from Judge Scalia and was praised as "extraordinarily thoughtful" in a New York Times column authored by Anthony Lewis. Lewis further described the opinion as "too rich" to be adequately summarized in his column. Libel lawyer Bruce Sanford said, "There hasn't been an opinion more favorable to the press in a decade."

- In Lebron v. Washington Metropolitan Area Transit Authority, Judge Bork reversed a lower court and held that an individual protestor had been unconstitutionally denied the right to display a poster mocking President Reagan in the Washington subway system. Judge Bork characterized the government's action in this case as a "prior restraint," one which bore a "presumption of unconstitutionality." Its decision to deny its space, Judge Bork said, was "an attempt at censorship," and he therefore struck it down.

- Judge Bork would be a powerful ally of First Amendment values on the Supreme Court. His conservative reputation and formidable powers of persuasion would provide critical support to the American tradition of a free press.

Judge Bork has been criticized for once suggesting (in 1971) that the First Amendment is principally concerned with protecting political speech. Judge Bork made his position on this issue clear in a letter to the ABA Journal -- the underlying purpose of the First Amendment is to establish an open and robust public, political debate; but nonpolitical speech feeds that debate through the expression of moral, scientific and cultural values.

Judge Bork has been criticized for once suggesting (in 1971) that the First Amendment is principally concerned with protecting political speech. Judge Bork made his position on this issue clear in a letter to the ABA Journal -- the underlying purpose of the First Amendment is to establish an open and robust public, political debate; but nonpolitical speech feeds that debate through the expression of moral, scientific and cultural values.

> "[Judge Bork is seen by some as]...the best that might have been expected of the Reagan administration on media law issues."
>
> -- Jane Kirtley, Director
> Reporters Committee for Freedeom
> of the Press

Bork Excerpts from Ollman v. Evans and Novak, 1984

> "The law of the First Amendment must not try to make public dispute safe and comfortable for all the participants. That would only stifle the debate."
>
> "This case...arouses concern that a freshening stream of libel actions, which often seems as much designed to punish writers and publications as to recover damages for real injuries, may threaten the public and constitutional interest in free, and frequently rough, discussion. Those who step into areas of public dispute, who choose the pleasures and distractions of controversy, must be willing to bear criticism, disparagement, and even wounding assessments..."
>
> "Perhaps the framers did not envision libel actions as a major threat to that freedom [of political expression]... But if. over time, the libel action becomes a threat to the central meaning of the First Amendment, why should not judges adapt their doctrines."
>
> "The American press is extraordinarily free and vigorous, as it should be. It should be, not because it is free of innaccuracy, oversimplification and bias, but because the alternative to that freedom is worse than those failings. Yet the area in which legal doctrine is currently least adequate to preserve press freedom is the area of defamation law..."

BORK AND CIVIL RIGHTS

As a member for five years of the United States Court of Appeals, Judge Bork voted to vindicate the rights of plaintiffs claiming race and sex discrimination, frequently reversing lower courts in order to do so. Examples:

- In Ososky v. Wick, he voted to reverse the district court and held that the Equal Pay Act applies to the Foreign Service's merit system;

- In Doe v. Weinberger, he voted to reverse the district court and held that an individual discharged from the National Security Agency for his homosexuality had been illegally denied a right to a hearing;

- In Palmer v. Shultz, he voted to vacate the district court's grant of summary judgment to the government and held for a group of female foreign service officers alleging State Department discrimination in assignment and promotion;

- In County Council of Sumter County, South Carolina v. United States, Judge Bork rejected a South Carolina county's claim that its switch to an "at-large" election system did not require preclearance from the Attorney General under the Voting Rights Act. He later held that the County had failed to prove that its new system had "neither the purpose nor effect of denying or abridging the right of black South Carolinians to vote";

- In Norris v. District of Columbia, Judge Bork voted to reverse a district court in a jail inmate's Section 1983 suit against four guards who allegedly had assaulted him. Judge Bork rejected the district court's reasoning that absent permanent injuries the lawsuit must be dismissed; the lawsuit was thus reinstated.

- In Laffey v. Northwest Airlines, Judge Bork affirmed a lower court decision which found that Northwest Airlines had discriminated against its female employees.

Affirmative Action

Judge Bork has never presided over a case involving an affirmative action plan. While a law professor, he wrote an op-ed piece in 1979 for The Wall Street Journal in which he criticized the Bakke decision. Since then, however, the Supreme Court has issued many other decisions reaffirming the general constitutionality of affirmative action. That principle was not settled law in 1979; it is now, and Judge Bork has never indicated or suggested that he believes this line of cases should be overruled.

WHITE HOUSE TALKING POINTS

In 1963 Bork wrote an article in the New Republic criticizing a proposal to outlaw discrimination in public accommodations like restaurants or hotels. (This proposal eventually became part of the Civil Rights Act.) He claimed at the time that there was a significant distinction between discrimination imposed by law and discrimination practiced by private individuals.

This 25-year old article cannot fairly be used to criticize Bork's nomination.

- o Ten years later, Fourteen years ago, [illegible] at his confirmation hearings for the position of Solicitor General, Bork repudiated the article:

  I should say that I no longer agree with that article...It seems to me I was on the wrong track altogether. It was my first attempt to write in that field. It seems to me the statute has worked very well and I do not see any problem with the statute, and were that to be proposed today, I would support it.

- o His article did not discuss legal issues or the Constitution -- it was purely abstract libertarian political philosophy and has no bearing on his views of the Civil Rights Act or the Constitution.

- o His The article itself, like his subsequent career, makes clear his abhorrence of racism: "Of the ugliness of racial discrimination there need be no argument."

- o The article, well known during his confirmation proceedings in 1982, was not even raised did give a single Senator cause for concern during his unanimous confirmation to the D.C. Circuit.

WHITE HOUSE TALKING POINTS

SELECTED QUOTES ON ROBERT BORK AND JUDICIAL NOMINATIONS

Sen. Joseph Biden, Chairman, Senate Judiciary Committee

"[I]t has been understood since the founding of this republic that it is totally improper for a president to set pre-conditions before making a nomination. For the same reason, the Senate must not apply litmus tests of its own. No party to the process of naming federal judges has any business attempting to foreclose upon the future decisions of the nominees."

Congressional Record
6/6/86

"The Constitution says the President obviously has a right to choose whomever he wishes; conversely, it also indicates that the United States Senate has equally as much right to insist upon ideological purity as the President does."

Face the Nation, 6/28/87

"Say the adminstration sends up Bork, and after our investigation he looks a lot like Scalia. I'd have to vote for him, and if the (pressure) groups tear me apart, that's the medicine I'll have to take. I'm not Teddy Kennedy. That kind of vote may turn out to be a liability for the presidential nomination process. . . . "

Philadelphia Inquirer
November 16, 1986

"If Judge Bork were to replace Judge Rehnquist or to replace Judge Scalia, I would have no problem replacing him; he's a brilliant man . . . ideologically somewhat rigid--but there is a need and a place for a Bork on the bench and a Scalia on the bench. But it does not mean that there should be six or seven or eight or even five Borks."

Face the Nation, 6/28/87

"I frankly do not know how we could approve any Members of the U.S. Senate, U.S. Congress, a member of any legislative body, or anyone who has ever served in a policy decision, who has taken a position on any issue, if the rationale for disqualifying you is that you have taken strong positions. That is certainly not proof of your inability to be objective and avoid being a policymaker on the bench. If we take that attitude, we fundamentally change the basis on which we consider the appointment of persons to the bench."

July 12, 1979

WHITE HOUSE TALKING POINTS

Sen. Edward Kennedy

"If strong political views were a disqualifying factor from serving on the Federal bench, then all of us here today -- and every man and woman who has ever served in either House of Congress, or held a political office -- would be disqualified... In my judgement, such a rule makes no sense at all."

Congressional Record, 9/25/79

Sen. Paul Simon

"The danger in applying a more ideological standard is that the Senate should not be the abuser of ideological rigidities any more than the president should be."

in "The Senate's role in judicial appointments"
Judicature, June-July 1986

Sen. Max Baucus

"...I want to congratulate the president on his nomination of you (Judge Bork). I think there is no doubt that you are eminently qualified to serve in the position to which you have been nominated. There is no doubt in my mind that you will be confirmed, and I hope very quickly and expeditiously."

January 27, 1982

Sen. Howard Metzenbaum

"I am familiar with your (Judge Bork's) views with respect to antitrust legislation, antitrust enforcement, and you and I are totally in disagreement on that subject. However, as I said at the time Justice (Sandra Day) O'Connor was up for confirmation, the fact that my views might differ from hers on any one of a number of different issues would not in any way affect my judgment as pertains to confirmation or failure to confirm a member of the judiciary."

January 27, 1982

Fleishmen-
Hillard -
Connecticut

Aetna
659-0330

986-0093

THE WHITE HOUSE

Chris,
FYI. These have gone to Leslye

T. Gibson

UNITED STATES DEPARTMENT OF EDUCATION
PUBLIC AFFAIRS

OFFICE OF THE DIRECTOR

July 16, 1987

MEMORANDUM

TO : Nikki Rickett
Associate Director of Public Affairs
The White House

FROM : Marion Blakey MCB
Director of Public Affairs

As we discussed by telephone, I am attaching a list of names of educators and academics who could be advocates of Judge Bork's nomination. I have placed an asterisk by the names of those we are confident will be supportive; other names are included of those who might be helpful (and in most cases are likely to be), but we do not know their position. In most cases I have not provided full addresses but would be happy to do so if needed.

400 MARYLAND AVE., S.W., WASHINGTON, D.C. 20202
(202) 732-3026

* Griffin Bell

* Denis Doyle
Hudson Institute
Alexandria, Virginia

Bill Pierce
Hudson Institute
Alexandria, Virginia

Tom Shannon
National School Boards Association

* Herb London
New York University

* Lowell Harriss
Emeritus, Columbia

* Joe Adelson
University of Michigan

* Whitfield Myers
University of South Carolina

* Richard Baer
Cornell University

Bruce Cooper
Fordham University

* Theodore Black
Chancellor Emeritus
NY Board of Regents

* Reg MacDonald
Superentendent
South Portland Public Schools
South Portland, Maine 04106

Henry Cotten
Cherry Creek High School
9300 East Union Avenue
Englewood, Coloroado 80111

Harry Galinski
Paramus Board of Education
145 Spring Valley Road
Paramus, New Jersey 07652

* James Bloomstein
Vanderbilt Law School

* Walter Berns
Georgetown University and
American Enterprise Institute

* Linus Wright
Superentendent
Dallas Public Schools

* Ed Levy
University of Chicago

Lloyd N. Cutler
Wilmer, Cutler and Pickering
Washington, D.C.

David Gardner
University of California

* Robert Clark
Harvard Law School

* John Dunlop
Harvard Business School

James Q. Wilson
UCLA and Harvard University

Nathan Glazer
Harvard University

* Ed Delattre
Ethics and Public Policy Center
Washington, D.C.

William Durden
Johns Hopkins University

Michael Kirst
Dean, School of Education
Stanford University

* Bob McElrath
Dean of Education
East Tennessee State University

* Alan Heslop
Claremont McKenna College

* Harry Miller
Hunter College

* Andrew Oldenquist
Ohio State University

* Herb Walberg
University of Illinois

Julian Prince
Stanford University

* Allan Carlson
Rockford Institute
Rockford, Illinois

* Les Lenkowsky
Institute for Educational Affairs
Washington, D.C.

* Michael Horowitz
Dickstein, Shapiro and Morin
Washington, D.C.

Lawrence Chickering
Institute of Contemporary Studies
San Francisco, California

Jim Coleman
University of Chicago

Allan Bloom
University of Chicago

Paul Copperman
Institute of Reading Development
San Francisco, California

Kevin Ryan
Boston University

* Gil Sewall
Education Excellence Network
Teachers College
Columbia University

Jackson Toby
Rutgers University

Ed Wynne
University of Illinois

Emily Feistritzer
National Center for Education Information
Washington, D.C.

* Stanley Rothman
Smith College

* Robert Goldwin
American Enterprise Institute

* George W. Carey
Georgetown University

Al Shanker
American Federation of Teachers
Washington, D.C.