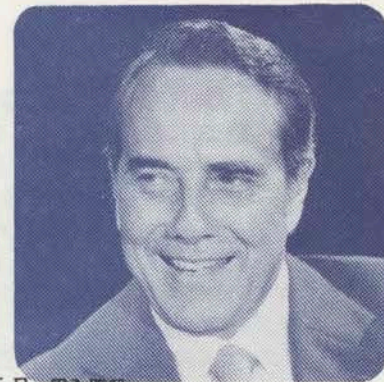


News from Senator

BOB DOLE



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STATEMENT OF SENATOR BOB DOLE NOMINATION OF JUDGE ROBERT H. BORK

MR. PRESIDENT:

AS WE COME TO THE END OF THIS DEBATE I THINK IT'S WORTH REFLECTING ON WHAT HAS HAPPENED OVER THE LAST FEW DAYS. WHILE THE DEBATE HAS FOCUSED ON JUDGE BORK, THE MAN, HIS VIEWS, HIS RECORD, WHEN WE VOTE IT WILL BE NOT JUST ON HIS NOMINATION. THERE ARE PRINCIPLES AT STAKE HERE THAT GO FAR BEYOND THE SELECTION OF ONE SUPREME COURT JUSTICE.

THERE WERE SOME WHO SAID THIS DEBATE WOULD BE A WASTE OF TIME; THAT MINDS WERE MADE UP AND WE OUGHT TO MOVE ON TO OTHER BUSINESS. I DO NOT AGREE. IT IS NEVER A WASTE OF THE SENATE'S TIME TO PAUSE AND REFLECT WHEN THE REPUTATION OF ONE OF THIS NATION'S FINEST PUBLIC SERVANTS IS ON THE LINE.

AND IT IS CERTAINLY NOT A WASTE IF NOT ONLY MY COLLEAGUES, BUT THE AMERICAN PEOPLE NOW UNDERSTAND THAT THE INDEPENDENCE OF THE JUDICIARY HAS BEEN PLACED IN JEOPARDY BY A CONFIRMATION PROCESS THAT HAS, IN TOO MANY RESPECTS, RESEMBLED A NO-HOLDS BARRED POLITICAL CAMPAIGN, COMPLETE WITH HIGH-POWERED LOBBYING ACTIVITY AND QUESTIONABLE RADIO AND TV ADS.

I HOPE THAT MY COLLEAGUES AND THE AMERICAN PEOPLE NOW UNDERSTAND THAT THE REAL DEBATE HAS BEEN OVER THE PROPER PHILOSOPHY OF JUDGING -- A DEBATE ABOUT WHETHER OUR COURSE FOR THE FUTURE WILL BE CHARTED BY UNACCOUNTABLE JUDGES OR ELECTED REPRESENTATIVES OF THE PEOPLE.

AND FINALLY I HOPE THAT EVERYONE NOW UNDERSTANDS THE REAL JUDGE BORK -- THE EXCEPTIONAL JURIST AND THE VERY GOOD AND DECENT MAN -- WHOSE OUTSTANDING RECORD DEMONSTRATES THAT HE IS UNIQUELY QUALIFIED FOR SERVICE ON OUR NATION'S HIGHEST COURT.

SOME HAVE RISEN DURING THIS DEBATE TO PRAISE JUDGE BORK; OTHERS, TO BURY HIM. I RISE AS A FORMER LEADER OF THE SENATE TO THANK HIM. THERE WAS THE DANGER THAT THE CONSTITUTIONAL RESPONSIBILITY OF THIS BODY -- THE RESPONSIBILITY OF ADVISE AND

CONSENT -- WOULD BE SHORT-CIRCUITED. BY HIS COURAGEOUS REFUSAL TO THROW IN THE TOWEL, TO QUIETLY WALK AWAY, JUDGE BORK GUARANTEED THAT THE SENATE WOULD LIVE UP TO THIS RESPONSIBILITY.

THROUGH THIS WEEK'S DEBATE, MANY OF MY COLLEAGUES HAD FOR THE FIRST TIME THE OPPORTUNITY TO STUDY THE COMMITTEE REPORT AND THE HEARING RECORD, WHEN BEFORE THEY AND THE PUBLIC HAD ONLY THE INTENSE PUBLIC CAMPAIGN TO WORK FROM. A PUBLIC CAMPAIGN THAT THE WASHINGTON POST CONDEMNED FOR ITS "INTELLECTUAL VULGARIZATION AND PERSONALLY SAVAGERY...OF THE ATTACK" AND FOR ITS "PROFOUND DISTORT{ION OF} THE RECORD AND NATURE OF THE MAN."

I THINK IT IS CLEAR THAT THIS ENTIRE CONFIRMATION PROCESS HAS BEEN COLORED, AND IN SOME WAYS COMPROMISED, BY THE MISINFORMATION AND DISTORTION ABOUT JUDGE BORK'S VIEWS ON KEY ISSUES AND ABOUT HIS OVERALL RECORD. THE LA TIMES AND WASHINGTON POST ACCOUNTS TELL THE STORY OF HOW THE OPPOSITION STRATEGY WAS DEVELOPED AND IMPLEMENTED -- FROM THE DAILY MEETINGS OF INTEREST GROUP LEADERS AND SENATE STAFFERS; THE STRATEGIC DELAY BEFORE THE HEARINGS; THE POLLING AND IDENTIFICATION OF POLITICAL THEMES THAT WOULD "SELL" IN THE SOUTH AND ELSEWHERE; THE COORDINATION OF AD CAMPAIGNS WITH THE COMMITTEE PROCEEDINGS. AND WE NOW HEAR THAT THERE MAY HAVE BEEN OUTRIGHT INTIMIDATION OF WITNESSES AT THE HEARINGS.

THE REAL BORK RECORD

IN THE PAST FEW DAYS SOME OF MY COLLEAGUES HAVE TRIED TO RIGHT THIS SLANTED VERSION OF JUDGE BORK'S VIEWS. I TOO WOULD LIKE TO FOCUS ON HIS RECORD, THE REAL RECORD.

FIRST, LET'S LOOK AT JUDGE BORK'S CIVIL RIGHTS RECORD. ALTHOUGH THERE'S BEEN A LOT OF RHETORIC IN THIS DEBATE, I HAVE YET TO HEAR A BORK OPPONENT STAND UP ON THIS FLOOR AND CITE ANY EVIDENCE THAT JUDGE BORK WANTS TO REVERSE A SINGLE CIVIL RIGHTS GAIN. IN FACT, IF YOU LOOK AT JUDGE BORK'S RECORD AS SOLICITOR GENERAL AND D.C. CIRCUIT JUDGE, YOU SEE THAT NOT ONLY DID HE DO NOTHING TO TURN THE CIVIL RIGHTS CLOCK BACK, TO THE CONTRARY, HE WORKED HARD TO PUSH IT FORWARD.

DURING THE TIME THAT JUDGE BORK WAS THE SOLICITOR GENERAL, THERE WERE MANY CASES IN WHICH HE ELECTED TO PARTICIPATE AS A "FRIEND OF THE COURT" EVEN THOUGH THE GOVERNMENT WAS NOT A PARTY. NINETEEN TIMES, SOLICITOR GENERAL BORK TOOK THIS ACTION TO SPEAK DIRECTLY TO A SUBSTANTIVE ISSUE UNDER THE FEDERAL CIVIL RIGHTS LAWS; 17 OF THOSE BRIEFS URGED THE SUPREME COURT TO CONSTRUE THE RELEVANT LAW AND RULE BROADLY IN FAVOR OF MINORITY OR WOMEN PLAINTIFFS. IN A WORD, SOLICITOR GENERAL BORK DID NOT RETREAT ON CIVIL RIGHTS.

TO THE CONTRARY, HE WAS IN THE FOREFRONT OF THE CHARGE. IN FACT, IN THE 10 CASES IN WHICH BOTH SOLICITOR GENERAL BORK AND THE NAACP LEGAL DEFENSE FUND FILED BRIEFS IN THE SUPREME COURT ON SUBSTANTIVE CIVIL RIGHTS CLAIMS, THE LEGAL DEFENSE FUND AGREED WITH BORK'S POSITION 9 OF THE 10 TIMES.

A REVIEW OF JUDGE BORK'S APPELLATE COURT RECORD REVEALS A SIMILAR PATTERN. JUDGE BORK HAS NEVER RENDERED OR JOINED A DECISION LESS SYMPATHETIC TO MINORITY OR WOMEN'S RIGHTS THAN THAT ADOPTED BY EITHER THE SUPREME COURT OR THE JUDGE HE WOULD REPLACE, JUSTICE POWELL.

NOW, MR. PRESIDENT, WE ALL KNOW HOW EASY IT IS TO HURL THE CHARGE OF RACISM OR SEXISM AND HOW HARD IT IS TO REFUTE THOSE CHARGES, ESPECIALLY WHEN THE FIREPOWER OF A SOPHISTICATED MASS MEDIA CAMPAIGN IS EMPLOYED AGAINST YOU. NOT ONLY DOES JUDGE BORK'S RECORD REFUTE THE CHARGE, BUT SO DOES HIS PERSONAL HISTORY, AS EXPLAINED TO THE JUDICIARY COMMITTEE BY HOWARD CRANE, BY MS. JEWEL LAFONTANT AND BY RESPECTED FRIENDS AND ASSOCIATES OF THE JUDGE LIKE LLOYD CUTLER.

THE CHARGE THAT JUDGE BORK IS INSENSITIVE TO THE RIGHTS OF WOMEN AND MINORITIES IS FALSE. IT'S THAT SIMPLE. NOTHING COMPLICATED ABOUT IT.

RIGHT OF PRIVACY

ONE OF THE MOST UNFAIR CRITICISMS LEVELLED AT JUDGE BORK SUGGESTS THAT HE IS AN "EXTREMIST WHO BELIEVES {AMERICANS} HAVE NO CONSTITUTIONAL RIGHT TO PERSONAL PRIVACY." THIS CHARGE IS ABSURD ON ITS FACE, SINCE, AS JUDGE BORK HAS NOTED, THE CONSTITUTION EXPLICITLY PROTECTS CERTAIN TYPES OF PERSONAL PRIVACY INCLUDING, FOR EXAMPLE, THE "RIGHT OF PEOPLE TO BE SECURE IN THEIR PERSONS, HOUSES, PAPERS, AND EFFECTS, AGAINST UNREASONABLE SEARCH AND SEIZURES."

WHAT JUDGE BORK HAS FOUND UNSETTLING IS THE JUDICIAL CREATION OF A VAGUE, GENERALIZED RIGHT TO PRIVACY BASED ON THE "PENUMBRAS" -- THE VAUGUE, INDEFINITE BORDERLINE AREAS -- OF THESE SPECIFIC CONSTITUTIONAL GUARANTEES.

NOW, LIKE JUSTICE HUGO BLACK, I VALUE MY PRIVACY AS MUCH AS THE NEXT PERSON. BUT, ALSO LIKE JUSTICE BLACK, I GET CONCERNED WHEN COURTS START POKING AROUND IN VAGUE, BORDERLINE AREAS LOOKING FOR NEW CONSTITUTIONAL VIOLATIONS.

WHETHER OR NOT ONE AGREES WITH JUDGE BORK'S POSITIONS ON GRISWOLD V. CONNECTICUT OR ROE V. WADE, IT IS SIMPLY IRRESPONSIBLE TO LABEL THOSE POSITIONS AS EXTREME OR UNSUPPORTED. IN TAKING THOSE POSITIONS, HE IS IN GOOD AND NUMEROUS COMPANY WITH SOME OF THE BEST LEGAL THINKERS IN OUR NATION. THE BRICKBATS THAT BEEN HURLED AT HIM ON THIS SUBJECT, THEREFORE, ARE SIMPLY ONE MORE EXAMPLE OF SLOGANS PASSING FOR LEGAL REASONING.

NOW THE VOTE

SO WHERE DOES THIS LEAVE US?

IT LEAVES US ON THE VERGE OF A VOTE. NOTHING THAT HAS HAPPENED BEFORE MATTERS. WE HAVE HAD TIME TO STUDY THE RECORD, TO DISCUSS AND DEBATE IT, AND TO GIVE IT THE SOBER REFLECTION IT DESERVES AND OUR OATH REQUIRES.

MR. PRESIDENT, MORE THAN ANYTHING ELSE, THIS NOMINATION IS ABOUT JUDICIAL RESTRAINT, AND ABOUT AN OUTSTANDING JUDGE WHO ADHERES TO THAT PHILOSOPHY. THE INTEREST GROUPS HAVE SPENT A LOT OF MONEY AND TWISTED A LOT OF ARMS IN ORDER TO KEEP THAT ISSUE FROM COMING INTO FOCUS DURING THIS CONFIRMATION PROCESS. HAD THIS DEBATE NOT OCCURRED, THEY WOULD HAVE SUCCEEDED. BUT THE DEBATE HAS CONFIRMED WHAT THE MINORITY REPORT OF THE COMMITTEE STATES SO CLEARLY: THE FUNDAMENTAL ISSUE INVOLVED HERE IS WHO GOVERNS AMERICA.

WILL OUR MOST DIFFICULT AND IMPORTANT CHOICES BE MADE BY JUDGES APPOINTED FOR LIFE -- ACCOUNTABLE TO NO ONE AND -- AS SOME OF MY COLLEAGUES WOULD HAVE IT -- UNRESTRAINED BY THE WRITTEN LAW? WILL WE LICENSE THESE JUDGES TO DISCOVER RIGHTS, IMPOSE RESTRICTIONS AND NARROW CHOICES ON THEIR OWN SUBJECTIVE VIEWS OF LIBERTY AND MORALITY?

OR WILL WE REQUIRE THAT JUDGES FAITHFULLY FOLLOW THE WRITTEN LAW AND PRESERVE FOR THE ELECTED REPRESENTATIVES OF FREE PEOPLE THE CHOICES NOT FORECLOSED TO THEM BY THE CONSTITUTION. THE QUESTION WE FACE IS NOT WHETHER GOVERNMENT WILL HAVE A SAY, BUT RATHER WHO IN GOVERNMENT WILL DECIDE THE REACH OF OUR LIBERTIES. FOR 200 YEARS, THE ANSWER HAS GENERALLY BEEN, IF THE CONSTITUTION IS SILENT, THE DECISION IS FOR THE PEOPLE AND THEIR ELECTED REPRESENTATIVES.

MY COLLEAGUES WOULD NOT READILY RELINQUISH TO THE JUDICIAL BRANCH THE AUTHORITY TO ENACT STATUTES. WHY THEN SHOULD WE SIGN OVER TO THE COURTS THE PEOPLE'S RIGHT TO AMEND THE CONSTITUTION? IT IS FAR MORE DIFFICULT TO CORRECT AN ERROR IN CONSTITUTIONAL INTERPRETATION THAN A MISREADING OF A STATUTE. IN BOTH CASES, HOWEVER, THE BASIC ISSUE IS THE SAME. WILL OURS BE A GOVERNMENT OF LAWS OR MEN?

THE AMERICAN PEOPLE HAVE FELT THE STING OF JUDICIAL ACTIVISM. THEY UNDERSTAND THAT THE SCALES HAVE BEEN TILTED TOWARD THE CRIMINAL BECAUSE OF IT. THEY UNDERSTAND THAT THEY HAVE LESS OF A VOICE IN HOW THEIR SCHOOLS ARE RUN, HOW THEIR TAX DOLLARS ARE SPENT, AND HOW THEIR NEIGHBORHOODS ARE PROTECTED BECAUSE OF IT. THEY UNDERSTAND THAT JUDICIAL ACTIVISM IS A FORMULA FOR DENYING THEM A SAY ON ISSUES LIKE THE DEATH PENALTY AND RESTRICTIONS ON PORNOGRAPHY. ATTENTION HAS BEEN DIVERTED FROM THESE AND OTHER FRUITS OF JUDICIAL ACTIVISM, BUT ONLY TEMPORARILY.

MR. PRESIDENT, LET ME CONCLUDE BY STATING ONE FINAL AREA OF CONCERN. IT SEEMS TO ME THAT, AS A RESULT OF THE HEARINGS AND THE DEBATE, WE KNOW A GREAT DEAL ABOUT HOW JUDGE BORK MAY HAVE VOTED ON CERTAIN CASES DECIDED TEN, TWENTY, OR EVEN EIGHTY YEARS AGO. WHAT HAS NOT GOTTEN MUCH ATTENTION, IN MY OPINION, IS HOW JUDGE BORK IS EQUIPPED TO DECIDE THE ISSUES THAT WILL CONFRONT THE SUPREME COURT IN THE FUTURE -- ISSUES THAT NONE OF US CAN ANTICIPATE, IN AREAS THAT NONE OF US CAN KNOW.

TO ME, THE QUESTION WE OUGHT TO BE ASKING OURSELVES IS WHETHER JUDGE BORK WILL FACE THOSE UNKNOWN ISSUES WITH FAIRNESS, INTELLIGENCE, COMPASSION, AND CREATIVITY. AND WHETHER HE WILL BRING TO THOSE ISSUES AN UNDERSTANDING OF THE LIMITATIONS OF JUDICIAL SOLUTIONS AND A HEALTHY RESPECT FOR THE ROLES OF THE OTHER BRANCHES OF GOVERNMENT.

AN EXAMINATION OF JUDGE BORK'S WRITINGS, RECORD, AND EXPERIENCE, MAKES THE ANSWER TO THAT ALL IMPORTANT QUESTION QUITE CLEAR. WE SHOULD CONFIRM THIS NOMINEE.