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News from Senator

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INTRODUCTION OF JUDGE ROBERT BORK TO THE SENATE JUDICIARY COMMITTEE

MR. CHAIRMAN, IT IS MY GREAT PLEASURE AND HONOR TO APPEAR IN SUPPORT OF THE NOMINATION OF JUDGE ROBERT H. BORK, A MEMBER OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT AND THE PRESIDENT'S NOMINEE TO FILL THE VACANCY THAT EXISTS ON THE SUPREME COURT.

THERE IS MORE THAN A LITTLE FORTUITY IN THE TIMING AND LOCATION OF THESE HEARINGS. IN TWO DAYS WE WILL BE CELEBRATING IN PHILADELPHIA THE BICENTENNIAL OF OUR CONSTITUTION. THAT CONSTITUTION ESTABLISHED, OF COURSE, THREE BRANCHES OF GOVERNMENT, THE EXECUTIVE, THE LEGISLATIVE, AND THE JUDICIAL, EACH WITH A ROLE TO PLAY IN GOVERNING OUR NATION.

THIS PAST SUMMER, IN THIS VERY ROOM, MEMBERS OF CONGRESS EXPLORED THE COMPLEX AND DYNAMIC RELATIONSHIP BETWEEN THE EXECUTIVE AND THE LEGISLATIVE BRANCHES OF OUR GOVERNMENT. IN THE PROCESS OF DOING THIS, THEY RAISED THE LEVEL OF PUBLIC DEBATE ON THAT RELATIONSHIP.

THIS COMMITTEE WILL NOW EXPLORE A DIFFERENT ASPECT OF OUR CONSTITUTIONAL SYSTEM: THE PROPER SCOPE OF THE SENATE'S ROLE IN THE SELECTION OF SUPREME COURT JUSTICES.

IN JUDGE ROBERT BORK THE PRESIDENT HAS FOUND A MAN OF UNQUESTIONABLE ABILITY AND INTEGRITY. HIS PROFESSIONAL BACKGROUND MADE HIM A LEADING AND OBVIOUS CANDIDATE FOR THE SUPREME COURT EVEN BEFORE JUSTICE POWELL RESIGNED

THOSE WHO HAVE OPPOSED HIS NOMINATION HAVE ALL BUT CONCEDED THIS MUCH, AND HAVE FOCUSED THEIR ATTENTION ON HIS SO-CALLED IDEOLOGY. IN DOING SO, THEY HAVE COINED SLOGANS AND COMPILED STATISTICS THAT, IN MY OPINION, PRESENTED A VERY DISTORTED PICTURE OF JUDGE BORK'S RECORD.

FORTUNATELY, JUDGE BORK WILL SOON HAVE AN OPPORTUNITY TO SET THOSE CRITICS STRAIGHT. AS HE DOES SO, I THINK THAT THE AMERICAN PEOPLE WILL COME TO UNDERSTAND, AS THIS COMMITTEE HAS UNDERSTOOD FOR SOME TIME, THE SUBTLETY AND COMPLEXITY OF THE ISSUES

CONFRONTED BY THE SUPREME COURT. AS I AM SURE HE WILL TELL YOU, THOSE ISSUES DO NOT LEND THEMSELVES TO EASY ANSWERS OR INSTANT ANALYSIS. THEY CERTAINLY DON'T LEND THEMSELVES TO SLOGANS OR STATISTICS.

I WOULD ASK THE COMMITTEE AND THE AMERICAN PEOPLE TO TAKE THE TIME TO UNDERSTAND JUDGE BORK'S APPROACH TO THE CONSTITUTION. THAT APPROACH IS BASED UPON "JUDICIAL RESTRAINT," THE PRINCIPLE THAT JUDGES ARE SUPPOSED TO INTERPRET THE LAW, NOT MAKE IT.

JUDGE BORK DID NOT, OF COURSE, INVENT THIS CONCEPT. IT FOUND ONE OF ITS EARLIEST, AND MOST ELOQUENT, ADVOCATES IN OLIVER WENDELL HOLMES.

SIMILARLY, JUDGE BORK'S VIEWS ON MANY ISSUES OF CONSTITUTIONAL LAW ARE NOT ORIGINAL. HIS WRITINGS ON THE RIGHT TO PRIVACY, FOR EXAMPLE, ARE DIFFICULT TO DISTINGUISH FROM THOSE OF HUGO BLACK. HIS POSITIONS IN THE AREA OF CRIMINAL PROCEDURE ARE ALMOST IDENTICAL TO THOSE ENDORSED BY LEWIS POWELL.

IF THIS COMMITTEE DOES, IN FACT, DECIDE TO CONSIDER JUDGE BORK'S SO-CALLED IDEOLOGY, IT SHOULD NOT IGNORE THESE PRECEDENTS. NOR SHOULD IT SETTLE FOR CATCH-PHRASES AND SLOGANS WHEN REAL ANALYSIS IS IN ORDER. IT SHOULD, IN SHORT, TAKE THE TIME TO INQUIRE AND UNDERSTAND.

I HAVE A PARTICULAR INTEREST IN KEEPING THE DEBATE ON A HIGH PLANE. WHEN JUDGE BORK'S NOMINATION ARRIVES ON THE SENATE FLOOR, AS I AM SURE IT WILL, THE DEBATE THERE WILL MIRROR WHAT TAKES PLACE HERE. I WOULD LIKE TO HELP POINT THAT DEBATE IN A DIRECTION THAT WILL EDIFY BOTH THE SENATE AND THE AMERICAN PEOPLE. I ALSO HAPPEN TO BELIEVE THAT JUDGE BORK'S WRITINGS AND RECORD, IF CAREFULLY EXAMINED AND CONSIDERED, MAKE HIM AN OUTSTANDING CANDIDATE FOR THE SUPREME COURT.

BEFORE I CONCLUDE, LET ME REMIND THE COMMITTEE THAT A VACANCY HAS EXISTED ON THAT COURT FOR MORE THAN TWO MONTHS NOW. THE COURT WILL OPEN ITS NEW TERM IN LESS THAN 3 WEEKS. I WOULD ASK THE COMMITTEE TO APPROACH ITS TASK WITH ALL DELIBERATE SPEED.

I LOOK FORWARD TO RECEIVING THE NOMINATION ON THE SENATE FLOOR.

THANK YOU, MR. CHAIRMAN.

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