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August 12, 1987

## MEDIA PLAN FOR THE BORK NOMINATION

After consultations with Media Relations, Public Affairs and the Press Office staff, including News Summary and television coordination, the following communications plan has been developed supporting the nomination of Judge Bork.

The plan focuses primarily on activities in nine states during the month of August -- Alabama, Arizona, Arkansas, Florida, Georgia, Louisiana, North Carolina, Illinois and Rhode Island. After two weeks or so, we will evaluate where we are and adjust as necessary.

Our overall goals include:

1. Taking advantage of opportunities to inform thoughtleaders and the public about Judge Bork's judicial philosophy, credentials and record through print and broadcast media and mailings to special interest groups and media, using Administration spokesmen and outside supporters; and
2. Keeping White House staff informed about emerging opinion surrounding the nomination.

### I. Internal Communications

The News Summary staff will begin to circulate a daily compilation of articles and editorials on Judge Bork to various White House staff. (See Attachment A for distribution list.) Any newsclips, Congressional Record entries or quotes about Judge Bork that recipients would like included in the package should be sent directly to News Summary, 165 OEOB.

### II. External Communications -- Broadcast

We will mail the approved Overview and Qualifications issue briefs to radio and television stations in key states as background on the nomination.

In addition, we will offer law school deans, practicing private attorneys or elected officials as spokesmen on the Judge's record, credentials and philosophy to radio and television programs that want to focus on the nomination. Our goal will be to encourage at least two radio and two television interviews per week in major media markets in the nine states. (See Attachment B for proposed shows and markets.) A number of these interview opportunities would be Washington-based satellite feeds -- enabling the surrogates to do a number of interviews at one sitting.

### III. External Communications -- Print

Beginning immediately we will do mailings to specialized publications and groups regarding Judge Bork's positions. We will use the approved issue briefs for these mailings; e.g., issue briefs on civil rights to black and Hispanic groups and media; women's groups and programming would receive briefs on abortion, civil rights and First Amendment. (See Attachment C for proposed list.) Suggestions of people who might do cover letters for this material would be appreciated.

Public Affairs is preparing several op/ed pieces which we can use with small and medium-sized newspapers in our key states -- seeking signers from our surrogate list. These will be harder to place than setting up broadcast interviews, but we have a large number of opportunities; we will pursue as many of them as we can.

In addition, we will attempt to have Administration spokesmen respond to negative editorials or op/eds as they appear and follow those responses with issue information to editorial boards. (See draft responses, Attachment D.)

ATTACHMENT A

Distribution List for Daily Newsclips on Judge Bork's Nomination

Will Ball (3 copies, including ones for Tom Korologos  
and William Liebingard)  
Ken Cribb  
A. B. Culvahouse  
Frank Donatelli  
Tom Griscom  
David Chew  
Jay Stephens  
Pam Turner  
Carl Anderson  
Leslye Arsht  
Elizabeth Board  
Nancy Kennedy  
Peter Keisler  
Joe Rodota

ATTACHMENT C

MAILINGS

\*\*\*\* Send Overview and Qualifications issue briefs to selected radio and TV stations, newspapers, newsletters and magazines -- plus specialized issue briefs where appropriate. \*\*\*\*

SPECIALIZED MEDIA:

ISSUE BRIEF:

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Black Radio Stations (208)  
Black Print (123)

Civil Rights

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Hispanic Radio and TV (714)  
Hispanic Print (452)

Civil Rights

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Business (205)

Judicial Philosophy, Justice Delayed,  
Criminal Justice

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Crime/Law Enforcement (99)

Judicial Philosophy, Justice Delayed,  
Criminal Justice

---

Media (30)

First Amendment

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Veterans (66)

Judicial Philosophy, Justice Delayed,

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Women (20)

Abortion, Civil Rights, First Amendment

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Defense (22)

Judicial Philosophy, Justice Delayed

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Aging (77)

Judicial Philosophy, Justice Delayed,  
Criminal Justice

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Jewish (136)

Civil Rights\*

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\* Will/AB: Could/would Ken Bialkin sign a cover letter? Are there other opportunities like that here? E.g.: Would Secretary Dole write the women's groups, or perhaps Anne Armstrong?

# Arkansas Gazette.

Founded in 1819

Oldest Newspaper West of the Mississippi  
A Gannett Newspaper

WILLIAM E. WOODRUFF, Founder  
J. N. HEISKELL, Editor 1902-1972

HUGH B. PATTERSON, Chairman

WILLIAM T. MALONE, President and Publisher  
CARRICK H. PATTERSON, Exec. V.P. and Editor

DAVID B. PETTY, Managing Editor  
JERRY F. DHONAU, Editorial Page Editor  
ROBERT S. McCORD, Forum Editor

EVAN A. RAY, V.P., Finance and Administration  
EDGAR A. MAJOR, V.P., Advertising Director  
DONALD W. DAVIS, V.P., Circulation Director  
RONALD KRENGEL, V.P., Production Director  
N. SUZANNE MILES, V.P., Marketing Director  
MARTHA JEAN McHANEY, Personnel Manager

## Bad news for individual liberty

Expect the worst and you get it sometimes. At least this is the case of Robert Heron Bork's nomination to the United States Supreme Court. President Reagan has had Bork near the top of his list of possibles for several years, obviously relishing the thought of placing another radical right ideologue on the high court.

There are perils in rejecting any president's choice for the Supreme Court in advance of confirmation hearings, but at the very least the Senate has an obligation to examine this pivotal nomination with the most extraordinary care, giving the fullest meaning to its constitutional duty.

Already this appears to be the case with the Senate Judiciary Committee, which must hold confirmation hearings before the nomination reaches the floor. Senator Howell Heflin of Alabama, a former federal judge and a member of the committee, promises, appropriately, that the hearings will be the "most complete and exhaustive investigation of any nominee . . . for the Supreme Court."

Senator Edward Kennedy of Massachusetts, a committee member, has put the question in another revealing perspective: "Robert Bork's America is a land in which women would be forced into back alley abortions, blacks would sit at segregated lunch counters, rogue police could break down citizens' doors in midnight raids, school children could not be taught about evolution, writers and artists could be censored at the whim of government."

Arkansas's two senators are reserving judgment until after the hearings, by which time they should have heard an earful and can decide accordingly.

This critical problem for the nation was cre-

ated with the unexpected resignation of Associate Justice Lewis F. Powell Jr., the moderate who kept the court, in several 5-to-4 decisions, from plunging headlong into a body prepared to shift individual rights to government, with its whims unchecked and civil rights gains of recent decades tragically trampled. With Bork, who has been a federal appeals court judge with a disturbing record, the danger that such a sweeping right-wing agenda would actually be impressed upon the American people is a chilling thought. Rights under the Constitution should belong to people, not to the state that would diminish them.

To those such as Senator Gordon J. Humphrey of New Hampshire who contend that "Judge Bork's record of legal excellence and high principle will inevitably prevail" we would commend his performance during the "Saturday Night Massacre" in the Watergate scandal in 1973. On that occasion, as an official of the Justice Department, Bork carried out President Richard M. Nixon's order to fire special prosecutor Archibald Cox, who was hot on Nixon's heels, after the department's two top officials, standing on principle, resigned rather than do Nixon's dark bidding. "High principle," indeed.

The country is blessed with Republican lawyers of genuine principle, many of them with the moderately conservative bent that was Justice Powell's as he weighed the fundamental questions before the high court. It is, to say the least, unfortunate that Mr. Reagan did not turn to one of them, instead of bowing to the wishes of those who would impress radical right ideology heavily upon the law of the land.

(Rodota:7/31/87)

DRAFT RESPONSE #1 TO THE ARKANSAS GAZETTE

The Arkansas Gazette finds Judge Robert H. Bork's record as a federal appeals court judge "disturbing" (editorial, July 3). Nothing in the editorial suggests the Gazette gave this record much attention before it dismissed Bork as a "radical right ideologue."

Judge Bork is a mainstream jurist who has been in the majority in 94 percent of the cases he has heard. None of his opinions has ever been reversed by the Supreme Court. Moreover, the Supreme Court adopted the reasoning of several of his dissents when it reversed opinions with which he had disagreed.

The Gazette praises the "moderate" record of retiring Justice Lewis F. Powell, Jr. In the area of civil rights, Judge Bork advocated in a number of cases a broader interpretation of civil rights laws than either Justice Powell or the Supreme Court was willing to accept. And in nine of the 10 times the Supreme Court reviewed a case that Judge Bork had ruled on, Justice Powell agreed with Bork.

"If you want someone with Justice Powell's detachment and statesmanship," President Reagan observed recently, "you can't do better than Judge Bork." The record clearly shows Judge Bork is a superb choice in every way to succeed Lewis Powell as our next Supreme Court Justice.

Sincerely,

# The Senate should not rubberstamp Bork

By James J. Thornton

THE U.S. SENATE is not obligated to confirm the nomination of Judge Robert Bork to the Supreme Court. As Norman Provizer argued in a recent column, executive appointments that require Senate confirmation were intended by the constitutional framers to be joint enterprises between equals, and it was never intended that the Senate should be servant to the president.



The confirmation of a Supreme Court justice should be distinguished from the appointment of cabinet posts. Most agree that ordinary appointees of the president, barring manifest unfitness, ought to be confirmed simply because the president should be allowed to select his executive team members. The Supreme Court itself long ago determined that the president may fire an executive appointee without heeding congressional complaints. (Judge Bork knows this better than most; he was the midnight massacer who fired special Watergate prosecutor Archibald Cox when Attorney General Elliott Richardson and his assistant refused to do so.)

Federal judges are not members of the executive branch; a Supreme Court judge is, in fact, one of the nine top members of a co-equal branch of government. The hallmark of that branch is independence because justices as a practical matter serve for life.

It is folly to pretend that filling Supreme Court vacancies is not an exercise in politics. (I do not remember seeing any Democrats on President Reagan's list of possible appointees.) The Supreme Court — and, of course, lower federal courts — substantially influence our daily lives in education, civil rights employment, criminal laws, protection against prejudicial treatment, rights of minorities and a host of other matters. Nor did this begin with the Warren Court; the conservative courts prior to Roosevelt gleefully

## Your Turn

emasculated all efforts by Congress and the states to soften the rigors of the industrial revolution in critical areas such as industrial safety and the working conditions of women and children. If they were not "activists," they certainly spared no energies in cossetting the corporate giants.

These conservative justices practiced social Darwinism just as dutifully as the industrial freebooters of their day; for the justices saw nothing constitutionally amiss when police and state militias fired on strikers in the same manner as the Cossacks rode down protesters in Tzarist Russia. It took Woodrow Wilson and Franklin Roosevelt to right the judicial balance, and if they overbalanced it, as conservatives complained, they at least found jurists who cared about the quality of life for all Americans including ethnic and racial minorities.

Slough off your illusions; strict constructionists leave as many political scars as activists. The activist may translate his social biases into law; the pious champion of judicial restraint may just as readily leave intact laws that permit the majority to oppress the minority.

Often when President Reagan speaks, it is taxing to discern whether he knows no better or whether he is taking advantage of popular misconceptions about our history. The president's admonition that the Senate not play partisan politics with Bork was either a deliberate misrepresentation of the nominating process or a display of abysmal ignorance. The president, himself threw down the gauntlet when he fixed on a judge who nestled comfortably into his ideological mold. To ask the Senate not to respond in kind is pedestrian if not downright flatfooted.

Judge Bork's admirers have paid homage to another popular misconception. Judge Bork looks to the "founders' intent" when he interprets the Constitution. Rubbish! That is just one of the accepted canons of constitutional interpretation; it is equally important

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to keep the document flexible enough to confront problems endemic to the late 20th century. (Personally, I can scarcely wait for strict constructionist who, drawing from the intent of the framers, interprets the right of a citizen to bear arms by limiting each American to a musket, a handful of musket balls and a bag of powder.)

Although hundreds of cases are politically neutral, the point is that all judges express their political biases on cases that have social and political impacts. So will Judge Bork. His past bodes ill for the rights of the accused, the right of minorities, and, if confirmed, he would lovingly reverse the law on abortion. Any jurist of average writing skill may find within certain parameters support for his preconceived pet notions. Cardinal Richelieu — no liberal, I can assure you — put it best: "If you give me six sentences written by the most innocent of men, I will find something in them with which to hang him."

If the Senate wants to resist this process, it has the constitutional right and duty to reject the nomination of Judge Bork. The framers of the Constitution were adamant in giving the Senate this power. If Judge Bork is truly a strict constructionist, then he will take his rejection graciously.

*James J. Thornton is an attorney with the Shreveport law firm of Johnston and Thornton.*

7/20 Shreveport Journal

(Rodota:7/31/87)

DRAFT RESPONSE TO JAMES J. THORNTON, SHREVEPORT JOURNAL

James J. Thornton seeks to preserve the independence of the judiciary (July 20). Yet the action he advocates -- the rejection, on ideological grounds, of the nomination of Judge Robert H. Bork to the Supreme Court -- would undermine the independence and integrity of the judicial branch of government.

If the Senate made ideology its chief concern in reviewing judicial nominations, the confirmation process would become a quagmire. Senators would have to interrogate prospective nominees on dozens of issues. Attempts to preserve various balances would paralyze the Senate. The judicial selection process would become completely politicized.

Such a result would be particularly ironic, in light of the fact that Judge Bork is not a "political" judge. His record on the U.S. Court of Appeals is best described as that of a mainstream jurist. Extremists exist on the fringe. But Judge Bork has been in the majority in 94 percent of the cases he has heard.

Nine of the 10 times the Supreme Court reviewed a case that Judge Bork had ruled on, retiring Justice Lewis F. Powell agreed with Bork. As President Reagan recently noted, "It's hard for a fair-minded person to escape the conclusion that, if you want someone with Justice Powell's detachment and statesmanship, you can't do better than Judge Bork."

The Senate need not "rubberstamp" Judge Bork, but he deserves a fair hearing. And a careful reading of his writings and opinions will show him to be an outstanding Justice for all Americans.

Sincerely,