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FOR IMMEDIATE RELEASE  
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REMARKS OF SENATOR BOB DOLE  
AT FRATERNAL ORDER OF POLICE CONVENTION  
MOBILE, ALABAMA

LET ME BEGIN WITH A WORD OF THANKS TO ALL OF YOU WHO SERVE IN THE FRONTLINES OF AMERICA'S WAR ON CRIME. BELIEVE ME, I KNOW IT'S EASIER TO PASS A LAW THAN TO ENFORCE IT. ABOUT THIRTY YEARS AGO I SERVED AS A COUNTY ATTORNEY OUT IN RUSSELL COUNTY, KANSAS. IT WASN'T MUCH LIKE "HILL STREET BLUES." OUR IDEA OF A CRIME WAVE WAS A FEW HOT CHECKS AND SOME TRAFFIC VIOLATIONS. WE RARELY CONFRONTED THE KIND OF THUGS YOU HAVE TO FACE SEVEN DAYS A WEEK. AND I JUST WANT YOU TO KNOW THAT THERE ARE MILLIONS AND MILLIONS OF LAW-ABIDING PEOPLE IN THIS COUNTRY WHO WANT TO SAY THANK YOU, BEGINNING WITH ME.

WAR ON CRIME

AS FAR AS I CAN RECALL, EVERY ADMINISTRATION -- REPUBLICAN OR DEMOCRAT -- HAS DECLARED WAR ON CRIME. UNTIL RECENTLY, THOSE WARS WERE MOSTLY SHAM BATTLES, FOUGHT WITH PRESS RELEASES AND CONCEDED IN ADVANCE THROUGH AN ALMOST TOTAL LACK OF CO-ORDINATED EFFORT BETWEEN FEDERAL, STATE AND LOCAL AUTHORITIES. OF COURSE, CRIMINALS DON'T WASTE THEIR TIME ON JURISDICTIONAL DISPUTES. THEY'RE RUNNING A 24-HOUR A DAY INTERNATIONAL OPERATION.

IT'S TAKEN WASHINGTON A WHILE TO LEARN THAT LESSON. BUT THE PAST FEW YEARS HAVE GIVEN US CAUSE FOR ENCOURAGEMENT. DURING THAT TIME, WE HAVE DEVELOPED JOINT STRIKE FORCES TARGETING CRIMINAL ACTIVITY ON A LOCAL OR REGIONAL BASIS. IN A PERIOD OF FISCAL AUSTERITY, THE REAGAN ADMINISTRATION HAS DRAMATICALLY INCREASED FUNDING OF THE FBI, DEA AND OTHER LAW ENFORCEMENT AGENCIES.



## WAR ON DRUGS

A YEAR AGO, BOTH ENDS OF PENNSYLVANIA AVENUE GOT TOGETHER TO LAUNCH THE MOST CONCERTED ATTACK EVER ON DRUG TRAFFICKERS WHO DESTROY LIVES AND DEVASTATE WHOLE NEIGHBORHOODS. THE 1986 LEGISLATION COMBINES RETAIL ENFORCEMENT AT THE STREET LEVEL WITH WHOLESALE EFFORTS TO WEAKEN AN INTERNATIONAL DRUG RING WHOSE ANNUAL SALES TOP HALF A TRILLION DOLLARS. IT'S A FIRST STEP -- NOT A FINAL SOLUTION. AND WE MUST BE WILLING TO FOLLOW UP WITH OTHER, EVEN STRONGER ACTIONS.

NOTHING, I KNOW, MAKES A LAW ENFORCEMENT OFFICER ANGRIER THAN ARRESTING A DANGEROUS PERSON ONLY TO SEE HIM RELEASED WITHIN HOURS ON BOND PENDING TRIAL. THE IMPACT IS EVEN GREATER ON THE HELPLESS VICTIMS OF THE CRIME AND ON THOSE WHO WILL HAVE TO TESTIFY AGAINST THAT DEFENDANT. HOW MANY TIMES HAVE YOU, AS LAW ENFORCEMENT OFFICERS, HAD TO CALM VICTIMS OR SOOTHE POTENTIAL WITNESSES WHO FEARED FOR THEIR SAFETY, EVEN THOUGH YOU KNEW FULL WELL THAT THERE WAS ALMOST NOTHING YOU COULD DO TO PROTECT THEM?

WELL, THREE YEARS AGO WE TRIED TO DO SOMETHING ABOUT THAT, AT LEAST AS FAR AS FEDERAL DEFENDANTS WERE CONCERNED. OVER THE STRONG OBJECTIONS FROM THE LIBERAL CROWD, WE ENACTED A COMPREHENSIVE CRIME REFORM PACKAGE THAT INCLUDED A PROVISION FOR PRETRIAL DETENTION OF DANGEROUS DEFENDANTS, A MEASURE I HAVE BEEN PUSHING FOR YEARS.

MORE THAN THAT, WE MADE IT STICK. EARLIER THIS YEAR, THE SUPREME COURT UPHELD THE CONSTITUTIONALITY OF PRETRIAL DETENTION, A DECISION THAT HOLDS CONSIDERABLE PROMISE FOR SIMILAR EFFORTS UNDERWAY OF THE STATE LEVEL.

## STATES AS INNOVATORS

WHICH BRINGS ME TO THE MAJOR THEME I WANT TO DEVELOP THIS MORNING. IN THE COMING YEARS, I BELIEVE THAT STATES WILL HAVE AN OPPORTUNITY TO EXERCISE MORE CONTROL OVER THE ADMINISTRATION OF JUSTICE, THE KIND OF CONTROL THAT THEY HAVE GRADUALLY LOST TO THE FEDERAL GOVERNMENT AND, PARTICULARLY, TO THE FEDERAL COURTS.

BY THIS I DON'T MEAN TELLING THE TAXPAYERS TO PICK UP THE TAB FOR PROGRAMS PREVIOUSLY FUNDED BY THE FEDERAL GOVERNMENT.

IF WE HAVE DISCOVERED ANYTHING OVER THE LAST FEW YEARS, IT IS JUST HOW MUCH WASHINGTON HAS TO LEARN FROM GRASSROOTS AMERICANS. LET ME GIVE YOU AN EXAMPLE OF WHAT THE STATES CAN TEACH THE FEDERAL GOVERNMENT. SINCE 1972, WHEN THE SUPREME COURT STRUCK DOWN THE DEATH PENALTY AS A VIOLATION OF THE 8TH AMENDMENT, 37 STATES HAVE REWRITTEN CAPITAL PUNISHMENT LAWS TO COMPLY WITH THE COURT'S RULING. WITH THE SINGLE EXCEPTION OF MURDERS COMMITTED DURING AIRCRAFT HIJACKINGS, HOWEVER, CONGRESS HAS DONE NOTHING.

AS A RESULT, FEDERAL JUDGES AND JURIES ARE PRESCRIBED IN SENTENCING CRIMINALS -- NO MATTER HOW TERRIBLE OR NUMEROUS THEIR OFFENSES. IN THE RECENT PAST, A REPUBLICAN SENATE HAS APPROVED FEDERAL LEGISLATION TO RESTORE THE DEATH PENALTY -- ONLY TO HAVE THE DEMOCRATS IN THE HOUSE INFLECT THEIR OWN FORM OF "CRUEL AND UNUSUAL PUNISHMENT:" DEATH BY FILIBUSTER. IT'S NOT RIGHT. AND IT'S NOT FAIR, EITHER TO VICTIMS OR TO THE BRAVE MEN AND WOMEN WHO RISK THEIR LIVES TO PROTECT THE LAW ABIDERS FROM THE LAW BREAKERS.



WHO IS BETTER EQUIPPED TO FIND REAL SOLUTIONS TO THE CRIME NIGHTMARE -- BUREAUCRATS AND POLITICIANS, OR PEOPLE LIKE YOU WHO ARE ON THE STREETS GOING EYEBALL TO EYEBALL WITH BIG LEAGUE CRIME.

#### THE BATTLE OVER BORK

RIGHT NOW WE HAVE A MAJOR BATTLE BREWING IN WASHINGTON THAT GOES TO THE HEART OF WHAT I'VE BEEN TALKING ABOUT.

THE BATTLE I'M TALKING ABOUT IS PRESIDENT REAGAN'S NOMINATION OF ROBERT BORK TO SERVE ON THE UNITED STATES SUPREME COURT. I'M NOT EXAGGERATING WHEN I TELL YOU THAT IT WILL BE THE MAIN EVENT OF THE 100th CONGRESS. AND YOU HAVE A HUGE STAKE IN THE OUTCOME OF THAT FIGHT.

LET ME TELL YOU, PRESIDENT REAGAN HAS SELECTED ONE OF THE ABLEST LEGAL MINDS OF THIS GENERATION TO SUCCEED JUSTICE LEWIS POWELL ON THE HIGH BENCH.

JUDGE BORK'S OPPONENTS, AND THERE ARE MORE THAN A FEW OUT THERE, HAVE CALLED HIM AN "IDEOLOGUE." THEY GO ON TO SAY THAT THE OPEN SEAT ON THE COURT SHOULD BE FILLED WITH THEIR IDEA OF A JUDICIAL MODERATE. WELL, MOST OF JUDGE BORK'S OPPONENTS WOULDN'T KNOW A JUDICIAL MODERATE FROM AN IRANIAN MODERATE.

#### THE REAL ROBERT BORK

LET ME TELL YOU A BIT ABOUT JUDGE BORK, THE SO-CALLED IDEOLOGUE.

HE IS A PHI BETA KAPPA GRADUATE OF THE UNIVERSITY OF CHICAGO LAW SCHOOL.

HE ROSE TO PARTNER AT ONE OF CHICAGO'S MOST PROMINENT LAW FIRMS.

HE TAUGHT AS A TENURED PROFESSOR AT YALE LAW SCHOOL FOR 15 YEARS, HOLDING TWO ENDOWED CHAIRS.

FROM 1973 TO 1977 HE SERVED AS SOLICITOR GENERAL, THE FEDERAL GOVERNMENT'S LAWYER AT THE SUPREME COURT.

WHEN HE WAS NOMINATED IN 1982 TO SERVE ON THE COURT OF APPEALS FOR THE D.C. CIRCUIT, THE ABA RATED HIM AS "EXCEPTIONALLY WELL QUALIFIED."

WHEN HIS NOMINATION CAME THAT YEAR TO THE SENATE FLOOR, HE WAS CONFIRMED UNANIMOUSLY, AND WITH THE FULL SUPPORT OF MANY SENATORS WHO SUPPOSEDLY FIND HIM DEFICIENT NOW.

SINCE HE HAS BEEN ON THE COURT OF APPEALS, HE HAS DECIDED MORE THAN 400 CASES. HE HAS WRITTEN ONLY 9 DISSENTS AND 7 PARTIAL DISSENTS. HE HAS NEVER BEEN REVERSED ON APPEAL.

#### ARE WE MISSING SOMETHING?

SO WHAT, YOU MIGHT ASK, IS THE PROBLEM?

THE PROBLEM, AS I SEE IT, IS THAT HIS OPPONENTS WANT A NOMINEE THAT THEY FEEL WILL DECIDE PARTICULAR ISSUES IN THEIR FAVOR, JUDICIAL RESTRAINT AND LEGAL ANALYSIS BE DAMNED.

WE HAVE SEEN ALL KINDS OF SMOKE BLOW JUDGE BORK'S WAY ON CAPITOL HILL. BUT WHEN YOU TURN THE FANS ON, THE PICTURE BECOMES VERY CLEAR: IT'S SPECIAL INTEREST POLITICS OF THE WORST KIND.



TO DRESS UP THEIR ARGUMENTS, JUDGE BORK'S OPPONENTS CLAIM THAT HE WILL SOMEHOW "UNBALANCE" THE COURT, WHICH IS PROPERLY BALANCED, OF COURSE, ONLY BECAUSE IT IS MAKING DECISIONS THAT THEY HAPPEN TO LIKE.

THEY FORGOT THAT IN A DEMOCRACY, THE PEOPLE RULE. THEY ELECT A PRESIDENT, IN THIS CASE BY OVERWHELMING MARGINS, AND THEY EXPECT TO SEE HIS MANDATE APPLIED TO THE COURT. SO FDR REMINDED US IN NAMING HUGO BLACK AND WILLIAM O. DOUGLAS. CHANGE IS INEVITABLE IN GOVERNMENT, AND PEOPLE TOO. THOSE WHO THINK THAT THEY CAN PREDICT WHAT IMPACT JUDGE BORK WILL HAVE ON THE SUPREME COURT OVER THE LONG TERM ARE FOOLING THEMSELVES.

IN MY OPINION, THE BEST THE PRESIDENT CAN DO IS SELECT SOMEONE WITH IMPECCABLE CREDENTIALS WHO UNDERSTANDS THE ROLE JUDGES ARE SUPPOSED TO PLAY IN OUR SYSTEM OF GOVERNMENT AND WHO WILL, IN FACT, STICK TO THAT ROLE. OUR JOB IN THE SENATE IS TO MAKE SURE THE NOMINEE FITS THAT BILL, AND, IF SO, TO CONFIRM HIM OR HER. WE SHOULDN'T BE TRYING TO PREDICT HOW THE NOMINEE MIGHT VOTE ON INDIVIDUAL CASES, YET THAT IS EXACTLY WHAT JUDGE BORK'S OPPONENTS ARE LINING UP TO DO.

#### EXPERIMENTING WITH THE EXCLUSIONARY RULE

I SAID EARLIER THAT STATES OUGHT TO HAVE REAL AUTHORITY TO PUT THE CLAMPS ON CRIME. AND I BELIEVE THAT THE SUPREME COURT, EVEN WITHOUT JUDGE BORK, HAS MOVED IN THAT DIRECTION IN RECENT YEARS. BUT IT STILL HAS A WAY TO GO; AND WE NEED YOUR HELP.

LET ME GIVE ONE IMPORTANT EXAMPLE. IN 1914, THE SUPREME COURT INVENTED SOMETHING KNOWN AS THE "EXCLUSIONARY RULE." FOR THE NEXT 47 YEARS, HOWEVER, THE RULE APPLIED ONLY IN FEDERAL CASES; STATES HAD THE FLEXIBILITY TO DEAL WITH QUESTIONABLE SEARCHES AND SEIZURES.

UNFORTUNATELY, IN 1961 THE SUPREME COURT DECIDED THAT IT KNEW MORE ABOUT THIS ISSUE THAN ALL THE STATES, ALL THE COUNTIES, ALL THE LOCAL LAW ENFORCEMENT OFFICIALS AND ALL THE VICTIMS OF CRIME.

SINCE THEN THE COST OF THAT SUPREME COURT VOTE HAS BEEN STAGGERING--ONE STUDY CONCLUDED THAT THE RULE ACCOUNTS FOR NONPROSECUTION OR NONCONVICTION OF UP TO 2.35% OF THOSE ARRESTED FOR FELONIES--A NUMBER THAT MAY SEEM SMALL UNTIL YOU THINK ABOUT HOW MANY FELONY ARRESTS ARE MADE EACH YEAR. THAT SAME STUDY FOUND THAT THE RATE OF LOSS MAY BE AS HIGH AS 7.1% OF FELONY DRUG ARRESTS, THE AREA WHERE WE ALL KNOW THE EXCLUSIONARY RULE HITS THE HARDEST.

WITH THE SOUND JUDICIAL APPOINTMENTS FROM RONALD REAGAN, AND WITH THE HELP OF AROUSED GROUPS SUCH AS THE FRATERNAL ORDER OF POLICE, THE COURTS MAY BE FINALLY CATCHING UP WITH THE AMERICAN PEOPLE. THE SUPREME COURT HAS OKAYED EXCEPTIONS TO THE RULE, MOST IMPORTANTLY IN CASES WHERE THE OFFICERS RELIED IN GOOD FAITH ON A VALID WARRANT.

WE HAVE ALSO BEEN TRYING TO DO OUR PART IN CONGRESS. FOR MANY YEARS NOW, I HAVE SUPPORTED LEGISLATION THAT WOULD CREATE SOME EXCEPTIONS FOR WARRANTLESS SEARCHES AS WELL.

BUT THE MOST IMPORTANT SHIFT IN THE LAW GOVERNING THE EXCLUSIONARY RULE IS JUST EMERGING. IN A NUMBER OF RECENT OPINIONS, THE SUPREME COURT HAS STRESSED THAT THE EXCLUSIONARY



RULE IS NOT A CONSTITUTIONAL RIGHT BUT A JUDICIALLY-CREATED REMEDY. IF BETTER REMEDIES OR DETERRENTS CAN BE DEvised, REMEDIES THAT DON'T LET GUILTY CRIMINALS GO FREE, THE SUPREME COURT MIGHT WELL AGREE TO DO AWAY WITH THE EXCLUSIONARY RULE ENTIRELY.

WE IN CONGRESS ARE EXPLORING A NUMBER OF POSSIBLE ALTERNATIVES NOW, BUT THE BEST OPPORTUNITY MAY BE ON THE STATE LEVEL. AFTER ALL, WHILE THE EXCLUSIONARY RULE HAS BEEN APPLIED IN FEDERAL CASES SINCE 1914, IT IS A RELATIVE NEWCOMER IN STATE COURTS.

AS I WIND UP, LET ME READ TO YOU FROM A CONCURRING OPINION IN THE CASE OF UNITED STATES v. MOUNT:

WHERE NO DETERRENCE OF UNCONSTITUTIONAL POLICE BEHAVIOR IS POSSIBLE, A DECISION TO EXCLUDE PROBATIVE EVIDENCE WITH THE RESULT THAT A CRIMINAL GOES FREE TO PREY UPON THE PUBLIC SHOULD SHOCK THE JUDICIAL CONSCIENCE EVEN MORE THAN ADMITTING THE EVIDENCE.

THE AUTHOR OF THAT LANGUAGE WAS JUDGE ROBERT BORK.

VOTE ON BORK: TEST OF CHARACTER AND RECORD

IN THE PAST FEW WEEKS THE COUNTRY HAS WATCHED AS THE CHAIRMAN OF OUR JUDICIARY COMMITTEE, SENATOR BIDEN, POSTPONED HEARINGS ON THE NOMINATION FOR MORE THAN A MONTH, PROMISING YET ANOTHER MONTH'S DELAY STILL TO COME. OVER THE LAST 25 YEARS, THE AVERAGE TIME CONSUMED IN BRINGING A SUCH A NOMINATION TO A HEARING HAS BEEN 18 DAYS. THE LONGEST PREVIOUS DELAY HAS BEEN 42 DAYS. YET SENATOR BIDEN, UNDER THE CURRENT SCHEDULE, WILL SPEND 70 DAYS PREPARING FOR JUDGE BORK'S HEARING. AS A RESULT, THE SUPREME COURT IS ALMOST CERTAIN TO START ITS NEW TERM ON OCTOBER 5 WITHOUT JUDGE BORK'S SERVICES.

IT'S ALL PART AND PARCEL OF THE POLITICAL CHESS GAME BEING PLAYED. UNFORTUNATELY, ROBERT BORK IS THE PAWN AND JUSTICE IS STALEMATED.

BORK HELD HOSTAGE?

EVEN ONCE THE NOMINATION COMES OUT OF SENATOR BIDEN'S COMMITTEE, THERE IS THE PROSPECT OF MORE DELAY BY ITS OPPONENTS. ON FRIDAY, SENATOR BYRD, THE MAJORITY LEADER, WENT SO FAR AS TO SUGGEST THAT THE NOMINATION WOULD NOT BE BROUGHT UP FOR A VOTE UNTIL WE RESOLVED LONG-STANDING DISPUTES OVER WHAT HE CALLED "MAJOR LEGISLATION."

THE LEGISLATION TO WHICH HE IS REFERRING INCLUDES, OF COURSE, THE DEMOCRATS' PROPOSAL FOR PUBLIC FINANCING OF SENATORIAL CAMPAIGNS AND OTHER BILLS THAT HAVE, FOR VERY GOOD REASONS, MET WITH STIFF REPUBLICAN OPPOSITION. BUT IN MY OPINION, A NOMINATION TO FILL A VACANCY ON OUR HIGHEST COURT SHOULD NOT BE HELD HOSTAGE TO ANY LEGISLATION, AND PARTICULARLY TO BAD LEGISLATION. AGAIN, THIS IS POLITICS OF THE WORST KIND.

ONCE WE HAVE PERSUADED SENATOR BYRD TO CALL UP THE NOMINATION FOR DEBATE, THERE MAY BE A FILIBUSTER, AN ATTEMPT, IN EFFECT, TO PREVENT THE SENATE FROM EVER VOTING UP OR DOWN ON THE NOMINATION. THE BEST WAY TO PREVENT THAT IS FOR THE AMERICAN PEOPLE TO LET THE DEMOCRATS KNOW THAT THEY WILL NOT TOLERATE IT, THAT THEY EXPECT THEM TO VOTE ONE WAY OR THE OTHER AND BE DONE WITH IT. OTHERWISE, THE VACANCY ON THE COURT COULD EXIST INDEFINITELY.

IN SHORT, THE SENATE FACES A CRITICAL TEST OF ITS ADVISE AND CONSENT POWERS THIS FALL WHEN IT DETERMINES WHETHER TO SEAT JUDGE BORK ON THE SUPREME COURT. IF WE PLAY FAIR AND SQUARE, THE TEST WILL NOT BE A POLITICAL ONE, BUT ONE OF CHARACTER AND RECORD. IF IT IS, THEN THERE IS LITTLE DOUBT THAT ROBERT BORK WILL BECOME AN ASSOCIATE JUSTICE OF THE SUPREME COURT. YOU, AND ALL AMERICANS WHO CHERISH THE LAW OF THIS LAND, HAVE A STAKE IN THE OUTCOME. DON'T CEDE THE FIELD TO THOSE WHO WOULD PLAY POLITICS WITH OUR HIGHEST COURT.