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EXCERPTS FROM TESTIMONY FAVORABLE TO JUDGE BORK

TESTIMONY OF EDWARD LEVI

Former Attorney General of the United States
(September 21, 1987)

- The first question is does he have views, and the answer to that clearly is yes, he does. He has an inquiring and powerful mind. He cares about our society and he cares about people, and he cares about how we can best have a good society under our constitutional system. (p. 213)
- Now the second question is, does he change his views? Here, I think the answer is also, clearly, yes. We know he has done so. There was a time when he took the position, not unknown to some quite distinguished economists -- which does not make their views on this correct -- that civil rights could be better protected simply through the removal of Government-imposed segregation, a position which he later rejected. (p. 215)
- One of the consequences of having an inquiring mind is that you do change positions. The third question is would he change his views for personal gain? (p. 215)
- To that, my experience with him is that I give a resounding no. I have never seen that happen in my experience with him. I am certain his integrity and inner strength, and the value he places on collective discourse would not permit that. And the fourth question is, are his views appropriate for a Supreme Court Justice? (pp. 215-16)
- The answer to this I think is yes, because he is concerned about those fundamental matters which a Supreme Court Justice should be concerned about, and because he has the knowledge and legal craftsmanship necessary for a truly great Justice. (p. 216)
- I suppose the final and all-embracing question about Bob Bork is what kind of a person is he? I certainly would not want to fault him for reading philosophy or economics, or being learned, or being concerned that the inner structure of the law is kept firm as the law develops, and changes as it must. (p. 218)
- Or that the legitimacy of the Supreme Court is recognized so that in times of great stress and need -- as during the period of the civil rights movement -- its mandates are obeyed. (p. 218)
- Nor would I really fault him for talking so much, or changing his mind, and looking for a better answer. He speaks because he wants an answer, he is trying out his views, and he

hopes, if you do not agree, he will convince you or you will convince him, or that out of it a discussion will arise, a new understanding. (p. 218)

- The law progresses through that kind of criticism, and through collegiality, and this really has been the strength of our special common law, which is our constitutional law. (p. 218)

- In my experience with him, I would say that Judge Bork is an able person of honor, kindness, and fairness, and I would say with practical wisdom, which he has shown as an outstanding Solicitor General, and an outstanding and eloquent judge, and for the sake of our country, I very much hope he will be confirmed. (p. 218)

- He works with the cases. He worries about those cases that his great predecessor judges all worried about, and I think he tries very hard to see how they can be worked into that kind of a structure where the law can be applied equally, which is, after all, an important part of justice. So I think there is an inner consistency to what he has done, but I also think that his views have changed. And I am not sure that his discussion with this rather strange assembly, if I may call you that, may not have had -- may not have given him some thoughts, too. (p. 221)

TESTIMONY OF WILLIAM FRENCH SMITH

Former Attorney General of the United States
(September 21, 1987)

- I became intimately familiar with Robert Bork's career in 1981 when evaluating his suitability for appointment to the United States Court of Appeals for the District of Columbia Circuit, perhaps the most important appeals court after the Supreme Court. In considering whether to recommend that President Reagan nominate him for this prestigious post, I focused my attention on the three factors scrutinized by the American Bar Association in evaluating judicial candidates: personal qualifications, integrity and temperament. (pp. 229-30)
- Based on my consideration of these factors, I determined that Robert Bork was superbly qualified to serve on the Court of Appeals. Indeed, after an exhaustive search, I concluded that Judge Bork was the individual best qualified for appointment to the court. (p. 230)
- It was apparent in 1981 that Judge Bork possessed impeccable professional credentials. He had compiled a superior academic record at the University of Chicago, where he served as executive editor of the University of Chicago Law Review. He had established a reputation as a legal scholar of the first rank during this 15 years of service on the Yale Law School faculty. He had also enjoyed a very successful career in private practice, having been elected to the partnership of Kirkland & Ellis. Last, but certainly not least, Robert Bork had rendered exemplary public service during a 4-year stint as Solicitor General of the United States. No one was better qualified professionally to sit on the Court of Appeals than Robert Bork. (p. 230)
- In assessing Judge Bork's integrity, I closely scrutinized his writings and his record. His writings on judicial philosophy had stressed that a judge should be faithful to the words of the statutory and constitutional provisions being interpreted. This philosophy is one that I, like Judge Bork, strongly endorse. It promotes judicial integrity. It is faithful to the rule of law. It constrains judges from imposing their own policy preferences on the public without legal authority. It thereby enhances predictability and respect for the law. In short, this philosophy requires that the law be applied fairly and consistently. It is a classic approach to judging with restraint. Judge Bork and I agree that it is the only approach that is truly compatible with our constitutionally-based, democratic form of government. (p. 231)
- Judge Bork's record indicated that his conduct on the bench would be true to the model of judicial integrity that his writing

so elegantly described. As a private practitioner, as a law professor and as a public servant, he had met the highest standards of integrity. (p. 231)

- I closely studied the circumstances surrounding the evening when Solicitor General Bork obeyed President Nixon's order to dismiss Watergate Special Prosecutor Archibald Cox. I concluded that Judge Bork's actions under extremely trying circumstances demonstrated the highest possible integrity. As former Attorney General Elliot Richardson has indicated, Bork very properly acted to forestall a series of mass resignations that could have decimated the Justice Department and diminished its effectiveness. (pp. 231-32)

- Judge Bork moved decisively in convincing President Nixon to name a new Special Prosecutor with undiminished authority, Leon Jaworski. The result was a successful culmination of the Watergate investigation. In short, Solicitor General Bork accomplished the extremely difficult dual tasks of preserving the effectiveness of the Justice Department, while keeping the Watergate Special Prosecution force alive. To my mind, his performance at that time exemplified his exceptional character and extremely sound judgment. (p. 232)

- My study of Robert Bork's record also prompted the conclusion that he possessed the requisite temperament to be a successful, fair-minded judge. His writings indicated that judges should neutrally apply the law to the facts presented. Such an approach aptly describes the behavior of jurists who possess true judicial temperament. Those who knew Robert Bork attested to his fair-mindedness, his sense of humor and his balance -- character traits that are synonymous with the possession of judicial temperament. (p. 232)

- My personal contacts with Robert Bork certainly convinced me that his temperament was ideally suited for the Federal bench. The American Bar Association fully agreed with my assessment of these qualifications, of his integrity and of his temperament. The ABA rated him exceptionally well qualified for appointment to the Court of Appeals, the highest possible rating. The full Senate, of course, unanimously confirmed Judge Bork for that court. (pp. 232-33)

- Having studied Robert Bork's 5-year record on the Court of Appeals, I am more than ever convinced that the Senate made a wise choice in consenting unanimously to his nomination. Simply put, Judge Bork's judicial record is marked by great distinction, high integrity and true judicial temperament. None of Judge Bork's majority opinions have been reversed by the Supreme Court, and only one of those opinions was reversed by the D. C. Circuit en banc; and, notably, this en banc reversal of his panel opinion was authored by Judge Bork himself. (p. 233)

- Some critics of Judge Bork's nomination nevertheless have categorized particular holdings of his as being for or against certain interests. That seems to be the substance of most of the objections that I have heard during these proceedings. (p. 233)

- With all due respect, those critics are simply missing the point. Judge Bork neutrally and fairly applies the law to the facts at hand; he does not approach a case by asking which side deserves to win. All judges reach substantive results that are displeasing to particular interest groups. It is part and parcel of the judicial task that one side will lose. (pp. 233-34)

- In evaluating a judge's ability, the key question is not who won, but rather, how did the judge reach his or her decision. Evaluated according to that standard -- the correct standard -- there is no question that Judge Bork has been an outstanding jurist. (p. 234)

- Five years ago, Robert Bork was superbly qualified to sit on the Supreme Court. His distinguished judicial service on the Court of Appeals has only served to enhance his qualifications. Former Chief Justice Burger recently stated that there has not been a better-qualified Supreme Court nominee than Judge Bork over the past 50 years. And Justice Stevens has echoed those sentiments, as do I. (p. 234)

- In my view, there is no one better qualified to sit on the Supreme Court. (p. 234)

- In sum, Judge Bork is a highly distinguished, fair-minded jurist and scholar of the highest professional integrity. He has all the earmarks of a great Supreme Court Justice. (p. 234)

TESTIMONY OF WILLIAM ROGERS

Former Attorney General of the United States
(September 21, 1987)

- Having listened with care to these hearings and, unlike some of the previous witnesses, I actually have listened to them, and after looking at Judge Bork's record of accomplishments, I do not believe that President Reagan could have found a more qualified man or woman to nominate for this job. (p. 300)

- Certainly, I can think of no nominee during my professional life who has been better qualified. As has been stated here, Robert Bork has had four distinguished careers, first as a lawyer in private practice, where he was very successful, as a holder of two endowed chairs at one the Nation's most prestigious law schools, as the government's chief advocate before the Supreme Court for four years -- and I have talked to a lot of people about the quality of his advocacy and it was superb -- and he served for five years as a respected Federal judge in what is probably the second most important court in country. (p. 300)

- Several members of the Committee on both sides of the aisle have stated that there is not the slightest suggestion of racism in Judge Bork's life or in his record, and that is certainly true. (p. 303)

- I spent a lot of years of my life in matters involving civil rights. He certainly has a wonderful judicial temperament. No one could have answered those questions that were asked of him for so long in such an unruffled and polite fashion without having good judicial temperament. (p. 303)

- Later, as Solicitor General -- and I do not see how people can disregard his excellent record -- he built on that tradition and on the accomplishments of the Kennedy administration. It has been too little noticed that, as Solicitor General, Judge Bork often advanced positions on behalf of minorities that went beyond those ultimately adopted by the Supreme Court. (pp. 304-05)

- I was sorry to see this morning some of the people who testified against him, because I did not think that they proved their case. I mean, if he had been an ideologue or he had been opposed to progress in the field of civil rights, he would have voted -- he would not have testified to strip the Supreme Court of jurisdiction. He would not have testified against the human life bill if he was an ideologue. Those were very important matters and he took a strong stand in behalf of the right causes. (p. 305)

- Another matter which is of great importance to the public and which has received insufficient public attention, I believe, is the role which is played by the Supreme Court in the administration of criminal justice, both at the State and the Federal level. About 50 of the 170 cases decided during the last term, 1985-86, were criminal cases. Judge Bork's stellar record of law enforcement should be a source of satisfaction to this Committee and, I must say, to all Americans. (p. 305-06)

- Several Senators on this Committee have been prosecutors or judges and know from personal experience the importance of vigorous law enforcement. Judge Bork understands that, too. (p. 306)

- He also understands some of the problems which have handicapped law enforcement officials in recent years. Judge Bork has opposed the application of -- he understands some of the problems which have handicapped law enforcement officials in recent years. (p. 306)

- He has opposed the application of artificial rules which keep the truth out of the courtroom and which fail to serve any other purpose. As a judge, Robert Bork has handed down tough but fair decisions that have protected the rights of victims and of society as well as the rights of the accused. That is why organizations representing nearly 350,000 professionals associated with law enforcement have endorsed his nomination. (p. 306)

- As I have said, I believe Judge Bork, if confirmed, will make an excellent Supreme Court Justice. I strongly urge favorable consideration by this Committee, and I sincerely hope he will be confirmed by the Senate. (p.306)

- So, some of the things that were said here this morning just were not true, just factually untrue. For example, one was that Dr. King -- one of the witnesses said that Judge Bork said that if Dr. King had challenged laws by disobedience that he, Judge Bork, would say that he was not protected by the Constitution. On the contrary, Judge Bork said just the opposite. He said under those cases, if Dr. King wanted to test the constitutionality of a law by violating, he thought he was protected by the Constitution. I was particularly struck, having represented Dr. King in the Supreme Court, I noticed that. I noticed that statement was made. (p. 309)

- I think there has been an awful lot of confusion about what Judge Bork stands for in the privacy field. His objection to that was that they had developed a new different theory of privacy which he said had not existed before, and I believe most scholars accept that. And he didn't think it was desirable to develop a new theory of privacy. (pp. 322-23)

- He supports all the privacy laws and all the constitutional interpretations of the privacy laws that existed, his position is that you didn't need to create a new one which would be ambiguous, you wouldn't know whether it would apply to everything or what, why it was different. And he said in the case of Griswold he would seek to find another constitutional basis to overrule that. (p. 323)

- We in the Eisenhower Administration started the procedure with the American Bar Association, because President Eisenhower wanted to be sure we had highly-qualified judges, and he asked us, and me in particular, to set up the procedure. So I set up this procedure, and in over 200 cases, we worked with the ABA. (p. 339)

- Now, at that time, the rule was that the ABA would not deal with the political or social or judicial views of any candidate; that they would confine themselves to other matters of his qualifications, including his scholarship, his experience, his regard in the community, judicial temperament, and things of that kind. And it was clearly defined that they would not get into how he stood on particular matters, particular judicial matters. (p. 339)

- And as far as I know, all the eight years I was there, they never varied from that. If they have changed the rules, well, that is something else again. So I guess I had better wait and see what they say. (p. 339)

TESTIMONY OF CARLA HILLS

Former Secretary of HUD
(September 22, 1987)

- Given my deeply held views of Judge Bork's splendid character and capacity, I was startled and saddened by the proliferation of reports from interest groups contending that his presence on the Court threatens that group's particular interest. Rather than reason with his considerable intellect, too many have used highly selective quotations from his writings and skewed tabulations of his opinions to brand him "anti-labor," "anti-First Amendment," "anti-feminist," and, in particular, "anti" the social objective of the writer. (p. 116)

- Professor Gendon says it best when she writes, and I quote, "Judge Bork is likely to be a strong supporter of women's rights." Two aspects of Judge Bork's judicial philosophy are germane to her conclusion. First, judicial activism has badly harmed women in the past and could harm them in the future. Our greatest gains as women have been made and, I believe, will continue to be made through the legislative process. When the Supreme Court has imposed its values on the Constitution in an activist fashion, it has had a track record of invalidating legislation favorable to women. An activist Court spent the first third of this century overturning Federal and State laws that were designed to protect women in the marketplace. (p. 116-17)

- Judge Bork's view of gender equality under the equal protection clause advances, not retards, women's rights. Judge Bork has suggested that equality between the sexes ought not to be treated in precisely the same way as equality between the races. Laws that make some fine distinctions in some circumstances in the treatment of sex could assist women and thereby be tolerated in Judge Bork's view; whereas, there can be no distinctions based on race. Judge Bork's view is similar to that of many feminists like Herma Hill Kay, Lucinda Finley, and Mary Becker. As Professor Kay writes, "The focus has shifted from a recounting of similarities between women and men to a re-examination of what differences between them could be taken into account . . . to achieve a more substantive equality." (p. 117-18)

- I am very comfortable that Judge Bork's jurisprudence will not harm, but, rather, will help women achieve equality. That his judicial restraint enables nuance differences to be created in our State and Federal legislative bodies, and it is there that women have achieved their gains in this century. (p. 151-52)

MICHAEL MCCONNELL

Assistant Professor of Constitutional Law
University of Chicago
(September 22, 1987)

- Almost without exception, the Justices who had the most controversy at the time of their nomination have proven to be the greatest Justices in this century. I speak of Louis Brandeis; I speak of Charles Evans Hughes; I speak of Harlan Fiske Stone.
(p. 121)

GARY BORN

Adjunct Professor of Law
University of Arizona
(September 22, 1987)

- A fair and objective reading of the historical record shows that Judge Bork's civil rights' views are squarely within the mainstream of U.S. legal thinking. The same record shows that Judge Bork has personally made substantial contributions to the civil rights of minorities and women in this country. (p. 129)
- Judge Bork's record as Solicitor General reflects a genuine -- reflects in my view a genuine commitment to the civil rights of women and minorities. (p. 130)
- I think that Judge Bork's one decision on the court of appeals indicates that, contrary to what a lot of people have told this committee, that he believes the equal protection clause covers women. It answers that fundamental question which has so often been answered in a different way to this Committee and I think that is highly important. (p. 194)

THOMAS CAMPBELL

Professor of Antitrust Law
Stanford University
(September 22, 1987)

- Just focusing on the privacy question, Judge Bork is a careful scholar and a careful jurist, and he says let's take this concept and be careful when we expand it. Professor Tribe has referred to the expansive concept of privacy going on even to the question, not that he supports it, but to the question of the right to use drugs in privacy of your own home. (p. 179)

DONALD BALDWIN

National Law Enforcement Council
(September 22, 1987)

- That view, that one's own personal view of the application of the law should prevail, misses the whole point of our republic form of government. Ours is a government of the people, by the people, and for the people, not a government of special-interest groups. Our Founding Fathers, in writing the Constitution decided -- and I believe rightly so -- that our nation should be a nation governed by co-equal branches of the government: the legislative, executive, and judiciary. The legislative branch writes the laws, the executive carries them out, and the judiciary branch interprets our laws -- they do not write our laws. The country is quite clearly a nation governed by laws, not by men. (p. 249)

- As representatives of the vast majority of law enforcement and others who are charged with upholding the laws of our land, I think my colleagues here will agree that Judge Bork has demonstrated that he is committed to the idea that judges should confine themselves to interpreting the laws rather than advocating their ideas of what some might think is wise public policy. (p. 250-51).

- As The Los Angeles Times stated in a July 2, 1987, editorial: "Judge Bork has proved to be a man who follows the law and legal precedent -- not his personal preferences -- in arriving at his opinions." (p. 251)

TESTIMONY OF ROBERT FUESAL

President, Federal Criminal Investigators Association
(September 22, 1987)

- [L]ike others, we believe that throughout his career, Judge Bork has demonstrated a real concern for the problems of lawlessness and violence in our society, with a marked sensitivity to the concerns facing today's law enforcement professionals. (p. 270)

JOHN L. HUGHES

National Troopers Coalition
(September 22, 1987)

- Judge Bork has, we believe, struck the appropriate balance between protecting the rights of society to enforce its laws, on the one hand, and upholding the constitutional rights of an accused on the other hand. (p. 280)

TESTIMONY OF THE HONORABLE WARREN BURGER

Former Chief Justice of the United States
(September 23, 1987)

- But I am glad that 18 years ago, when I was before this Committee, that one of my former law students did not come in and say that I was against the contract clause of the Constitution, because very frequently in lectures, I would put the question the also: Why do we need a contract clause; and I would pursue that further: Why do we need all of this complex law of contracts on offer and acceptance and consideration and that sort of thing? And of course, that was to make them think, and I think it succeeded, but none of them were allowed in to say that I was against the contract clause, even though my rhetorical question may have suggested that to some of them. (p. 6)

- The examination of a nominee, in my view as a citizen and as a member of the Bar, ought to be on the whole person and the totality of the record. On that score, for example, Mr. Justice Black might not today be confirmed. (p. 8)

- When you look at a whole block of cases over the six or seven years that Judge Bork has been on the Bench, or any other judge that long -- I can think of another judge in that category, the late Judge Tamm -- then, it has real significance, that over that period of time and that number of cases, that nothing was found wrong or worthy of review; then, it has real meaning. (p. 15)

- It would astonish me to think that he is an extremist any more than I am an extremist. (p. 15)

- We all remember that the Constitution does not require that a Justice of the Supreme Court be trained in the law, but all of them have been. I have said before the American Bar Association, and have no hesitation in repeating here, in the half-century since I was a law student, following these things, I know of no person who meets those qualifications better than he does. (p. 16)

- A very sound lawyer and a very fair judge, on the whole record. I think I said before you came in, Senator, that my acquaintance with Judge Bork is purely professional, the acquaintance of a professional colleague. I have never been in his home, nor he in mine. I have observed his work necessarily, sitting where I was, as I observed the work of hundreds of other judges. And I have no hesitation in saying he is well, very well-qualified. (p. 16)

- I simply do not understand the suggestion that he is not in the mainstream of American Constitutional doctrine. There is

nothing on the record that would [indicate that he is not in the mainstream in the] last seven years. It is almost seven years since he has been on the court. (p. 22)

- I, for example, when I have gone to law schools for lectures, have been asked many times by law students, "Have you ever decided a case or written an opinion that you did not agree with, personally?" And I said yes, of course, a great many of them. (p. 23)

- This man is thoroughly qualified on every count that I would consider if I were sitting as a Senator. (p. 30)

- Now as to the right of privacy under the cases of the kind you suggest, more law professors and law school deans than I could count have criticized the analytical and juridical basis for those opinions. (p. 41)

- That is the business of law professors to take the Supreme Court opinions apart and tell the court how they could have written them better even with the same result. And that has been going on for years and increasingly so as the Law Review publications have enlarged and as we have had more law schools. I see no serious problem about it. (p. 42)

- I think I would disagree with the analysis of a number of cases where I agreed with the result. Sometimes on the court a Justice will say, "I concur in the judgments" and then write a separate opinion, or in between doing that and joining the opinion, write a separate concurring opinion, explaining your own approach to it. That is a very common practice. (p. 42)

- There were a number of opinions that the Supreme Court decided while I was in the Bar and while I was on the Court of Appeals that I did not agree with, but when I got to the court I followed them. I do not see the difficulty that some others do with that. (p. 43)

- Many times when it was perfectly clear that half of the court did not agree, but felt bound by the precedents. That is so common in the Judiciary that it is taken for granted. (pp. 43-44)

- I cannot think of a single instance in the thirty years now where I had any thoughts that a person was taking into account the source of his appointment or her appointment. That is one of these things that gets multiplied and multiplied, part of the hype of the Twentieth Century. I am not sure of the source of it. (p. 45)

- I was so concerned about the disinformation in some of these full page ads that I glanced at, that I felt as a member of the

Bar, as a citizen, I had an obligation really to say what I believe. (p. 48)

- It is a campaign of disinformation as far as these ads are concerned. (p. 48)

- The outside activities are unfortunate. That, I think, has a negative effect on the whole system. (p. 48)

WILLIAM LEUCHTENBURG

Professor of History, University of North Carolina
(September 23, 1987)

- Question by Senator Spector: Is there not a place for a nominee to the Court who articulates the view of the majority, Madisonian majoritarianism, as he writes about it, and as learned constitutional scholars have written to talk about the rights of the majority, and to have that in the balance as you apply the rights of the minority to maintain this tension and to have some sort of balance? State it specifically. Is there not a place for that kind of a doctrine of that kind of philosophy on the Court?

Answer of Professor Leuchtenburg: Well, I would say in response, Senator Specter, that that attitude is very well represented on the present Supreme Court; that in the views of Chief Justice Rehnquist, of Scalia and others, that there is no doubt that a view is going to be expressed at many times with respect to balancing. It is not that that kind of attitude is not voiced at all. (pp. 111-12)

TESTIMONY OF LLOYD CUTLER

Counsel to President Carter
(September 23, 1987)

- In virtually every Supreme Court decision that the Committee staff has attacked Judge Bork for criticizing, one, two, or three of these distinguished Justices [Hugo Black, John Marshall Harlan, Potter Stewart, Byron White, Lewis Powell, and John Paul Stevens] dissented, placing himself on the same side of the issue as Judge Bork. Indeed, Judge Bork's criticisms usually endorse the criticisms set forth in the dissents of these dissenting Justices. I have included their names and the case citations in an attachment to my statement. (p. 124)

- As Judge Bork has already testified, he has always recognized the right to disobey or urge disobeying, a law believed by the disobeyer to be unconstitutional, is appropriate and the only way of mounting a judicial challenge to that law. And I am morally certain, had he been on the Court at the time, that he would have done so in a case involving Dr. King. (p. 126)

- In my view, his confirmation would not shift the so-called balance of the Court nearly as much as the appointment of Hugo Black to succeed Willis Van Devanter, or of Arthur Goldberg to succeed Felix Frankfurter, or of Thurgood Marshall to succeed Tom Clark. (pp. 126-27)

- The time is going to come -- and it cannot come too soon for me -- when there is going to be a Democratic President. And, given our growing national penchant for ticket-splitting and lack of Party sensitivity and loyalty on the part of voters, a Democratic President may well come to office with a Republican Senate.

- It is necessary for Democrats who would vote against a moderate conservative nominee to the Court to recall or remember that they are giving a hostage to the time when a Democratic President will be appointing a moderate liberal, or perhaps a very liberal member to the Court, who will be judged by the same standard in reverse that you would be applying, in my view, if you reject Judge Bork today. (pp. 128-29)

- On the whole, I think he would come much closer, particularly as a sitting Justice if he is confirmed, to a Justice like Justice Powell and Justice Stevens -- and I remind you that that is precisely what Justice Stevens himself said, that "you will find in Judge Bork's opinions a philosophy similar to that you will see in the opinions of Justice Stewart, Justice Powell, and some of the things that I, Justice Stevens, have written."

That is his opinion, and he is probably in a much better position to judge than I. (p. 135)

- I would rank him as an intellectually highly-qualified Justice. When we start asking ourselves how many sitting or future Justices compare with Justice Holmes and Justice Brandeis or Justice Cardozo, they are generally accepted to be giants. They are on Mount Rushmore. It does not mean that I feel Judge Bork today is ready to take his place among them.

I think he has a potential. I certainly think that. (p. 147)

- I believe, that Judge Bork does not fit the current idiom of the definition of an ideologue, a man who has fixed views that he does not change in the light of new arguments or new conditions. (p. 170)

TESTIMONY OF JAMES THOMPSON

Governor of Illinois
(September 23, 1987)

- I believe Robert Bork would be a fine Justice on the Supreme Court; and more, I believe he would do equal justice under the law, the words carved on the Court, which I passed to come here to testify. I believe he has a fine inquiring mind, and I believe he is a fair-minded person who will listen. (p. 194)

- Out of all of the decisions which have been discussed over the many days that this inquiry has taken, the discussions in the press, very little attention has been paid to the criminal justice opinions of Judge Bork, and I think for good reason. They are practical, reasonable, moderate opinions. And yet, nearly a third of the business of the Supreme Court falls within the area of criminal justice and criminal procedure, and there has been the smallest amount of attention paid to Judge Bork's views on one of the most important issues to consistently come before the Court which not only involve the protection of the public, but individual rights as well. (pp. 196-97)

TESTIMONY OF THOMAS SOWELL

(September 25, 1987)

- My support for the nomination of Judge Robert Bork to the U.S. Supreme Court began even before he became a judge of the Circuit Court of Appeals. I publicly urged that he be considered as a replacement for retiring Justice Potter Stewart some years ago, and then again as a replacement for retiring Chief Justice Warren Burger last year. (p. 80)

- Gradually, but steadily, over the past 35 years, more and more decisions have been taken out of the hands of the American people and vested in courts. Those preoccupied with the merits or demerits of the specific issues raised in the cases involved pay little attention to the general drift away from accountable representative government. The ad hoc way many of these landmark cases of this era were based on legal principles improvised for the moment has meant that law itself has become more and more a matter of how judges happen to feel politically or socially about particular issues or particular litigants. (p. 81)

- No one has opposed these judicial trends more consistently or more ably than Robert H. Bork. First, as a scholar, and then as a judge. Mr. Bork has rejected the idea that judges should engage in heroic adventures in policymaking, as he calls it. The renunciation of power, he has said, is the morality of the jurist, not the assumption of power in the name of morality. (p. 81)

- Obviously I wouldn't be here if I believed any of that. The landmark civil rights cases which Robert Bork initiated or joined as Solicitor General have been dismissed by his critics because, supposedly, he was only the mouthpiece of the Administration. But surely no one believes that someone with Robert Bork's marketable skills was so desperate that he had to hang on to a job that required him to perform duties which conflicted fundamentally with what he believed and wanted to do. (p. 83)

- I do not think that judicial activism has been beneficial to minorities. One of the reasons is what I have mentioned earlier, that it is extremely hard for kids in many ghettos to get a decent education today, let's say as decent an education I got in Seton Hill some 40 years ago, because the disruption is so much greater today, and there is so little you can do about it.

If you expel more black males from some schools than you expel Asian females, that becomes a court case. You have the American Civil Liberties Union intervening in these places. There were students -- there were parents, actually, parading, I believe in Chicago, with signs saying "American Civil Liberties Union keep out," because they wanted their kids to get educated,

and that could not be done if you are going to have to due process ever disruptive student. (p. 97)

- You see, the problem is not whether you believe that school desegregation should have ended. I believe it should have ended long before. Judge Bork believes it should have ended long before. What he, and what I, have objected to are the principles used in that decision, because those principles take on a life of their own and they come back to haunt you in other areas. Obviously, this old phrase, "The hard cases make bad law" derived from that fact. You dream up a principle to reach this result, and then the principle has a life of its own. (pp. 105-06)

TESTIMONY OF PROFESSOR MEADOR

Professor of Law
University of Virginia
(September 25, 1987)

- We have heard a lot of talk here about mainstream, and I think that is a useful shorthand for determining whether a judicial philosophy of the nominee is within the acceptable range of contemporary American legal thought. There seem to me to be three questions that the Senate can ask of any nominee for the Supreme Court that will test the mainstream judicial philosophy point.

First, I would ask this; Is confirmation of the nominee supported by a substantial array of lawyers and legal scholars who are themselves well regarded and who come from various parts of the country and diverse legal settings? If the answer to that is yes, it seems to me that suggests rather strongly that the nominee is in the mainstream; otherwise, he would not have that kind of substantial and broad-based support for confirmation.

Second question: Do the nominee's views about various legal doctrines and task and approach to interpreting the Constitution have substantial support among other judges, lawyers and legal scholars; that is, does he have some professional company in his various legal views?

On both of those questions, it seems to me the evidence before this Committee has a lead to an affirmative answer. Those are objective questions, and the virtue of them is they relieve the Senators of having to referee these debates that are going on here day after day, which are impossible of definitive resolution. You don't ask who is right and who is wrong, do I agree or not agree; you say is there a substantial body of opinion supporting confirmation among knowledgeable and widely diverse lawyers, and does the nominee have professional company without his various views?

Third question: Where the nominee is judge already on a lower court, as is the case here, the question can be asked -- should be asked, has he been a lone wolf, an eccentric continual dissenter with very little company among his judicial colleagues, and has he been reversed a significant number of times by a higher court? If the answer to all that is yes, that would suggest that he is outside the mainstream. Here again, though, the evidence is to the contrary with Judge Bork.

So these are three tests that I submit would be useful to the Senate, would permit Senators to make a meaningful scrutiny of the nominee in their constitutional consenting function, and yet would get out of the unseemly kind of political fight,

ultimately relying on a kind of political influence, idiosyncratic judgment of the moment about the nominee. And I believe it would serve the smooth functioning, effective institutional functioning of President and Senate under Article II of the Constitution in a way that would benefit the country and the Court. (pp.235-237)

TESTIMONY OF PROFESSOR GEORGE PRIEST

Professor of Law, Yale Law School
(September 25, 1987)

- The critics of Judge Bork have focused almost exclusively on his academic writings, and are concerned that if confirmed Judge Bork will resurrect the style of extreme criticism of established law that characterizes his academic work. I believe this to be a very legitimate concern. But I think that to adequately understand Judge Bork it is helpful to have some view of the nature of the style of modern legal scholarship.

Judge Bork is the first truly prominent modern legal scholar to be put forward for the Supreme Court, and to understand his writings, it is important to recognize that since World War II there has been a vast change in the style of modern legal scholarship. There has been an increasing sophistication in scholarship, legal scholarship, that derives from a much greater focus on underlying theories or conceptual ideas in the manner of the social and natural sciences. (pp. 239)

- Robert Bork was a major academic prior to this appointment as Solicitor General, and later as judge, but I believe Robert Bork would never have achieved the academic prominence that he did if he had not mastered the academic style that I have described. Robert Bork's most important academic contributions in the field of antitrust law have generated a total rethinking of the field, which the Supreme Court has largely adopted.

And like his writings in the field of constitutional law, his antitrust writings are slashing, they are extreme, they challenge that there is any wisdom at all in 185 years of Supreme Court precedent, and they focus single-mindedly on one set of concerns -- consumer welfare -- to the exclusion of all others. But I believe it is only thorough this form of scholarship that new ideas can be established. (pp. 244)

TESTIMONY OF PROFESSOR SIMON

Professor of Law, Yale Law School
(September 25, 1987)

- I should like to talk about courage and about candor. Robert Bork's intellectual courage was reflected in his willingness to take unconventional positions in a number of questions of law and constitutional theory and also politics, such as his support for Barry Goldwater in 1964, almost alone in Yale faculty. Even in a university committed to notions of pluralism and academic freedom, it was not easy to be an unorthodox dissenter, but Judge Bork stood his ground with both dignity and good humor.

Robert Bork's candor was related to this courage. After all, a timorous person may shape and shade beliefs to please or appease the crowd. At Yale and elsewhere, in gatherings large and small, I never heard Robert Bork utter a sentence that had even the earmarks of dodging or trimming, nothing that suggested that what he said or did was influenced by either fear or favor. It was and continues to be my belief that with Robert Bork what you get is what you see and hear.

In the long run, Judge Bork's attributes of courage and candor will serve the Court and the country well. From time to time, it is of importance that a Justice be willing to resist prevailing passions. It is too bad, for example, that more Justices didn't support the plaintiffs' rights in the Japanese-American internment case of 1944. Judge Bork called this decision a constitutional disaster, and he would, I believe, have the courage to buck the tide should history present the Court with another such test of its mettle. (pp 247)

- As a member of the Supreme Court, Judge Bork could be expected to continue to raise these hard and fundamental questions with his colleagues, and to exhibit the intellectual courage of the past but subject, as he told the Committee at these hearings, to the institutional constraints that go with the job, including a commitment to stare decisis. His candor, we may assume, would continue unabated. (pp 251)

TESTIMONY OF PROFESSOR ROTUNDA

Professor of Law, University of Illinois
(September 25, 1987)

- I would like to begin by addressing the latest argument I've heard against Judge Bork. It's called confirmation conversion. The argument is that his general legal theory which he articulated before this Committee is fairly reasonable. He was here for about a week. It seemed fairly reasonable and, therefore, he must have changed his theory in an effort to secure confirmation.

I think the charge is very serious, and I believe it's false. As Professor Tribe told this Committee last Tuesday, he said, "I had no reason to doubt his integrity," nor do I.

I've heard a lot of Judge Bork's testimony. I've read a lot of his writings. I've reviewed his cases. I haven't been surprised by any of the testimony because I think I read his earlier writings and seen the rhythm in context, I think with care without bias. We should look at what Judge Bork actually says in context rather than what others claim he said. Very often, other people seem to put their words in his mouth, and I think that's not only unsanitary but very unfair. (p. 252-53)

- Senator Biden, I think, said earlier today what evidence do we have that Judge Bork has ever done anything for racial minorities. Well, I looked at his record as Solicitor General. He's often referred to as our Tenth Justice. He urged, for example, in Beer v. United States a broad interpretation of the Voting Rights Act to help black minorities. The Court, unfortunately, rejected his proposal.

In G.E. v. Gilbert, he urged the Court to rule that pregnancy discrimination was illegal sex discrimination. The Court rejected it. The Senators and the House overruled the Court.

Bork argued successfully in Runyon v. McCrary, that private racial discrimination is illegal. Justice White dissented in that case.

In Washington v. Davis, Judge Bork argued, again unsuccessfully, that disproportionate impact of a test, Civil Service test on black police candidates, made it illegal. The Court said you had to have intent to discriminate as well. (p. 258)

TESTIMONY OF CHARLES S. RHYNE

Former President of the American Bar Association
(September 25, 1987)

- I have observed Judge Bork before the Supreme Court. The oral argument of a case before the Supreme Court is perhaps the truest test of behavior of a legal advocate under pressure. If any tendency toward intellectual arrogance, rigidity or disrespect for precedent were present in an advocate, it would show under the vigorous questioning of the Justices.

While any Solicitor General takes with him an argument in the Supreme Court, the great respect the Court traditionally has shown for that great office and its views on the case to be decided, I have never noted that the Supreme Court in any way did not treat Solicitor General Bork with the utmost respect; and I have found that his arguments, even in supporting Federal legislation which I was challenging and which the Court declared unconstitutional, were fair, vigorous and well-grounded in the precedents I was seeking to change and did change. (p. 359)

- I would like to conclude by saying that I am a member of the Lawyers' Committee for Civil Rights Under Law, and served as a member of the first Board of Trustees of that Committee, and I cite many other instances in here where I desegregated the D.C. Bar, I desegregated Duke University where you wife and myself graduated, and I have had the word "race" taken off the membership application of the American Bar Association. So I am very sensitive to the claims that minorities have made that their fear that Judge Bork as a nominee to the Supreme Court, and I think they are not justified because, given the countervailing influence of precedent and the nominee's basic sense of simple fairness I have encountered in my contacts with him and his legal expertise, intellectual capacity, integrity, and unqualified judicial temperament, I have no fear that the cause of equality would suffer from his elevation to the Supreme Court. And I see no legitimate basis for any such fear.

Nothing Judge Bork has ever written or said keeps me from fully supporting his nomination, and I urge this Committee to favorably report on his nomination and support Senate confirmation of Judge Robert H. Bork as a Justice of the Supreme Court of the United States. (p. 361)

TESTIMONY OF JOHN SHEPHERD

Former President of the American Bar Association
(September 25, 1987)

- America believes -- the people that I have talked to, and I have taken surveys; I wish Senator Metzenbaum could be here. I have asked a lot of people about their judgment of what kind of a man we need today on the Court. None of them have answered that they fear, as Senator Metzenbaum seems to, that our country is in desperate straits and that our liberties are about to be lost. No -- we are a confident people, and we depend upon the Senators who are conducting these hearings, as well as the witnesses, to bring out the strengths of our country as well as pointing the finger to our unfortunate defects where they exist.

And so, the work you are engaged in goes far beyond the walls of this building, and it goes to people who have not had the breaks that some of us have had to have had legal education or college education. And I wish that some of the professors would be a little more temperate in their analysis of the work that is going on here, because our country and all of us as presidents of the Bar Associations have proudly said throughout our land and indeed in many foreign countries that America is a country that respects the rule of law. And so we do. And one judge, as important as it is, or one Senator, or one past president of the American Bar, is not going to drastically change the protection of the rights of these citizens. And they need somebody in authority, like this Committee, to assure them of that fact.

And I say, Senator, with great respect for you and all the Members of this Committee, that the fact is that the business of justice in America is too important to be left to professors and senators and, yes, even to judges. In America, the business of justice is everybody's business. (p. 369 - 70)

- It's interesting to note, as I did some of my research, that some of the people who have appeared before this committee also appeared, or their organizations appeared, in the confirmation hearings, for example, of Lewis Powell.

In opposing his 1971 nomination, noted civil rights lawyer Henry L. Marsh, who while he was testifying on behalf of the Old Dominion Bar, castigated Justice Powell's record -- and this is a quote -- "record of continued hostility to the law. His continual war on the Constitution." In deference to the hour, I will not cite the other people who had such comments to make not only about Lewis Powell, who I think we can all agree is a distinguished past president of the American Bar, and a distinguished jurist, but same type of comments were urged upon the confirmation about John Paul Stevens. (p. 379)

TESTIMONY OF WALLACE RILEY

Former President of the American Bar Association
(September 25, 1987)

- At the last annual meeting of the American Bar Association, out in San Francisco in August, and just last week at the meeting of the State Bar of Michigan in Grand Rapids, Michigan, I talked to a lot of lawyers. And I found that a great majority of the lawyers with whom I spoke were of the belief that Judge Robert Bork was a good choice for the Supreme Court.

These people are practicing lawyers who are impressed by the outstanding academic credentials, by the military and public service record, by the law firm practice, and by the appellate judicial experience of Judge Bork. Most would settle for Judge Robert Bork's success in any one legal career. He has distinguished himself in four. (p. 371 - 72)

TESTIMONY OF JAMES T. BLAND, JR.

President of the Federal Bar Association
(September 25, 1987)

- I want to stress that I am speaking only on behalf of our nationally-elected officers, not our entire membership, which is composed of more than 15,000 lawyers and judges in government service, in private practice, and in our Federal judiciary.

We did, however, conduct a poll of our nationally-elected leaders several months ago, when the Administration requested our input as to the qualifications of Judge Robert Bork. We were not asked if we liked Judge Bork. We were not asked if we would like to see Judge Bork on the Supreme Court. We were merely asked if, in our professional opinions, we believed Judge Bork was qualified to sit on the Supreme Court of the United States. The answer? It was overwhelmingly "yes". ((p. 373 - 74)

TESTIMONY OF GRIFFIN BELL

Former Attorney General of the United States
(September 28, 1987)

- I must say that the paper [prepared by Senator Biden], while excellent, seems to set out the qualifications for a Democrat, somebody that a Democratic President would have nominated, and to see if that President met the test that maybe President Carter would have wanted the Supreme Court to meet.

It does not address whatever the test ought to for somebody put up by a conservative Republican who ran on that issue. That was an issue in the last campaign. And that is the problem I have with the paper. I do not think it makes out Judge Bork to be anything more than a conservative. I was looking to see if he was a radical of some sort. I would not vote for a radical to go on the Supreme Court. But on privacy, I find that his views, for example, on the Griswold v. Connecticut case, are precisely the views that Justice Black and Justice Stewart had -- neither of whom I ever thought of as a radical. (p. 53)

- One of the things I like about Judge Bork is he is not only bright, but he is contemplative and reflective and sensitive, it seems to me, and he is working all the time to compare whatever is before the Court with the Constitution, and he is trying to find things under the Constitution. I like that about him. (p. 55)

- Those are my views. I think Judge Bork is in the mainstream. I wondered a good deal about if we do not get Judge Bork, who will we get? Here is a very bright person. We have to be very careful in this country -- we do it from time to time -- we have become anti-intellectual. It would be easy to get somebody confirmed who has never done anything, has never taken a controversial position on anything. But that is not the kind of person we want. We want somebody who has written a lot and who has said a lot and who has been examined about what he has written and said. And when all is said and done, if we think he is believable, then he is no more than a conservative. And the President has a right to put up a conservative. And if Judge Bork is not confirmed, he will put up another conservative. If that man is not confirmed, he will put up another one. So I would not be willing to let a good man go when I do not know who else is coming down the line. (p. 57)

- [I]f I was in the Senate I would vote for him. I think he is a conservative, but he is principled, he is rational, and I think that he would not wear any one's collar. I doubt President Reagan knows what he would do, and I like that. I like to see a man go on the Court who is going to be his own judge, be his own

man, and I think that is the way it is going to turn out. (p. 64-65)

- He is going to do whatever he thinks the Constitution means, and he is searching all the time. He has grown from the time he was a young law professor to now. He has grown a great deal. He has changed his mind about things. I like that. (p. 65)

Well, the public-accommodations law which he opposed at the time, there were thousands of people, lawyers or judges who opposed it. (p. 69)

- Well, I have not really worried about it until today. When I got up this morning and read in the paper that the polls showed that the majority of the people are against Judge Bork, it struck me that we have abandoned the constitutional process for confirming judges, selecting and then confirming judges, and that we are going now into the Gallup poll business. (p. 74)

- Based on my knowing him I consider him to a very sensitive person to other people and to history. And it would take almost a barbaric person to come out and say and even try and turn back the clock on civil rights.

If I thought he was going to turn the clock back on civil rights, I would not support him. I will tell you that. I have spent a lot of years of my life in that field of endeavor, and we do have things in pretty good shape now. There are still problems, of course, and there always will be in a country like ours where we have a lot of diverse people.

But I have never seen him say anything that would indicate to me or see anything he has written that he would do anything against civil rights. Therefore, I do not expect that he would. (pp. 100-01)

- I would be shocked if he did anything except vindicate civil rights of people. (p. 101)

HONORABLE RICHARD THORNBURG

Former Governor of Pennsylvania
(September 28, 1987)

- I came to know Bob Bork as an extremely able and intelligent lawyer. I also came to know Bob Bork to be a man of personal integrity and a man of commitment to the rule of law. I know that Bob Bork shares with me a deep concern in ensuring that the criminal laws of this country are enforced through effective investigation and fair trials conducted in keeping with the Constitution of this nation. (p. 156)

- During that two-year interval in which I served as head of the Criminal Division, we were in frequent contact with regard to our concerns about Constitutional rights being observed and the civil rights and civil liberties of people, including unpopular groups that were the target of many of these particular operations. And there was a mutual concern that never again should these types of activities be countenanced by our Government. And out of that came recommendations in coordination with then FBI Director Clarence Kelly for changes in FBI procedures, and out of that came a number of changes in other intelligence and criminal prosecution procedures designed to ensure those Constitutional rights. (p. 176)

- During that period of time, I observed Judge Bork to be a strong believer in civil rights and civil liberties, expressing great concern from a largely academic point of view in terms of his experience, displaying a firm grasp of the Constitutional principles involved in the very difficult sometimes cases of first impression that we were looking at, and a genuine, heartfelt concern on a personal basis in addition to his academic expertise that these types of activities not be given the imprimatur of Government thereafter. (p. 176-77)

I think that there clearly is not only the intellectual capacity, which I believe the Judge has displayed throughout his career, but the sense of feeling with regard to the personal impact of the Constitutional guarantees that made him a most worthwhile addition to this group that was working on these highly complex and very important matters. (p. 177)

TESTIMONY OF A. RAYMOND RANDOLPH

Former Deputy Solicitor General
(September 28, 1987)

- I think that during these hearings something has been lost, and that is to what extent one can gain an insight into how Robert Bork would be an Associate Justice of the Supreme Court by looking at the time that he in fact served as the sometimes called "tenth Justice of the United States," namely, Solicitor General. (p. 158)

- As a Solicitor General, I think Robert Bork's record was outstanding. I have followed these hearings carefully. I don't think there has been a single witness that would dispute that assessment of what he did. (p. 158)

- I have been practicing law before the Supreme Court for seventeen years. I don't want a Justice who is predictable. I want a Justice who is open-minded, fair, can be persuaded, and is not bound and controlled by sympathy. I want someone who is neutral, because otherwise my role as an advocate before the Court is not of any use. Robert Bork would make that kind of Justice. (p. 161)

TESTIMONY OF JEWEL LAFONTANT

Former Deputy Solicitor General
(September 28, 1987)

- You see, I knew him well. Let me tell you about the heart of the man. In 1973 after I left the United Nations, I came to the Office of the Solicitor General. I was a rarity, if not an oddity: there never had been a woman, black or white, Deputy Solicitor General of these United States. And my presence here is due to the high regard I have for Judge Bork, based upon my personal experiences with him.

Judge Bork placed me in charge of the entire Civil Division where I reviewed hundreds and hundreds of cases that had been determined first in the United States district courts and then in the United States courts of appeal. I say I was an oddity -- and it's not just my assessment; it appeared that there was also the perception of the staff in the offices of the SG. You see, attempts were made to isolate me. On one occasion, a secretary who had warmed up to me after a few months after my arrival, she said: I am going to tell you something, Mrs. LaFontant, that you are not going to like -- the other deputies meet regularly, and you are not included. How do you know this, I asked. She continued: I was told to call the deputies in to a meeting and the names were called, and I said: "And Mrs. LaFontant?" The response was: oh, no, just the men. The response could have been: oh, no, just the whites.

I immediately reported this to Solicitor General Bork, and it is an understatement to say that he was appalled. And though he is usually a calm and even-tempered person, he exhibited strongly his dismay and sputtered his unhappiness about this attempt to exclude me and to discriminate against me. The very next day was the beginning of my attending so many briefings -- I was bombarded with meetings -- that I wondered to myself whether I had been wise in complaining in the first place.

But those meetings were very important, not only because the current cases were discussed, the relevant law reviewed, but the cases for argument before the Supreme Court were assigned at those meetings, and those in charge of assigning have the pick of the cases to present to the various lawyers.

By being kept out of these discussions, my education of course was being limited, to say the least, and I was not given the choice cases to argue.

But Judge Bork handled this in his usual low-key, quite but determined and fair manner -- no confrontation, no embarrassing accusations -- things just changed. He had seen to it that I was treated the same as the others.

And during my entire tenure there, Judge Bork exhibited complete fairness and openness. He was always open for debate -- actually enjoyed the give and take of debate. He believes, and has said: intellect and discussion matter, and can change the world. He doesn't have a closed mind.

Bob Bork's devotion to women's rights was further exhibited in his support of the Federal Women's Program of the entire Department of Justice. In fact, the Federal Women's Program was founded in my quarters of the Solicitor General's Office, and I became its first chair, which could not have happened without the blessing and encouragement of Judge Bork. (pp. 162-64)

- All of my life I have been involved in civil rights organizations, having served for many years as secretary of the Chicago branch of the NAACP, on the board of directors of the American Civil Liberties Union and its legal redress committee, and as chairman of the Illinois Advisory Committee of the United States Civil Rights Commission, as well as being a commissioner of the Martin Luther King Holiday Commission. I have no hesitancy in supporting Judge Bork's nomination to the Supreme Court. (p. 165)

- But what I like about him further is that he can be persuaded. In his 1963 New Republic article, he opposed the public accommodations provision of the proposed 1964 Civil Rights Act, but ten years afterwards, in '73, while I was in the Solicitor General's Office, he changed his mind. He admitted he was wrong, and he has been severely criticized for his change of heart. To me that is a sign of true intellect, that you can admit you made a mistake. Bork said: "I was on the wrong track, the civil rights statute has worked very well. Were it to be proposed today . . ." -- and he was talking in '73 -- "I would support it." (p. 166)

- As a woman and a black woman, I have no fear of entrusting my rights and my privileges to Robert Bork as an Associate Judge of the Supreme Court. I believe in him. (p. 165)

- I am sold on the fact that he is completely devoid of racial prejudice. He is not prejudiced against women. I am convinced of it. (p. 179)

- I heard his testimony here, and it is like in a jury trial. You look at the witness, and you assess him from the way he appears. So that has to be left with you -- how did he appear to you. To me, he is an honest, fine man who would not tell me these things if he did not sincerely believe them. (p. 180)

TESTIMONY OF STUART SMITH

Former Deputy Solicitor General
(September 28, 1987)

- During my time at the Department of Justice, I argued almost 50 cases in the Supreme Court and more than 60 cases in the various circuit courts of appeals. I have worked with many fine lawyers over a very productive professional career, both in Government and in private practice, but I can tell the Committee that I have never encountered anyone who has been the equal of Bork in terms of his intellectual integrity and absolute professionalism. (p. 170)

TESTIMONY OF PAUL BATOR

Professor of Law
University of Chicago
(September 28, 1987)

- My own view, Mr. Chairman, is that the country will be better off with a Robert Bork on the Supreme Court than without him because he is a person of surpassing intellectual distinction, because of his outstanding integrity and intellectual honesty, and because of his commitment to the rule of law. (p. 187-88)

- In terms of qualifications, the Bork nomination seems to me to be one of the five or six most distinguished of the century. We have had many mediocre Justices in this century. To reject a nominee of outstanding distinction would be to miss an important opportunity. (p. 188)

- As Solicitor General, Judge Bork performed in the very highest tradition of that office. And I hope members of the Committee have carefully read the really powerful and moving letter that was written to the Committee by the lawyers, the very distinguished lawyers who served with Judge Bork in that office. A letter which speaks of Judge Bork's professionalism, of his tolerance and openness, of his dedication to the judicial process and reasoned decisionmaking, and his commitment to the rule of law. (p. 188)

- And, finally, as a judge, Judge Bork has served with great distinction and with completely appropriate institutional commitments and traditions. And it does seem to me very unjust to assume or to state that when Judge Bork goes on the Supreme Court, he will suddenly go haywire, and start operating as a radical eccentric. Oblivious to the traditions and institutional constraints of that office. There is no evidence for that proposition. (p. 189)

TESTIMONY OF HENRY MONAGHAN

Professor of Law
Columbia University
(September 28, 1987)

- In my view, no more than a score of persons has ever been nominated to the Supreme Court with such surpassing credentials. (p. 191)
- Judge Bork's nomination should have been met with acclamation. But, from the beginning, this nomination has been the occasion for a wide-ranging referendum on the Reagan Presidency and on various specific Supreme Court decisions. In that controversy, Judge Bork's qualifications, indeed Judge Bork himself has been wholly submerged. (p. 191)
- Judge Bork has been replaced by a wholly symbolic larger than life Judge Bork, and every effort has been made to depict him as a dangerous liberty-threatening radical. (p. 191)
- I want to emphasize that there is no evidence, none at all, that either Judge Bork's general judicial philosophy or his attitude towards specific Supreme Court decisions is radical or atypical. (p. 191)
- Judge Bork's views have evolved and they will continue to evolve, and this is exactly how it should be for any lawyer possessed of an intelligent inquiring fair intellect who deals seriously with the hard issues of constitutional law. (p. 193)
- For me, therefore, the fact that Judge Bork has shown the capacity to change his mind is among the strongest possible reasons for confirming him. (p. 193)
- The hard fact is that Judge Bork's views are not out of the mainstream. There are more than score of distinguished Circuit Judges and law professors who hold views similar to those of Judge Bork, not all of whom, I might add, are as open-minded as Judge Bork. (p. 193)
- He would cover women [under the Equal Protection Clause]. As I understand Judge Bork's protection analysis, he takes race as the core case, and he says if there is a racial classification, the Government must justify that by the highest standard known to the law. No racial classification is good at least if it disadvantages blacks. And I think it is a mistake to assume that Judge Bork has made up his mind on affirmative action, but let me put that out of the way.

If a racial classification burdens or disadvantages blacks, that is the core of the amendment. He is certainly right about

that historically. In the slaughterhouse cases, it was doubted that anything else was covered but racial classifications. But in any event, Judge Bork would then require that the justification be a compelling or overriding one.

Now, he recognizes from that point on, as I recognized, as does the rest of the universe recognize, that the equal protection clause can then be used against any other kind of a classification -- illegitimates, children, women -- but the standard drops at that point; the standard drops to the reasonable basis standard, which is to say that any classification that hurts anybody has to be justified by the Government. The Government must show it rests upon some reasonable basis. And that in a nutshell is, I think, Judge Bork's view. (pp. 230-231)

- Judge Bork is criticized from the far right, from the left. I would like to think that he is at least in the mainstream. (p. 237)

- I think that -- you know, I think it is Judge Scalia whose views are far more conservative than Judge Bork. If Judge Scalia came in here today, there would be less intensity, and I also think that there are, in every period, symbolic battles, and it is time for a symbolic battle at this point, and of course, if it turns out that Judge Bork is not confirmed, the substance will not change. The next appointment will be, I think, a moderate conservative. (p. 252)

TESTIMONY OF LILLIAN BEVIER

Professor of Law
University of Virginia
(September 28, 1987)

- Because he has been critical of some of the Court's past cases, some of his opponents have indulged in a rather simplistic prediction. Oh, if Judge Bork is on the Court they say he will vote to roll back the clock and massively repudiate the decisions whose reasoning he has questioned.

But Senators, this is not going to happen. As Judge Bork himself has repeatedly emphasized, it is one thing to ask whether the Court should, in the future, recognize new rights that the Constitution does not specify. It is quite another thing altogether to ask how the Courts should deal with the rights that have, even mistakenly, been recognized in the past.

Whether a precedent should be followed involves different considerations, legitimately different from whether it should have been created in the first place. .

Even if a past case were a mistake, it may very well be that it neither can nor should be undone, and in some sense, overruling precedents is like trying to undo the consequences of a mistake. (pp. 196-97)

- In short, when Judge Bork practices judicial restraint, he neither abdicates the judicial obligations to protect individual and minority rights nor does he shrink from appropriate opportunities to expand those rights. (p. 199)

TESTIMONY OF LEO LEVIN

Professor of Law
University of Pennsylvania
(September 28, 1987)

- The Judge Bork that I know has absolutely no resemblance whatsoever to the Judge Bork that is being caricatured in many places. This person does not have an ounce of prejudice, racial, ethnic, religious, sexual, in his body, and I have no hesitation whatever on that score. (p. 200)

- I think Judge Bork is strongly committed that once a value has been identified -- and I think that is where precedent counts -- to say to it, okay, we are going to apply what is needed in today's world to make that value a reality, even though it encompasses situations never intended earlier. And I think for myself -- and I have a kind of confidence in this -- that taking a particular approach, and particularly in First Amendment, and particularly as I gather the whole spirit in which he wrote on that in the Ollman case, which divided the Court of Appeals so, I think he is dedicated to the importance of First Amendment values. Having identified them, he then moves on to what is needed to day to do it. (p. 228)

TESTIMONY OF DALLIN OAKS

Dean, Brigham Young University Law School
(September 28, 1987)

- In my judgment, Robert H. Bork would make an outstanding Justice on the United States Supreme Court. He is highly intelligent. He is the product of a superior legal education. (p. 203)

- Through long experience in different areas of the profession, he has proven his excellence in the kind of legal practice, scholarship, and public service, that has traditionally fitted persons for the effective performance of high judicial office. (p. 203-04)

- He is a man of integrity who has adhered to the highest standards of the legal profession. I have been saddened as some respected persons and organizations have characterized Judge Bork as an extremist, an enemy of legal rights that are vital to some citizens, and valued by all. These assertions are not well-founded and do not serve the cause of thoughtful discourse on the qualifications of this nominee. (p. 204)

- Robert Bork, from my long knowledge of him and observation of his record and his work, is an open-minded intellectual, not an expedient climber. He has changed his mind, but any scholar worth his salt is going to change his mind on things. (p. 216)

TESTIMONY OF HOWARD KRANE

Partner, Kirkland & Ellis
(September 28, 1987)

- By way of background and as an historical footnote, I am the lawyer who as a young man was the immediate beneficiary of Bob Bork's insistence to the senior partners of my law firm that it eliminate prejudice and discrimination from its hiring practice in 1957, a time, regrettably, when quotas and other discriminatory practices were not uncommon within the legal profession and most other parts of American society and business. (p. 262-63)

- The negative symbolism and rhetoric that has clouded real insight into Judge Bork's views during this confirmation process bear no resemblance to the man and his true character. Bob Bork is a person without prejudice against any group. In all the many personal and private conversations I have had with him over the years, I have never heard him disparage anyone based on race, gender, religion or ethnicity. There can be and is no basis for any suggestion that Bob Bork's personal views and beliefs make him unsympathetic to victims of official or private discrimination or predisposed against their plight. If there were, we would not be friends, and I would not have had the opportunity he opened up for me and others at my firm. (p. 263-64)

- I have, in short, the measure of the man. With the authority of personal knowledge, I can and do reject any suggestion that Bob Bork has misstated his views or falsely professed to have changed his views in order to enhance his chances of being approved by this Committee and confirmed by the Senate. (p. 265)

- As I indicated at the outset of my remarks, I am grateful for the opportunity to testify on behalf of Bob Bork. But I am also saddened that testimony such as mine is in any way necessary. I am a believer that reasonable men and women can disagree about a great many things, but reasonable men and women cannot disagree about the integrity, honesty and candor of Bob Bork. In these respects, as well as many others, he is the finest man I know. (p. 266)

TESTIMONY OF REED G. CARLOCK

Attorney at law, Phoenix, Arizona
(September 28, 1987)

- Judge Bork has to a remarkable degree the qualities of intellect and character necessary to this task. His insistence on determining how and where an idea fits into the framework of our Constitution gives a principled continuity to his thinking and enhances judicial determinations and opinions.

His lively intellectual curiosity gives assurance that new facts and new arguments will be considered and old results changed, if appropriate.

When is it appropriate to change old results? I believe Judge Bork's answer to that question, in practice, will be that he will not seek to change old results just because in his view there was a better answer when the result was first reached if in the meantime governmental and private arrangements and expectations have made the old results so much of our structure that it is better left alone. (p. 270)

STATEMENT OF ELLIOT L. RICHARDSON

Former Attorney General of the United States
(September 29, 1987)

- Robert Bork's actions in the aftermath of the Cox dismissal contributed to the continuation and ultimate success of the Watergate investigation. He took immediate steps to keep the Watergate Special Prosecution Force together and insisted that it retain responsibility for the investigation. (p. 3)

- The uncertainty to which I earlier referred stemmed from utterances that made me wonder whether his views reflected the requisite balance between the two most basic considerations that constitutional adjudication is required to reconcile: on the one hand, due regard for continuity and stability and, on the other, openness toward the maturing values of a changing society.

My uncertainty has now been dispelled by the carefully considered testimony that Judge Bork has given to this Committee. Though he may not assign the same weight to these considerations that I would give them, I regard his valuation of them as eminently reasonable. I am also satisfied that to portray him as bent on enshrining his every past utterance in some future majority opinion is worse than a caricature -- it is a distortion. (p. 3-4)

- In my judgment, moreover, the clarification of his views that has now emerged is entitled to be taken at face value. To treat it otherwise would be both insulting and implausible. Insulting because no foundation whatsoever has been laid for impugning his fidelity to the truth. Implausible for two reasons: first because it is natural that a sometime professor now face to face with awesome responsibility would reconsider earlier positions; second, because it is to be expected that a man of his formidable intellectual capacity would continue to think and learn and revise his opinions accordingly. Indeed, I would think less of him if he had not, upon mature reflection, modified many of his views. (p. 4)

- As I read the history of the Constitution and the language of the Ninth Amendment, the framers deliberately left open the question of what rights not mentioned in any constitutional language are nonetheless protected. It does not follow, however, that courts are left at large to define those rights. Judge Bork's answer to this question, as he has expounded it to you, is at least as much entitled to representation on the Court as my own. (p. 6)

STATEMENT OF GERHARD CASPER

Professor of Law, University of Chicago
(September 29, 1987)

- It is my view that Judge Bork has a more profound understanding of the essential nature of American constitutionalism than has been reflected by many of his critics. Contrary to the impression created by these hearings -- which have already done a great amount of harm -- this country is held together by the rule of law, not by the rule of judges. As Judge Learned Hand once said: "[I]n a society which evades its responsibility by thrusting upon the courts the nurture of [the spirit of moderation], that spirit in the end will perish." (p. 3-4)

STATEMENT OF RONALD R. DAVENPORT

Former Dean, Duquesne Law School
(September 29, 1987)

- I have known Judge Bork for over 25 years. As a graduate student at the Yale Law School, I took his course in Antitrust Law. This was Judge Bork's first year at Yale and I had many opportunities to engage him in spirited debate on the issues of that time. I found him then to be open, approachable, and balanced. Over the past 25 years both in his career at Yale, his career as Solicitor General, and as a judge on the Court of Appeals for the District of Columbia, our professional relationship has continued. Several years ago, Judge Bork spent the day at Duquesne Law School and spoke to our law alumni. Judge Bork is a bright, able, and energetic scholar. He has a sharp, questioning, and demanding mind. Although I do not share all of his conclusions and approaches, I nonetheless believe that he brings to the court, not only intellectual brilliance, but an open and inquiring mind. (p. 1)

- I am confident that if Judge Bork is confirmed, he will not treat his elevation to the Supreme Court as a roving commission to rewrite the Constitution. In fact, to do so would do violence to his deep respect for the concept of judicial restraint. Judge Bork is a warm and sensitive man who, in my judgment, will bring to the Court a deep respect and concern for the rights of all citizens. (p. 3)

STATEMENT OF STEVEN P. FRANKINO

Dean, Villanova Law School
(September 29, 1987)

- After the mid-1960's the ideological spectrum of legal education generally narrowed. Those of us who were comfortable within that perspective did not fully appreciate that some students and many legal professionals were not with us. Judge Bork and others mounted a campaign to redress the balance. The vigor they brought to the platforms was in no small part designed to open up the law schools to underrepresented ideas and values. The development of Federalist Society chapters within law schools provided outlets and fora for students and faculty who wished to explore law beyond contemporary orthodoxies. This has been a significant contribution. It has encouraged the return of a full spectrum of viewpoints to legal education. If the rhetoric of Judge Bork and his colleagues was sometimes pointed, heated and even caustic, it was because the barriers to their being heard were so formidable. (p. 1)

- During most of Judge Bork's service on the D. C. Circuit Court I was actively involved in the legal life of the District of Columbia. My work brought me in frequent contact with lawyers who actively practiced before him. I never heard it suggested that Judge Bork was an ideologue or a judge with an agenda. Those who practice in the Court of Appeals have praised Judge Bork's openmindedness and fairness. He has evidenced no idiosyncratic approach to the judicial function. (p. 2-3)

- I have on a number of occasions attended lectures and speeches Judge Bork has delivered on the nature of the judiciary. There is nothing radical or unusual in his approach -- in fact, he is in accord with what I have understood to be the traditions of the common law and the positions of many great American jurists. There are other approaches to the judicial function but to characterize Judge Bork's as outside of current legal thinking is in my opinion simply not accurate. (p. 3)

STATEMENT OF MAURICE J. HOLLAND

Dean, University of Oregon School of Law
(September 29, 1987)

- Judge Bork's nomination has also provoked much debate and discussion about the proper role of the Senate in granting or withholding consent to Supreme Court nominations. On this issue I might be breaking ranks with some of the supporters of this nomination, since I believe the Senate's role to be a very substantial and important one, and that its inquiry should be considerably more searching than when screening Executive Branch appointments. This does not in the least discomfit me in supporting this nomination, as I firmly believe that Judge Bork does emphatically meet the rigorous standards the Senate should properly insist upon. (p. 1-2)

- Judge Bork has repeatedly stated his unreserved agreement with the fundamental proposition that it is "emphatically the province of the judiciary to say what the law is," and that the law of the Constitution must prevail over majoritarian decisionmaking, and as a Court of Appeals judge he has acted on that agreement. But he is, in turn, somewhat more distrustful than many of his opponents of the legitimacy of judges finding new rights in the Constitution, which amount to new shackles upon democratic governance, rights that are not even suggested by the text of the document, much less stated in its language, rights which the historical data indicate formed no part of the intent of the framers or ratifiers, rights that were not even hinted at in hundreds of Supreme Court decisions handed down for many decades after the adoption of the relevant provision or amendment. Part of Judge Bork's nuanced and thoughtfully formulated distrust of judges as expositors of a "living Constitution," or in Justice Hugo Black's phrase, "making up the Constitution as you go along," may perhaps derive from his awareness that such a free-form, non-interpretivist approach to the Constitution carries with it strong temptations to the judiciary to play the heroic part and aggrandize its power in derogation of the power legitimately confided to the people and their elected representatives. (p. 4-5)

- Judicial philosophy as it pertains to judicial review and the role of the Supreme Court is a house of many mansions. It encloses a broad range of differing views within the confines of honorable and thoughtful opinion. Judge Bork's views place him well within those confines, and indeed place him within a great tradition which includes many of America's finest jurists, including Supreme Court justices. It would be a tragic mistake for the Senate, in voting on this nomination, in effect to proclaim that mere fidelity to the great tradition of judicial restraint is a sufficient reason to withhold its consent to confirmation of a nominee so eminently qualified by virtue of

personal integrity and professional distinction as is Judge Bork.
(p. 7)

TESTIMONY OF THOMAS D. MORGAN

Dean, Emory University School of Law
(September 29, 1987)

- [Judge Bork's] record as a judge and advocate is clearly outstanding, as would be his work as a Justice. It has been asked how the committee can be sure that a person with Judge Bork's critical views of the reasoning of many Supreme Court cases would nonetheless adhere to those cases when on the Supreme Court. I can only answer that the fundamental principle he has always asserted about judging is that judges themselves should be bound by the law. That is his point about the need to ground Constitutional decisions fairly in the language of the Constitution. (p. 3)

- If we look at his whole approach, then, not just the criticism of individual decisions, we find no basis to doubt that his performance as an advocate and judge is the "real" Robert Bork. (p. 3)

- In his antitrust writing, for example, the work which first brought Judge Bork to national attention, he consistently asked a basic question which others had not been regularly asking: Is the application of the Sherman or Clayton Act to a given situation one that will make consumers better off as Congress intended, or will it -- unintentionally, but in fact -- do harm to consumers? (p. 4)

- I do not question for a moment -- and I am confident Judge Bork does not -- that disputes between Congress and the President involve matters where the stakes for all of us are extremely high. Indeed, lately, they often implicate questions of war and peace. But they are disputes which Congress and the President have many political tools with which to resolve. In the old days, we called such issues "political questions" and Justice Frankfurter was particularly concerned that the federal courts avoid them.

Intervention of courts into that policymaking process could do more harm than good, Judge Bork has said. And whether or not you believe he is right, you can see that his view is neither opportunistic nor inconsistent with the way he has traditionally approached difficult questions. (p. 5-6)

- There are few deeper ironies in this hearing than the portrayal of Robert Bork as opposed to liberty. His whole career is consistent with the view that concepts of limited government and human freedom run throughout the substance and structure of the Constitution; they are not even limited to the Bill of Rights.

What Judge Bork properly fears, however, is that a Supreme Court which does not consider itself bound by the limits of a fair reading of the Constitution is a Court that potentially can do more harm than good. It may make up the law in a way that you and I like today, but it could restrict our rights as easily tomorrow if we fail to insist that courts operate within legal standards which are fairly traceable to the Constitution or a valid statute. (p. 6)

STATEMENT OF EUGENE V. ROSTOW

Former Dean of Yale Law School
(September 29, 1987)

- In my view, your hearings have not raised a serious issue about Judge Bork's rectitude or his intellectual qualifications for the post. The sole question before you is whether Bork's judicial philosophy so offends the Senate as to justify its refusal of consent. You will note that I did not say that the issue is whether you agree with his judicial philosophy and record, or find it congenial or even comfortable. The question, as I see it, is quite different. Many of you, I know, have concluded, as I have, that Judge Bork should be confirmed on the merits. Some are opposed or doubtful. To you, I say particularly, the Constitutional issue is whether you can honorably conclude that Judge Bork's jurisprudence is so outrageous as to fall outside the zone of the President's Constitutional discretion in making nominations. In making that decision, I appeal to you to recall that some of the most influential and useful judges in the history of the Court were not full members of what has been called here "the mainstream" of Constitutional opinion, but dissenters, often lonely voices in the wilderness, whose views prevailed in the long run. Holmes, Brandeis, and the elder Harlan all belonged to this precious and remarkable group. (p. 4)

- Not many nominees for appointment to the Supreme Court could have explained the judicial process as well and as honestly as Judge Bork has done in these Hearing, with as much sophistication, as much learning, and as much passion for the law. (p. 6)

STATEMENT OF TERRANCE SANDALOW

Professor of Law
University of Michigan
(September 29, 1987)

- It is inconceivable that the American Bar Association's Standing Committee on the Federal Judiciary would have rated "exceptionally well qualified" for appointment to the Court of Appeals and "well qualified" for appointment to the Supreme Court -- the highest possible rating in both instances -- a man as narrowly dogmatic as the one that Judge Bork's critics have sought to depict. (p. 4)

- The record thus provides no more foundation for the claim that Judge Bork's testimony is opportunistic than it does for the contention that he is a conservative ideologue. Both assertions are, rather, evidence of the regrettable tendency in recent years for opponents of controversial nominees to seek ways of besmirching the latter's character rather than resting their case, openly and honestly, on disagreement with a nominee's judicial philosophy. (p. 8)

- As a constitutional scholar, Judge Bork's writing has been directed almost entirely toward the problem that most students of the subject have thus come to regard as the central question of constitutional law, determining when courts are justified in invoking the Constitution to invalidate decisions by politically accountable branches of government. His view that courts may legitimately invalidate legislation only when justification for doing so can be found in the language and structure of the Constitution and the intentions of its framers is to be understood in light of the controversy I have briefly recounted over the appropriate role of the judiciary in our national life. It is not, as some have asserted, an expression of political and economic conservatism, but a means by which to implement his belief that in a democracy public policy is properly made by politically responsible officials unless the policy they set violates our constitutional traditions. His record in this respect is too clear to permit any misunderstanding. (p. 12)

- In taking the position that public policy is properly made by politically responsible officials unless they violate constitutional values, Bork joins justices, both liberal and conservative, who are among the most distinguished figures in the Court's history, including Justice Holmes, Frankfurter, Black, Jackson, and the second Harlan. To be sure, no one of these justices approached the task of constitutional interpretation in precisely the way that Judge Bork does. They wrote at a different time and faced different issues and arguments than he has had to confront. It is, nevertheless, beyond question that, with respect to constitutional philosophy, they are his

intellectual ancestors. Only those who fundamentally reject the tradition of judicial restraint with which these justices are associated can regard Judge Bork as "an extremist." (p. 13-14)

- Judge Bork's appointment promises to restore the constitutionally established balance among the branches of government. (p. 16)

- Judge Bork's testimony in these hearings, and more significantly his record as a judge, make clear that his constitutional philosophy would lead him to enforce vigorously the limits that our constitutional tradition imposes on legislative power. But it would lead him also to defer to Congress and state legislatures when such limits cannot be found in our constitutional tradition. Those who oppose his appointment on the ground that it would "unbalance" the Court should tell us what balance they prefer.

STATEMENT OF DONALD I. BAKER

(September 29, 1987)

- I was exposed first hand to Robert Bork as Solicitor General. I found him an impressively thoughtful person; he brought originality and insight -- sheer intellectual power -- to difficult situations. (p. 1)

- I became more impressed with the insight in many of his antitrust writings as I got to know them better as a Cornell professor and practicing lawyer. Thoughtfulness, candor and intellectual firepower are definitely what I want in a Supreme Court Justice. That is why I am here today. (p. 1)

- Robert Bork has been one of the keenest antitrust minds of our time. He would bring extra insight to the Supreme Court deliberations on antitrust questions. His insight could help on both the crucial cert. petition selection process and on the clarity of particular decisions. He would not fail to see issues lurking beneath the surface nor, I suspect, be too modest to call them to the attention of the brethren. (p. 2)

STATEMENT OF JAMES T. HALVERSON

Partner, Shearman & Sterling
(September 29, 1987)

- Judge Bork's 1978 book, The Antitrust Paradox, has had an extraordinary influence in the refinement by the Supreme Court of its views in a number of antitrust cases. Since its publication, this outstanding work has been cited approvingly in six majority opinions written by Justices commonly viewed as having widely varying judicial philosophies, Justice Brennan in the Cargill case in 1986, Justice Powell in the Matsushita case in 1986, Justice Stevens in the Aspen Skiing case in 1985 and in the NCAA case in 1984 and Chief Justice Burger in two 1978 cases, Reiter v. Sonotone and United States v. United States Gypsum Co. Justice O'Connor cited Judge Bork's book in her 1984 concurring opinion in Jefferson Parish Hospital District NO. 2 v. Hyde, as did Justice Blackmun in his 1978 dissent in National Society of Professional Engineers v. United States. Indeed, it should be noted that every member of the present Supreme Court joined one or another of these opinions. (p. 4)

- As I have said earlier in a letter to the Editor of The Washington Post, the fact that six of the nine present Justices have cited Judge Bork's book, and that all of them have joined opinions citing it, demonstrates clearly that the claims of Judge Bork's critics that his antitrust views are not in the mainstream or somehow "extreme" are just plain wrong. (p. 5)

- Therefore, Judge Bork's critics, and not Judge Bork, are out of touch with the center of legitimate judicial and economic thought about the proper direction of antitrust analysis. As I said in my earlier letter, the mainstream view, which no one has helped promote more than Judge Bork, is that the proper antitrust policy is one which encourages strong private and government action to promote consumer welfare rather than unnecessary government intervention to protect politically favored competitors. (p. 6)

STATEMENT OF THOMAS E. KAUPER

Professor of Law, University of Michigan Law School
(September 29, 1987)

- Judge Bork has been a major figure in the antitrust field for three decades. His views, expressed primarily in his scholarly writings during a very creative and productive period in academic life, have been highly influential in the evolution and reformulation of antitrust doctrine. He has been influential precisely because his ideas have been accepted, in whole or in part, by academics, policy makers and judges (including Justices of the Supreme Court) in large numbers. Many in academic life aspire to have such an impact simply through what we write. Few ever achieve it. That Judge Bork has done so is grounds for praise, not condemnation. He has put forth a simple but powerful set of ideas, ideas which have influenced the law of their own force. (p. 2)

- Judge Bork has a long and distinguished record as an academic, public official and judge. In terms of experience, intellect and integrity, few persons nominated to the Court during my professional lifetime have been as qualified. At the core of his antitrust views is a philosophy of judicial restraint which rests on the fundamental proposition that in a democratic society legislatures, not judges, should make social and political judgments. This is not a philosophy which advocates that judges implement their own political views. I am not a constitutional scholar. But I know Judge Bork. I do not know the Judge Bork portrayed in some press accounts. He knows that constitutional protections are not determined by majority vote. He believes in the individual, and what the individual, unfettered by government restraint, can accomplish. He values the power of free speech. And he is a warm and compassionate human being. I am proud to support his nomination to serve as Associate Justice of the Supreme Court of the United States. (p. 7-8)