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THE WHITE HOUSE
WASHINGTON

July 21, 1987

MEMORANDUM FOR ARTHUR B. CULVAHOUSE, JR.
JAY B. STEPHENS
C. CHRISTOPHER COX
PATRICIA M. BRYAN
BENEDICT COHEN

FROM: PETER D. KEISLER *POK*
SUBJECT: The Firing of Archibald Cox

Attached for your information is a summary and chronology of the events surrounding the "Saturday Night Massacre," which was prepared by the Department of Justice last week.

Attachment

THE WHITE HOUSE
WASHINGTON

TO: C. CHRISTOPHER COX

FROM: PETER D. KEISLER

For your information.



U.S. Department of Justice
Office of the Attorney General

16 July 1987

NOTE FOR Mike Carvin
Steve Markman

FR: David McIntosh

Attached is a brief narrative of the events surrounding the "Saturday Night Massacre" which can be released for public consumption.

Also attached is a detailed chronology with citations and references to conflicting accounts which should be held for internal use in preparing for the hearings.

cc: Brad Reynolds

ROBERT BORK'S ROLE IN THE "SATURDAY NIGHT MASSACRE"

On Saturday, October 20, 1973 Robert Bork was thrust into the center of the Watergate affair when he acted upon President Nixon's order to fire Special Prosecutor Archibald Cox. The task fell to Solicitor General Bork when Attorney General Elliot Richardson and Deputy Attorney General William Ruckelshaus refused to fire Cox and resigned.

As the only remaining official in the line of succession who could serve as Acting Attorney General, Bork determined that it was necessary to carry out the President's command in order to preserve institutional integrity of the Justice Department. He convinced top officials that they should not resign and immediately took steps to insure that the Special Prosecution task force would remain intact and independent. Following the Saturday Night Massacre, Bork convinced President Nixon that he must appoint Leon Jaworski as the second Special Prosecutor with full guarantees of independence.

The Decision to Fire Cox

Bork had not taken part in the drawn out negotiations with Cox over whether President Nixon would turn over all of his White House tapes. Prior to Saturday evening, Bork had only been tangentially involved in giving advice the Elliot Richardson on the jurisdiction of the Special Prosecutor. When the negotiations fell through, and Cox held a press conference to announce he would challenge the President in court to obtain the tapes, Richardson called Ruckelshaus and Bork into his office to discuss what could be done.

Everyone seemed to agree that since there was no statutory restriction the President had the power to dismiss Archibald Cox as an executive employee. Richardson told Ruckelshaus and Bork that he could not carry out the order to fire Cox because he had made a promise to the Senate at his confirmation hearing that the Special Prosecutor would be independent. At that point, Bork realized that he may be called upon to fire Cox. When Ruckelshaus said that he, too, felt bound by the commitment to the Special Prosecutor, Bork weighed the alternatives. Richardson made it clear that the President was going to insist that Cox be fired one way or another. If Bork did not carry out the order, there would be no one left in the line of authority and the Department would be decimated as the White House sought an official to carry out the President's order. Because he had been appointed before Richardson, Bork was not bound by the same commitment to Cox.

Sense of Duty to Justice Department Leads Bork to Fire Cox

Bork suggested that he could fire Cox and then resign himself to show that he was not an "apparatchik" who acted merely to save

his own job. Both Richardson and Ruckelshaus told Bork he should not resign because his presence was needed to preserve the Department of Justice. They assured Bork they would publicly back his decision to stay.

Richardson met with the President who told him that the Middle East was about to erupt into another conflict and that the Soviet Union was taking advantage of Nixon's perceived weakness to threaten U.S. activists. President Nixon suggested that Richardson should fire Cox in order to demonstrate to the Soviets that Nixon was in charge and resign in a week when the Middle East situation had cooled down. Richardson stated that he would not fire Cox and told the President he would resign immediately. Chief of Staff Alexander Haig then called Ruckelshaus who also refused to follow the order.

Bork agreed to come to the White House where he signed the letter drafted by White House Counsel dismissing the Special Prosecutor. Final papers terminating the Special Prosecutor's charter were drawn up on Tuesday after the holiday weekend. Al Haig had the letter delivered to Archibald Cox and ordered the FBI to seal the Special Prosecutor's offices. Bork spoke briefly with Richard Nixon who asked him if he wanted to be Attorney General. Bork declined indicating it would be inappropriate.

Ensuring That the Watergate Prosecution Continues

When Bork returned to the Justice Department, Richardson and Ruckelshaus urged him to stay on as Acting Attorney General. Bork indicated he would and immediately called Criminal Division Assistant Attorney General Henry Petersen and other top Department officials to urge them to stay. Petersen agreed to remain and was put in charge of the investigation. Haig had requested that the top lawyers in the Special Prosecution task force also be fired, which Bork refused to do. Instead, he called Cox's Deputy, Philip Lacovara, to assure him that the task force employees would continue the investigation as Justice Department employees.

The next day Bork held a meeting with Henry Petersen, Philip Lacovara and Henry Ruth, another Deputy to Archibald Cox, to discuss the status of the Watergate prosecution. Ruth and Lacovara reported that in two to four weeks they would complete some investigations, but that others would take more time and would require more evidence from the White House. Bork assured Lacovara and Ruth that they would have complete independence in continuing the investigation, including the right to go to court to obtain whatever evidence they needed.

Bork Selects Leon Jaworski As Special Prosecutor

During the next three weeks, Bork convinced President Nixon that another Special Prosecutor had to be appointed. He began an extensive search for the right person -- someone who had

experience in prosecuting criminal actions and was well known in the legal community. Ultimately, Bork convinced President Nixon to accept his selection -- Leon Jaworski. Nixon agreed that he would not dismiss Leon Jaworski or diminish his jurisdiction, even in extreme circumstances, without first obtaining a consensus from the "group of eight," consisting of the Senate and House Majority and Minority leaders and the Chairmen and ranking minority member of the Senate and House Judiciary Committees. At Bork's insistence, Leon Jaworski was granted the same charter as Archibald Cox with the additional Presidential guarantees.

The rescission of the regulations granting Cox independent prosecution authority was challenged by Ralph Nader in the D.C. District Court. Judge Gesell entered an order declaring the rescission to be illegal, because the grant of independence implied a requirement that Cox consent to any rescission. Ralph Nader was dismissed as a plaintiff and no relief was granted the other plaintiffs because they had no standing. Some question was raised about the timing of the dismissal (Saturday) and the subsequent rescission (Tuesday). However, Bork's action in firing Cox automatically amended the Justice Department regulations creating his office.

Although at the time Bork bore the brunt of criticism for the "Saturday Night Massacre," commentators have since credited him for saving the Justice Department through his strong leadership in time of crisis. He was able to carry out the President's order to fire Cox, and thereby maintain the Justice Department's integrity, while at the same time he preserved the Watergate investigation and protected the prosecutors from political pressure, thereby ensuring that justice was served.

Chronology

Saturday, 20 October 1973

- o Until late Saturday afternoon, Bork had not been involved with the Special Prosecutor at all, except for informal discussions on jurisdictional problems of the Special Prosecutor (2 or 3 with Richardson and perhaps 2 with Cox and his staff). Bork did not know the details of the Special Prosecutor's jurisdiction and did not participate in the negotiations to turn over the tapes. [Bork Press Conf]
- o On Saturday afternoon: Bork goes "down the hall" to watch the press conference at which Cox indicates he will seek all of the Nixon tapes. [Bork Press Conf]
- o Richardson's Secretary stopped by Bork's office to tell him Richardson wishes to speak with him -- Bork assumes the request was related to Special Prosecutor Cox, but has "no idea what my involvement was going to be."
- o Richardson calls Bork into his office for first time and "filled me in on what was taking place." At that time matters remain "fairly fluid." Ruckelshaus and some Richardson aides are in the office. [Bork Press Conf]
- o Richardson, Ruckelshaus and Bork discuss pressure from White House to fire Cox and a variety of possible reactions. Richardson concludes he cannot do it because of commitments made during his Senate confirmation hearings [Bork Press Conf]
- o Richardson asks Ruckelshaus "Can you fire him, Bill?" [1984 Post interview] Ruckelshaus thinks for a minute and says "no." [Bork Press Conf]
- o Bork first realizes he may be called upon to fire Cox when Richardson asks Ruckelshaus to do so. [1984 Post interview] [Bork Press Conf]
- o Richardson then asks Bork "Can you fire him, Bob?" [1984 Post interview]
- o After thinking for a moment, Bork decides he is not in same "special position" which Richardson and Ruckelshaus find themselves and tells Richardson he could discharge Cox, but that he should resign afterwards to avoid the perception that he followed the order to save his job. [Bork Press Conf]
- ** Bork responds "Wait a minute, let me think" and walks around Richardson's office while the others continue

discussing other matters. Bork considers the fact that there is no one else in the line of authority. Then he concludes he would fire Cox and resign to avoid looking like an "apparatchik." [1984 Post interview]

- o Richardson responds "No, you've got to stay. The department needs continuity." [1984 Post interview] Ruckelshaus also urges Bork to stay. [Bork Press Conf] and says that if he stuck by his post "Elliot and I will say publicly that we urged you to stay." [Doyle]
- o No final decision is made then -- and discussions continues throughout the afternoon. [1984 Post interview]
- o Richardson goes over to the White House. [1984 Post interview]
- o Richardson meets with Alexander Haig, Len Garment, Charles Allan Wright, and Fred Buzhardt. Haig asks him to fire Cox. Richardson then meets with Nixon and Haig and offers his resignation. Nixon asks him to fire Cox now and wait a week to resign because of recent conflict in the Middle East and threats from the USSR. Richardson refuses. [Doyle]
- o Ruckelshaus and Bork discuss differences in their respective moral positions regarding the discharge of Cox during the afternoon. [1984 Post interview]
 - oo Ruckelshaus had determined earlier in the week he would resign because he felt he was under a commitment to the Senate and he felt it was the morally correct action. [Doyle]
 - oo Bork and Ruckelshaus agree Bork is in a different moral position. Bork remembers thinking, can I survive this professionally? He contemplates the "murder-suicide" of firing Cox and resigning. [Doyle]
- o Haig calls Ruckelshaus to order him to fire Cox and states that Ruckelshaus should wait a week until the Middle East cools down to resign. Ruckelshaus refuses. [Doyle] At the end of the call, Bork gets onto the phone and Haig asks him to come to the White House [Bork Senate Testimony on Special Prosecutor Bill]
- o Richardson returns from the White House and says to Bork "You've got to do it, carry it off." [1984 Post interview] "Somebody has got to do it. He is going to be fired. You've got the nerve and the brains." [Doyle]
- * Bork testified in the hearing on the Special Prosecutor legislation that Richardson and Ruckelshaus neither urged him to fire Cox nor did they urge him not to do so. They realized the moral choice was Bork's. [Bork Senate Testimony '73]

- o Bork decides to fire Cox and calls his wife to tell her what he has to do. [1984 Post interview]
- o Bork rides in a White House car with Garment and Buzhardt. [Doyle] Upon arrival, Haig begins to persuade Bork that he needs to fire Cox to preserve the President's ability to control the executive branch. Bork indicates to Haig that he has already decided to fire Cox but has not decided whether he will resign. [Bork Senate Testimony '73]
- o Note: At the subsequent hearings, Sen. Bayh questioned Bork whether Haig told Bork that he was at the top of the list for the Supreme Court as an inducement to fire Cox. Bork testified that Haig did not discuss the Supreme Court at that time, and that it would have been inappropriate to do so. [Bork Senate Testimony '73]
- o Bork testified that he recalled that when he first became Solicitor General Haig had mentioned the Supreme Court position. Bork did not indicate that it was in connection with Watergate in any way.
 - * (Early in Watergate) Haig asked Bork to be Nixon's chief Watergate lawyer--hinting a Supreme Court appointment would be the reward. Bork asked to hear the tapes, and declined when he was not permitted to do so. [Doyle]
- o Bork signs the letter discharging Cox [1984 Post interview] pursuant to letter from Nixon ordering him to do so and instructing Bork to bring Watergate investigations back into the Department of Justice [NYT 21 Oct -- reprint of Nixon, Bork letters]
- o Bork later testified that he was not anxious to fire Cox because: (1) because Bork liked Cox personally, (2) Bork anticipated the furor and abuse that would follow, and (3) Bork did not want to be perceived as doing what others refused to do in order to save his job. [Bork Senate Testimony '73]
- o Bork is taken to see President Nixon, who thanks him for executing his order and asks Bork whether he would ever like to be Attorney General. Bork responds--no, that would be inappropriate. [Doyle]
- o Haig indicates that there were reports that documents were leaving the Special Prosecutor's office. With Bork's concurrence, Haig calls Director Kelly and orders that the Special Prosecutor's offices be sealed by FBI agents. [Bork Senate Testimony '73]

- o Bork returns to Justice where Richardson and Ruckelshaus urge him to stay as acting Attorney General to preserve continuity at the Department and to prevent massive resignations. [Bork Senate Testimony '73 on Special Prosecutor Bill] Bork's next act is to call Henry Petersen and ask him to stay on as AAG Criminal Division. [Bork Press Conf]
- o Haig directs Bork to fire Richard Ben-Veniste, Philip Lacovara, and Henry Ruth. Bork refuses this order on the ground that it would be an overt subversion of justice by causing an unreasonable delay in the Watergate investigation. [Newsweek, Periscope, 29 Sep 75]
- o Bork calls to Philip Lacovara and says that for the time being all employees of the Special Prosecutor task force will be carried as Department of Justice employees. [Doyle]

Sunday, 21 October 1973

- o Bork telephones Cox to ask him to come into the Department and brief them. Cox refuses and tells Bork that Hank Ruth can tell Bork everything he needs to know. [Doyle]
- o Bork removes FBI agents from Special Prosecutor's office and replaces them with DOJ security personnel (as previously arranged). FBI agents are also removed from Richardson's and Ruckelshaus' offices. [Bork Senate Testimony '73]
- o Bork meets with Henry Ruth, Philip Lacovara and Henry Petersen in his office to discuss how far along the Special Prosecutor's task force is. [Bork Senate Testimony] Ruth and Lacovara indicate that some matters are within 2 to 4 weeks of completion, but others are a long way off. They indicate that with respect to each transaction they plan to seek all the indictments at once. [Bork Senate Testimony]
- o Bork indicates that he wants the Watergate Special Prosecution unit to continue doing precisely what it has been doing under Cox and that they would have their independence. He tells Lacovara and Ruth that it will guard their independence, including their right to go to court to get evidence. [Bork Conf. Hearing 1982] "I hope you guys have strong cases. If you lose them I'm going to be accused of bagging them." [Doyle]
- * Lacovara and Ruth indicate that White House interference make it impossible to maintain an appearance of impartial investigation, that the Special Prosecutor's Office needs more evidence from the White House, and that Petersen would have the appearance of a conflict because he will likely be a witness in the Watergate cases against the Justice Department and White House officials. [Doyle]
- * The meeting ends shortly after an emotional argument between Lacovara and Petersen, in which Petersen tells Lacovara that if they press charges against reputable, former Justice officials they had better have iron-clad cases. [Doyle]
- * NOTE: Doyle places this meeting on Monday, 22 October.

Tuesday, 23 October 1973

- o Elliot Richardson conducts a farewell press conference in the Great Hall at 11:00 am. [Doyle]
- o Nixon announces that he will comply with Judge Sirica's order to turn over the tapes. [Doyle]
- o Bork issues official documents rescinding the Special Prosecutor regulations retroactively effective 21 October 1973. [Bork Senate Testimony '73]
- o Bork and Petersen meet with the the Special Prosecution team who are polite but question why Bork fired Cox. Bork indicates he wishes them all to stay on the team. Petersen indicates he did not see a need for a separate press official. [Doyle]

Wednesday, 24 October 1973

- o Bork and Petersen hold press conference to discuss the firing of Cox and plans for the continuation of the Watergate investigation.
- o Bork explains what happened on Saturday and indicates that he would not agree to limit the Justice Department's ability to gather further evidence from the White House. [Bork Press Conf.]
- o Bork is questioned about whether he had lawfully repealed the DOJ regulations stipulating that Cox could only be removed for "cause." Bork explained that his action as Attorney General in firing Cox obviously amended the regulations and that any argument to the contrary was a "legalism." [Bork Press Conf.]
- o Bork indicates that he feels the Nixon letter to him directing that Cox be fired guaranteed Bork the ability to conduct a full and vigorous investigation. Bork states he is considering several options for carrying on the Watergate investigation, including the appointment of another Special Prosecutor. [Bork Press Conf.]

Tuesday, 30 October 1973 (circa)

- o Bork calls Richardson for advice on a successor Special Prosecutor. Richardson indicates he had compiled a list of 55 or so candidates. After reviewing this file, Bork discusses the possibilities with his staff, his wife, and several White House aids (Haig, Garment, and Buzhardt).
- o Bork determines that Jaworski is the best candidate because he has prosecutorial experience and is a well known figure in the legal community. [Bork Senate Testimony '73] Bork calls over to the White House to propose Jaworski [Bork House Testimony '73]
 - * Haig proposed several candidates and Bork finally agrees to Leon Jaworski as a successor to Cox. Haig telephones Jaworski, who initially declines. Haig urges him to come to Washington to discuss the job. Jaworski makes a brief call to Bork, but perceives Haig to be in charge. [Doyle]
- o Jaworski meet with Haig, Garment and Bork at the White House. Haig gives Jaworski assurances from the President that he will be independent. [Bork Senate Testimony '73]
- o Bork gives Jaworski assurances that he will be totally independent in the investigation. [Doyle] [Bork Senate Testimony '73]
- o Bork discusses with Haig the need to grant to Jarworski the same authority Cox had and total independence. [Bork Senate Testimony '73].

Wednesday, 7 November 1973

- o Guidelines are published which reestablished the Special Prosecutor with the same authority as under Cox. In addition, a safeguard is built in which provides that if there are exceptional circumstances which justify removal of the Special Prosecutor, the President would not do so without first obtaining approval from 6 of 8 top Congressional leaders. This provision is later amended to include any change in jurisdiction. [Bork Senate Testimony '73].

Wednesday, 14 November 1973

- o In a suit brought by Ralph Nadar and three Congressmen, Judge Gesell declares that "Archibald Cox, appointed Watergate Special Prosecutor ... was illegally discharged from that office" on the grounds (1) that the limitation on removal required consent of the Special Prosecutor before the office could be abolished and (2) that the revocation of DOJ regulations was arbitrary and unreasonable because the office was recreated 3 weeks later with virtually identical provisions. [Bork Senate Testimony '73] Ralph Nadar is dismissed as a plaintiff and the court holds that the other plaintiffs (who did not include Cox) lack standing to receive injunctive relief.

THE WHITE HOUSE

WASHINGTON

July 21, 1987

MEMORANDUM FOR WILLIAM L. BALL, III
ASSISTANT TO THE PRESIDENT FOR LEGISLATIVE AFFAIRS

FROM: PETER D. KEISLER *PK*
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Bork

Attached, for your information, are: (1) the text of the speech Senator Packwood delivered before the National Abortion Rights Action League, (2) clippings from home-state newspapers which quote Senators Baucus, Burdick, Conrad, Cohen and Mitchell on the Bork nomination, and (3) a tabulation prepared by the Department of Justice of prior votes by individual Senators on confirming our judicial nominees.

Attachment

bc: C. Christopher Cox

ACCEPTANCE REMARKS
NARAL TRIBUTE TO SENATOR BOB PACKWOOD
WASHINGTON HILTON
FRIDAY, JULY 10, 1987

~~CONFIDENTIAL~~
~~CONFIDENTIAL~~

I appreciate very much the laudatory comments of all of you. Not just the two that introduced me tonight, but all of you that have come up so generously in the room and have thanked me for one thing or another.

It's ironic when Kate told me several months ago about this presentation and I was delighted to accept. Of course, the Judge Bork nomination was not before us and we just assumed that, absent death, the Court would continue on as it was during the remainder of the administration. Clearly, Judge Bork's nomination has heightened the significance of my appearance here tonight.

So let me, so that the press gets it exactly straight, and I've got to say to the press, in fairness, I am very, very seldom misquoted. I am usually quoted accurately on things I wish I had never said.

*This transcript
was prepared by
Packwood's office.*

While I was last in Oregon, it was just after Judge Bork's name had been put forth by the President, I was at a Rotary, which fortunately will be admitting women now under the recent Supreme Court decision. At the end of it, one of the Rotarians asked me about the Bork nomination and what would be my position. I said, well, I will make that decision based principally upon abortion and his views about Roe v. Wade and if I think he will overturn it, I will vote against him and if he will vote for it, I'll weigh other factors. But, clearly if he was going to overturn it, that would be a controlling factor in my mind.

On this, I have become a single issue person. I didn't used to be. The pro-lifers have driven me to that position. After spitting on my wife and threatening to kidnap and kill my children, I have become a one-issue person with those people. There is much to be said for the Old Testament eye for an eye and tooth for a tooth, if that's the way it has to be.

Then the person asked me would he be confirmed. And I said, well, I think to be stopped it would probably have to be on a filibuster, because my hunch is there might be a majority that would confirm.

Now that's the sum total of what I said at the Rotary. There was a young Associated Press person there --- 21, 22 years of age, probably her first job. And puts out the story that I was going to oppose the nomination and lead the filibuster. That got picked up by the wires and...

Now, that indeed may turn out to be all true. I'm not sure. I'm well aware of the pressures that would be placed upon me by the President and by my old and close and good friend, Howard Baker, who has yet to call but I'm sure after the statements tonight will.

But I do recall when I was just a young Senator in 1969 and Judge Hainesworth was nominated that I got a phone call from the late Bryce Harlow, who was then the principal lobbyist for the White House and said that he wanted me to come down to the White House and talk with the President about the nomination.

Although I was only a freshman then, I had been down to the White House three or four other times before in groups to meet with the President. But I went down and it turned out this was alone, with just President Nixon and myself. I have never lost the reverence for the presidency or, frankly, the respect for a president. I go into the White House every time, in the presence of the President every time, with a certain degree of awe. But, at this time, I had only been in the Senate seven or eight months.

The President began to talk -- President Nixon -- about Hainesworth and his legal qualifications and didn't I think that if he was qualified, the man should be put on the Court on the basis of qualification. Knowing what this meeting was going to be about, I had done some research on President Nixon's statements and his statement over the years, a number of times he has said it, that the problem with the Supreme Court is that people voted their philosophies rather than just the law and, therefore, if that's going to be the situation, we should weigh the philosophies of the people we put on the Court and I quoted that back to him.

At the end of about 45 minutes, which even today is probably as long a meeting as I've had with the President just one on one, he stood up and I sensed the meeting was over. So I stood up. As we went to the door, he puts his arm around me, and says, Bob, he said, I'm impressed with the caliber of your research that you've done with my statements, he said, and the strength of your convictions, but I would appreciate it if you could, as a personal favor to me, see your way clear to vote for Judge ^{YN}~~Hainesworth~~. And I thought, that's about as much lobbying pressure as I'm probably ever going to have, when the President of the United States, of your party, as a personal favor, wants your help on something, frankly, you could have voted either

way and it would not have been the making or the deathknell of your political career.

I subsequently voted against Judge ^{Haynesworth} ~~Hainesworth~~ and against Judge Carswell. Maybe because of those, who knows, we got Roe v. Wade. It's hard to tell what the factors were or how those two would have done as opposed to who you got when you didn't get them.

But then Kate talked about the battles we've had since. I was one of those that missed wrong although I don't think I'm wrong now. Time is on our side, so long as NARAL and all of you stand firm, we're going to have to fight these battles in courts and in the legislative races and in the congressional races. Time is on our side. We're going to win this battle eventually. There will be ups and downs and there will always be a little knot of zealots who I think will diminish eventually to the consequence of prohibitionists or people like that who will simply never accept the concept of right to choose.

But we've got another decade of serious battle and we've had some ups and downs. When we started right after the Roe v. Wade decision and Medicaid funding of abortions, we had about 500,000 abortions a year funded by Medicaid. Today, we're lucky if we have five or six hundred. We've lost that battle on majority votes in the Congress. We've lost them whether the Republicans controlled the Congress or the Democrats. In fact, we

lost almost all the funding decisions while the Democrats controlled. We lost all those by the time 1980 came.

So in that sense, it certainly isn't a partisan battle. And we've had a whole variety of battles over different things since then. We had the constitutional amendment of Orrin Hatch's. Fortunately, on that one, it took a two-thirds vote. But we got fifty votes against it. He didn't even come close to two-thirds. Our tougher battles have been on statutes --- human life bills, court stripping bills. Whether or not these are constitutional I don't know. I hope not.

But I thought the toughest one we had was in 1981. The President was riding high. It was the human life bill. It was Jesse Helms' human life bill. Life starts at the moment of conception. We were having hearings on that. And I think that bill could have passed but one extraordinary appearance absolutely killed the bill in the Judiciary Committee by a person who was adamantly opposed to the bill and to the concept of court stripping. Now, I'm going to read the statement:

"S. 158 would provide that human life would be deemed to exist from conception. The intended results is to bring the 14th amendment protections of human life to bear upon unborn fetuses. The object, as I understand it, is to return to the States the power to regulate abortions that was denied by the Supreme Court in Roe against Wade....

"It seems to me, in brief, (I'm skipping lots of intervening material) that the bill...is unconstitutional insofar as it attempts to prescribe a rule of decision for the courts under the 14th amendment....

"The deformation of the Constitution is not properly cured by further deformation. (And by this he meant court stripping.) Only if we are prepared to say that the Court has become intolerable in a fundamental, democratic society, and that there is no prospect for getting it to behave properly, should we adopt a principle which contains within it the seeds of the destruction of the Court's entire constitutional role.

"I do not think we are at that stage, but if others think we are, then we should be debating not the technicalities of S. 158...but the questions of whether we should retain, abandon, or modify the constitutional function of the courts as we have known it since Marbury v. Madison."

That's Bork and Bork absolutely boned and skinned and trashed 158 and killed it. Because we needed an intellectual conservative who could rip it apart and it never came out of committee.

So, it is not an easy decision with Judge Bork. I don't know him well. I met him two or three times socially. Then I met with him this Wednesday and I will go over a bit my conversation with him. I talked with him on Thursday. I hope to meet him again next week because I've got some further questions I want to ask.

But I will say this about the man personally. I would have no doubts, personally, one on one, trusting my civil liberties to his discretion and judgment, one on one. Is he a decent man, an honest man, an open man, a fair man and one who would, I think, under all circumstances personally defend your right to be different, defend your personal right to have an abortion, defend your personal right to have sexual preferences as you choose? Personally, I think he would. That's a personal decision, not a court decision.

There is no question that he is one who favors judicial restraint. And he does not like the Court second-guessing Congressional actions or State actions, unless he can find some legitimate basis in the Constitution as written. You can say that's old-fashioned. But I want to warn all of you from the

standpoint of some of the liberties we cherish, there is some value to judicial restraint. If we happen to get a court that does not agree with some of the philosophies we share and they choose to impose their brand of activism, I don't think Judge Bork would do that. But there are people who are suggested as nominees to the Court who would clearly use the power of the Supreme Court to impose on all of us, not restraint, or not let Oregon do what it wants or Alabama do what it wants, but what they think we ought to do.

Therefore, I was very disappointed when Ted Kennedy on the floor referred to Bob Bork as a man who would take us back to back-alley abortions and blacks, I'm quoting, would sit at segregated lunch counters and rogue police would break down citizens' doors in midnight raids and schoolchildren could not be taught about evolution. That is not Bob Bork.

Now having said that, let me tell you what my standard is going to be and, as best I could, I quizzed him and he answered the questions quite faithfully to the extent he could the other day. But I must say, I started out with a statement from another section of the same statement that I read when he was testifying on the human life bill. And that statement in the same statement says,

"I am convinced, as I think most legal scholars are, that Roe v. Wade is, itself, an unconstitutional decision, a serious and wholly unjustifiable judicial usurpation of state legislative authority. I also think that Roe v. Wade is by no means the only example of such unconstitutional behavior by the Supreme Court."

The man does not agree with the privacy decisions of the Supreme Court. He claims that it was not there at the time of the founding, that it's a relatively recent doctrine, and if you mean in terms of the Court referring to it, it is a relatively recent reference. Now, clearly, when the Court does refer to it, they say that the founders would have intended it. But if you mean was it something that you started seeing in Court decisions in 1805 and ten and fifteen and twenty, you didn't see them at all until possibly the mid-twenties.

One of the cases, ironically, coming out of Oregon called Pierce v. Society of Sisters. Oregon is thought of as a liberal state but in the twenties, the Ku Klux Klan seized control of our legislature, passed a law outlawing private schools. You could not send your child to a private school. And the Society of Sisters was a Catholic school and brought the suit. The case went to the Supreme Court and the Supreme Court held

for the Society of Sisters, fortunately. While on a quasi-privacy theory, I think they could have decided it probably on a freedom of religion basis but there is a quasi-privacy argument in it.

But it's from the mid-twenties onward that you started to see them. And then the famous Griswold case in '65 where Connecticut was trying to ban the sale of contraceptives and that went to the Court and that was privacy and the Court overturned it. And Roe v. Wade was premised on privacy.

So I asked the Judge. I said, Judge, had you been on the Court at the time of Roe v. Wade and had you had to decide that case, which way would you have voted. And he said, well, if it had had to be pinioned on privacy, I would have voted against it. I would have voted with what was the minority in that case.

And then I asked him another question and he kind of smiled and he said he had not been asked that question before. I said, let's assume you were a lawyer in 1970. A woman comes to you that's pregnant and wants an abortion. You're going to file a case in Federal Court attempting to get for her the abortion and overturn a state statute and you're not going to use the theory of privacy, what would be the theory of your brief to defend her rights. And that's when he smiled and said, I've not been asked that question before. And he kind of mused and he said, well, maybe equal

protection, maybe due process. But, he said, I'm not sure. I then asked him his other views on the other privacy cases and it's clear that he just isn't enthusiastic about the privacy theory at all.

Now, that's the background. I'm doing a little more research on some of the privacy cases. I talked with him on Thursday, indicated I'll ask him for some more information. I got it and I said I would like to see him again next week if I could and he said, fine, he would be happy to meet with me.

I want to assure you what my position is going to be on this because I said I am single issue as far as this particular subject is concerned and it is much easier for me to say that than attempt to rationalize my views on this subject into some logical, philosophical continuum. They just don't fit. I'm just nuts on this subject and there's no point in arguing with me.

If, and I told the Judge this, I said, if I think that there's any, I didn't say likelihood, I said possibility that you would vote to overturn Roe v. Wade then I'm going to oppose you. I said my standard is going to be, beyond a reasonable doubt, I've got to be convinced that you will not vote to overturn it. He said, I understand that.

We parted at that stage and that will be my standard. In this case, it will not serve our case well,

however, to trash Judge Bork personally. I would challenge any one of us in this room to match him intellectually. It would not be a pretty sight to see any one of us go up against him toe-to-toe on the Constitution. You might have philosophies. He would have philosophies. But in terms of beating him intellectually with just a judge, a score of the debates sitting off on the right, it would be tough. But as far as I'm concerned this is a legitimate time to ask philosophical questions. Courts make philosophical decisions. Judges are influenced by their philosophical views. Any of us that think that people are not -- no matter what our decisions, whether they're judicial or legislative -- deep down are not in some way affected by the things that move us emotionally and deep-^{seated}~~seated~~ views we've had, are just denying human nature.

So I expect to be done with the research that I've asked the Library of Congress to do for me within the week. And I expect to meet with Judge Bork when his schedule and mine are convenient. I've got the trade bill on the Senate floor and the debt ceiling coming up but I can't imagine it should take me longer than two weeks. If I conclude that there is any possibility that he will overturn Roe v. Wade, then I will not only oppose him, I will not only filibuster, but I will lead

a filibuster in an attempt to stop him without any hesitancy.

But I would ask us all to remember Henry Kissinger's admonition and it's probably true. In this world, there are no permanent enemies and no permanent friends, just temporary alliances. And a day may come when we may need Judge Bork again. And I would hate to think that he would look back upon his confirmation battle, if by chance he is confirmed or if he isn't -- he is still on the D.C. Court of Appeals which is still the most significant Court of Appeals in the nation -- and have a heavy heart and a bad memory because of people who attacked his integrity or his decency or his intellect. Those are above reproach and those who attack him on that will do their case harm.

Thank you again for the honor. I'll be with you for years.

Bork confirmation forecast by Baucus

By TOM COOK
Gazette Helena Bureau

HELENA — Many U.S. senators are looking for political or personal flaws in Robert Bork to justify voting against his confirmation as the next Supreme Court justice, Sen. Max Baucus, D-Mont., said Monday.

"Unless something very major and so far unknown is uncovered about Bork, I think he will be confirmed by the Senate," Baucus, who was in Helena to unveil his wilderness bill, said.

Senators are wrestling with the difficult question of whether "competence and integrity" are sufficient justification to accept President Reagan's appointment of Bork, or

whether "political ideology and philosophy" should be weighed heavily in the decision, Baucus said.

"When it comes to confirmation on administrative appointments it is clear that competence is generally enough. The president is entitled to pick his own team," Baucus said. "But a justice is appointed for life, and it is a different matter. This is the most difficult confirmation I have seen in 10 years."

Justice Lewis Powell, whose unexpected resignation set the stage for Bork's appointment, was generally seen as a swing vote in recent Supreme Court decisions giving a moderate to liberal bias to key decisions.

Bork is described as a staunch



Senators wrestle with difficult questions on Supreme Court appointment, Baucus says.

conservative and represents a potential swing to the right in Supreme Court direction. He would be the third justice selected by Reagan.

Baucus said Bork likely would swing the court away from liberal positions such as freedom of choice in abortions.

However, Bork is a "staunch supporter of freedom of speech issues," and believes in maintaining a "strong Supreme Court," Baucus said.

"He is very much opposed to stripping the court of any of its powers and responsibilities as the third branch of government," Baucus said.

"I still have to give this some hard thinking," Baucus said. "But I think he will be confirmed."

Conrad (D-ND)

Dakotans predicting hard fight

North Dakota officials predicted conservative U.S. Supreme Court nominee Robert H. Bork will face a tough confirmation hearing in the Democratic-controlled Senate.

Charles Feste, president of the North Dakota Bar Association, said Bork's part in firing special Water-gate prosecutor Archibald Cox at the direction of then-President Richard Nixon will likely become an issue in the confirmation hearing.

"I expect the Democrats to pull out all the stops in trying to block the confirmation, and that should be one of the stops," Feste said.

Attorney General Nicholas Spaeth agreed with Feste, saying Bork's firing of Cox "will make him a pretty controversial nomination."

William Pearce, a Bismarck corporate lawyer, said Bork "has a very high reputation as a legal scholar."

Sen. Quentin Burdick, D-N.D., said he had not yet made a decision on whether to vote for or against Bork.

"I expect it will be a lengthy process," Burdick said. "In this case, in particular, it is important that we be completely thorough and painstaking in our deliberations because this nominee will undoubtedly shift the balance on the high court for some time to come perhaps even into the next century."

Freshman Sen. Kent Conrad, D-N.D., said he would have a "very difficult time voting for Mr. Bork" because of his firing of Cox.

Bismarck

Tribune

July 2,

1987

1987

Freshman Sen. Kent Conrad, D-N.D., said he would have a "very difficult time voting for Mr. Bork" because of his firing of Cox.



Doug

Cohen, Mitchell reserve judgment on Bork nomination

Associated Press

Sens. William S. Cohen and George J. Mitchell of Maine say they are reserving judgment on President Reagan's nomination of Robert H. Bork to the U.S. Supreme Court until confirmation hearings are held in the Senate.

Mitchell said Wednesday he opposes any move by his fellow Senate Democrats to stall Bork's nomination until after the 1988 presidential election, a strategy which might allow a Democratic

president to name a replacement for Justice Lewis F. Powell, who is retiring at 79.

Mitchell said similar tactics employed by Republicans have blocked Democrats' judicial choices in the past. But, he said, "Two wrongs do not make a right."

Mitchell said Bork "appeared to be qualified by judicial experience and intellectual ability." But he said he would decide whether to

vote for Bork's confirmation after the confirmation hearings began.

"The purpose of Senate hearings is to examine every nominee's background, and (the hearings) will provide an opportunity for members of the Senate to weigh Judge Bork's experience and ability in detail," Mitchell said.

Cohen said he would follow closely the Senate Judiciary Committee's proceedings.

Also, he said, "I will independently study (Bork's) legal opinions and the other activities he has undertaken in his years of government service."

Cohen said he would reserve judgement until that process is complete.

Bork, a 60-year-old conservative, has served as U.S. solicitor general and currently sits on the U.S. Circuit Court of Appeals for the District of Columbia.

ANALYSIS OF ROLL CALL VOTES ON REHNQUIST, MANION, FITZWATER AND
KOZINSKI NOMINATIONS, AND ON REHNQUIST AND FITZWATER CLOTURE

SENATORS VOTING "YES" ON ALL SIX ROLL CALL VOTES

Abdnor, James (R., SD)
Andrews, Mark (R., ND)
Armstrong, William L. (R., CO)
Boschwitz, Rudy (R., MN)
1/ Broyhill, James T. (R., NC)
Chafee, John H. (R., RI)
Cochran, Thad (R., MS)
D'Amato, Alfonse M. (R., NY)
Denton, Jeremiah (R., AL)
Danforth, John C. (R., MO)
Dole, Robert (R., KS)
Domenici, Pete V. (R., NM)
Durenberger, Dave (R., MN)
2/ Garn, Jake (R., UT)
Gorton, Slade (R., WA)
Gramm, Phil (R., TX)
Grassley, Charles E. (R., IA)
Hatch, Orrin (R., UT)
Hatfield, Mark O. (R., OR)
3/ Hawkins, Paula (R., FL)
Hecht, Chic (R., NV)
Helms, Jesse (R., NC)
Humphrey, Gordon J. (R., NH)
Kasten, Bob (R., WI)
Laxalt, Paul (R., NV)
Lugar, Richard G. (R., GA)
Mattingly, Mack (R., GA)
4/ McClure, James A. (R., ID)
Murkowski, Frank H. (R., AK)
Nickles, Don (R., OK)
3/ Packwood, Bob (R., OR)
Pressler, Larry (R., SD)
Quayle, Dan (R., IN)
Roth, William V., Jr. (R., DE)
Rudman, Warren (R., NH)
Stafford, Robert T. (R., VT)
Stevens, Ted (R., AK)
Symms, Steven D. (R., ID)
Thurmond, Strom (R., SC)
Trible, Paul S., Jr. (R., VA)
Wallop, Malcolm (R., WY)
Warner, John W. (R., VA)

TOTAL: 42
(All Republican)

- 1/ Broyhill was sworn in as Senator after Manion vote and therefore voted only on last two roll call votes.
2/ Garn did not vote on Rehnquist nomination and cloture.
3/ Hawkins and Packwood did not vote on Manion nomination.
4/ McClure did not vote on Fitzwater nomination.

SENATORS VOTING "NO" ON ALL SIX VOTES

Biden, Joseph R., Jr. (D., DE)
Bradley, Bill (D., NJ)
Burdick, Quentin (D., ND)
Byrd, Robert C. (D., WV)
Cranston, Alan (D., CA)
Dodd, Christopher J. (D., CT)
Eagleton, Thomas F. (D., MO)
Exon, J. James (D., NB)
Glenn, John (D., OH)
Gore, Albert (D., TN)
Harkin, Tom (D., IA)
Hart, Gary (D., CO)
Kennedy, Edward M. (D., MA)
Kerry, John F. (D., MA)
Lautenberg, Frank R. (D., NJ)
Levin, Carl (D., MI)
Matsunaga, Spark M. (D., MI)
Melcher, John (D., MT)
Metzenbaum, Howard M. (D., OH)
Mitchell, George J. (D., ME)
Moynihan, Daniel Patrick (D., NY)
Nunn, Sam (D., GA)
Riegle, Donald W., Jr. (D., MI)
1/ Rockefeller, Jay (D., WV)
Sarbanes, Paul S. (D., MD)
Sasser, Jim (D., TN)

TOTAL: 26
(All Democrats)

1/ Rockefeller did not vote on Kozinski nomination.

SENATORS WITH DISCREPANCY IN VOTING

Baucus, Max (D., MT)
Bentsen, Lloyd (D., TX)
Bingaman, Jeff (D., NM)
Boren, David L. (D., OK)
Bumpers, Dale (D., AR)
Chiles, Lawton (D., FL)
Cohen, William S. (R., ME)
DeConcini, Dennis (D., AZ)
Dixon, Alan (D., IL)
Evans, Daniel J. (R., WA)
Goldwater, Barry (R., AZ)
Heflin, Howell (D., AL)
Heinz, John (R., PA)
Hollings, Ernest F. (D., SC)
Kassebaum, Nancy Landon (R., KS)
Long, Russell (D., LA)
Mathias, Charles McC., Jr. (R., MD)
Nunn, Sam (D., GA)
Pell, Claiborne (D., RI)
Proxmire, William (D., WI)
Pryor, David (D., AR)
Simon, Paul (D., IL)
Specter, Arlen (R., PA)
Stennis, John C. (D., MS)
Weicker, Lowell P., Jr. (R., CT)
Zorinsky, Edward (D., NB)

TOTAL: 26
(18 Democrat
8 Republican)

SENATORS NOT VOTING ON AT LEAST ONE OF SIX VOTES

Bumpers, Dale (D., AR)
Garn, Jake (R., UT)
Goldwater, Barry (R., AZ)
Hawkins, Paula (R., FL)
Heinz, John (R., PA)
Inouye, Daniel K. (D., HI)
Leahy, Patrick J. (D., VT)
Mathias, Charles McC. (R., MD)
McClure, James A. (R., ID)
Packwood, Bob (R., OR)
Rockefeller, Jay (D., WV)
Zorinsky, Edward (D., NB)

TOTAL: 12
(5 Democrat
7 Republican)

CLOTURE VOTES

SENATORS VOTING "NO" ON ALL FOUR NOMINATIONS
BUT "YES" ON BOTH CLOTURE VOTES

- none -

SENATORS VOTING "NO" ON ALL FOUR NOMINATIONS
BUT "YES" ON ONE OF THE TWO CLOTURE VOTES

Baucus, Max (D., MT) - ("YES" on Fitzwater cloture)
Bingaman, Jeff (D., NM) - ("YES" on Rehnquist cloture)

SENATORS VOTING "YES" ON REHNQUIST NOMINATION
BUT "NO" ON OTHER THREE NOMINATIONS
(irrespective of cloture vote)

1/ Bentsen, Lloyd (D., TX)
Boren, David L. (D., OK)
Bumpers, Dale (D., AR)
Chiles, Lawton (D., FL)
Ford, Wendell H. (D., KY)
Hollings, Ernest F. (D., SC)
Johnston, J. Bennett (D., LA)
Nunn, Sam (D., GA)
Proxmire, William (D., WI)

TOTAL: 9
(All Democrats)

1/ Bumpers did not vote on Fitzwater

SENATORS VOTING "NO" ON REHNQUIST NOMINATION
BUT "YES" ON OTHER THREE NOMINATIONS
(irrespective of cloture vote)

- none -

SENATORS VOTING "NO" ON MANION NOMINATION
BUT "YES" ON OTHER THREE NOMINATIONS
(irrespective of cloture votes)

DeConcini, Dennis (D., AZ)
Evans, Daniel J. (R., WA)
Kassebaum, Nancy (R., KS)

TOTAL: 3

SENATORS VOTING "YES" ON MANION NOMINATION
BUT "NO" ON OTHER THREE NOMINATIONS
(irrespective of cloture votes)

- none -

SENATORS VOTING "NO" ON FITZWATER NOMINATION
BUT "YES" ON OTHER THREE NOMINATIONS
(irrespective of cloture vote)

- Heflin, Howell (D., AL)
1/ Heinz, John (R., PA)
Long, Russell B. (D., LA)
Stennis, John C. (D., MS)
2/ Zorinsky, Edward (D., NB)

- 1/ Heinz did not vote on Kozinski
2/ Zorinsky did not vote on Kozinski

SENATORS VOTING "YES" ON FITZWATER NOMINATION
BUT "NO" ON ALL OTHER THREE NOMINATIONS
(irrespective of cloture vote)

Pell, Claiborne (D., RI)
Simon, Paul (D., IL)

SENATORS VOTING "NO" ON KOZINSKI NOMINATION
BUT "YES" ON ALL OTHER THREE NOMINATIONS
(irrespective of cloture vote)

Cohen, William S. (R., ME)
Goldwater, Barry (R., AZ) - (did not vote on Manion)

SENATORS VOTING "YES" ON KOZINSKI NOMINATION
BUT "NO" ON ALL OTHER THREE NOMINATIONS
(irrespective of cloture vote)

- none -

SENATORS VOTING "YES" ON REHNQUIST AND KOZINSKI
BUT "NO" ON MANION AND FITZWATER NOMINATIONS
(irrespective of cloture vote)

Dixon, Alan (D., IL)
Specter, Arlen (R., PA)

SENATORS VOTING "YES" ON REHNQUIST AND MANION
BUT "NO" ON FITZWATER AND KOZINSKI NOMINATIONS
(irrespective of cloture vote)

Zorinsky, Edward (D., NB) - (did not vote on Kozinski)

SENATORS VOTING "YES" ON REHNQUIST AND FITZWATER
BUT "NO" ON MANION AND KOZINSKI NOMINATIONS
(irrespective of cloture vote)

Pryor, David (D., OK)

SENATORS VOTING "NO" ON REHNQUIST AND KOZINSKI
BUT "YES" ON MANION AND FITZWATER NOMINATIONS
(irrespective of cloture vote)

- none -

SENATORS VOTING "NO" ON REHNQUIST AND MANION
BUT "YES" ON FITZWATER AND KOZINSKI NOMINATIONS
(irrespective of cloture vote)

Mathias, Charles (R., MD) - (did not vote on Fitzwater)

SENATORS VOTING "NO" ON REHNQUIST AND FITZWATER
BUT "YES" ON MANION AND KOZINSKI NOMINATIONS

- none -

REHQUIST NOM.
 REHQUIST NOM.
 MANION NOM.
 FITZWATER NOM.
 FITZWATER NOM.
 KOZINSKI NOM.

REHQUIST NOM.
 REHQUIST NOM.
 MANION NOM.
 FITZWATER NOM.
 FITZWATER NOM.
 KOZINSKI NOM.

Vice President Bush, George (Tex.)	Y	Y	Y	Y	Y	Humphrey, Gordon J. (N.H.)	Y	Y	Y	Y	Y
Abdnor, James (S Dak)	Y	Y	Y	Y	Y	Inouye, Daniel K. (Hawaii)	Y	Y	Y	Y	Y
Andrews, Mark (N.Dak)	Y	Y	Y	Y	Y	Johnston, J. Bennett (La.)	Y	Y	Y	Y	Y
Armstrong, William L. (Colo.)	Y	Y	Y	Y	Y	* Kassebaum, Nancy Landon (Kans.)	Y	Y	Y	Y	Y
* Baucus, Max (Mont)	Y	Y	Y	Y	Y	Kasten, Bob (Wis.)	Y	Y	Y	Y	Y
* Bentsen, Lloyd (Tex.)	Y	Y	Y	Y	Y	Kennedy, Edward M. (Mass.)	Y	Y	Y	Y	Y
Biden, Joseph R., Jr. (Del.)	Y	Y	Y	Y	Y	Kerry, John F. (Mass.)	Y	Y	Y	Y	Y
* Bingaman, Jeff (N.Mex.)	Y	Y	Y	Y	Y	Lautenberg, Frank R. (N.J.)	Y	Y	Y	Y	Y
* Boen, David L. (Okla.)	Y	Y	Y	Y	Y	Laxalt, Paul (Nev.)	Y	Y	Y	Y	Y
Boschwitz, Rudy (Minn.)	Y	Y	Y	Y	Y	Leahy, Patrick J. (Vt.)	Y	Y	Y	Y	Y
Bradley, Bill (N.J.)	Y	Y	Y	Y	Y	Levin, Carl (Mich.)	Y	Y	Y	Y	Y
Broyhill, James T. (N.C.)	Y	Y	Y	Y	Y	* Long, Russell B. (La.)	Y	Y	Y	Y	Y
* Bumpers, Dale (Ark)	Y	Y	Y	Y	Y	Lugar, Richard G. (Ind.)	Y	Y	Y	Y	Y
Burdick, Quentin N. (N.Dak.)	Y	Y	Y	Y	Y	* Mathias, Charles McC., Jr. (Md.)	Y	Y	Y	Y	Y
Byrd, Robert C. (W.Va.)	Y	Y	Y	Y	Y	Matsunaga, Spark M. (Hawaii)	Y	Y	Y	Y	Y
Chafee, John H. (R.I.)	Y	Y	Y	Y	Y	Mattingly, Mack (Ga.)	Y	Y	Y	Y	Y
* Chiles, Lawton (Fla.)	Y	Y	Y	Y	Y	McClure, James A. (Idaho)	Y	Y	Y	Y	Y
Cochran, Thad (Miss.)	Y	Y	Y	Y	Y	McConnell, Mitch (Ky.)	Y	Y	Y	Y	Y
* Cohen, William S. (Maine)	Y	Y	Y	Y	Y	Melcher, John (Mont.)	Y	Y	Y	Y	Y
Cranston, Alan (Calif.)	Y	Y	Y	Y	Y	Metzenbaum, Howard M. (Ohio)	Y	Y	Y	Y	Y
D'Amato, Alfonse M. (N.Y.)	Y	Y	Y	Y	Y	Mitchell, George J. (Maine)	Y	Y	Y	Y	Y
Danforth, John C. (Mo.)	Y	Y	Y	Y	Y	Moynihhan, Daniel Patrick (N.Y.)	Y	Y	Y	Y	Y
* DeConcini, Dennis (Ariz.)	Y	Y	Y	Y	Y	Murkowski, Frank H. (Alaska)	Y	Y	Y	Y	Y
Denton, Jeremiah (Ala.)	Y	Y	Y	Y	Y	Nickles, Don (Okla.)	Y	Y	Y	Y	Y
* Dixon, Alan J. (Ill.)	Y	Y	Y	Y	Y	* Nunn, Sam (Ga.)	Y	Y	Y	Y	Y
Dodd, Christopher J. (Conn.)	Y	Y	Y	Y	Y	Packwood, Bob (Oreg.)	Y	Y	Y	Y	Y
Dole, Robert (Kans.)	Y	Y	Y	Y	Y	* Pell, Claiborne (R.I.)	Y	Y	Y	Y	Y
Domenici, Pete V. (N.Mex.)	Y	Y	Y	Y	Y	Pressler, Larry (S.Dak.)	Y	Y	Y	Y	Y
Durenberger, Dave (Minn.)	Y	Y	Y	Y	Y	* Proxmire, William (Wis.)	Y	Y	Y	Y	Y
Eagleton, Thomas F. (Mo.)	Y	Y	Y	Y	Y	* Pryor, David (Ark.)	Y	Y	Y	Y	Y
[East, John P.] (N.C.)	Y	Y	Y	Y	Y	Quayle, Dan (Ind.)	Y	Y	Y	Y	Y
* Evans, Daniel J. (Wash.)	Y	Y	Y	Y	Y	Riegle, Donald W., Jr. (Mich.)	Y	Y	Y	Y	Y
Exon, J. James (Nebr.)	Y	Y	Y	Y	Y	Rockefeller, John D., IV (W.Va.)	Y	Y	Y	Y	Y
* Ford, Wendell H. (Ky.)	Y	Y	Y	Y	Y	Roth, William V., Jr. (Del.)	Y	Y	Y	Y	Y
Garn, Jake (Utah)	Y	Y	Y	Y	Y	Rudman, Warren (N.H.)	Y	Y	Y	Y	Y
Glenn, John (Ohio)	Y	Y	Y	Y	Y	Saibanes, Paul S. (Md.)	Y	Y	Y	Y	Y
* Goldwater, Barry (Ariz.)	Y	Y	Y	Y	Y	Sasser, Jim (Tenn.)	Y	Y	Y	Y	Y
Gore, Albert (Tenn.)	Y	Y	Y	Y	Y	* Simon, Paul (Ill.)	Y	Y	Y	Y	Y
Gorton, Slade (Wash.)	Y	Y	Y	Y	Y	Simpson, Alan K. (Wyo.)	Y	Y	Y	Y	Y
Gramm, Phil (Tex.)	Y	Y	Y	Y	Y	* Specter, Arlen (Pa.)	Y	Y	Y	Y	Y
Grassley, Charles E. (Iowa)	Y	Y	Y	Y	Y	Stafford, Robert T. (Vt.)	Y	Y	Y	Y	Y
Harkin, Tom (Iowa)	Y	Y	Y	Y	Y	* Stennis, John C. (Miss.)	Y	Y	Y	Y	Y
Hart, Gary (Colo.)	Y	Y	Y	Y	Y	Stevens, Ted (Alaska)	Y	Y	Y	Y	Y
Hatch, Orrin G. (Utah)	Y	Y	Y	Y	Y	Symms, Steven D. (Idaho)	Y	Y	Y	Y	Y
Hatfield, Mark O. (Oreg.)	Y	Y	Y	Y	Y	Thurmond, Strom (S.C.)	Y	Y	Y	Y	Y
Hawkins, Paula (Fla.)	Y	Y	Y	Y	Y	Trible, Paul S., Jr. (Va.)	Y	Y	Y	Y	Y
Hecht, Chic (Nev.)	Y	Y	Y	Y	Y	Wallop, Malcolm (Wyo.)	Y	Y	Y	Y	Y
* Hellin, Howell (Ala.)	Y	Y	Y	Y	Y	Warner, John W. (Va.)	Y	Y	Y	Y	Y
* Heinz, John (Pa.)	Y	Y	Y	Y	Y	* Weicker, Lowell P., Jr. (Conn.)	Y	Y	Y	Y	Y
Helms, Jesse (N.C.)	Y	Y	Y	Y	Y	Wilson, Pete (Calif.)	Y	Y	Y	Y	Y
* Hollings, Ernest F. (S.C.)	Y	Y	Y	Y	Y	* Zorinsky, Edward (Nebr.)	Y	Y	Y	Y	Y

* Discrepancy in voting pattern
 - Means not present

THE WHITE HOUSE

WASHINGTON

July 23, 1987

MEMORANDUM FOR ARTHUR B. CULVAHOUSE, JR.
COUNSEL TO THE PRESIDENT

FROM: PETER D. KEISLER *POK*
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Conservatives and the Bork Nomination

We are hearing a lot less these days of conservative spokesmen boasting that the Bork nomination presents the opportunity to "roll back" thirty years of developed precedent. The message has become more sophisticated, more temperate, and more accurate. Attached for your information is: (1) a transcript from a press conference given by conservative activist Paul Weyrich, and (2) a copy of the postcard which the National Right to Work Committee is asking its members to send to Congress.

Attachment

cc: Jay B. Stephens
C. Christopher Cox
Patricia Mack Bryan
Benedict Cohen

NEWS CONFERENCE

Paul M. Weyrich
National Chairman
Coalitions for America

Washington, D.C.
July 14, 1987

QUESTIONS AND ANSWERS

JUDY WIESSLER, Houston Chronicle: Are you going to be involved in the Bork confirmation?

Mr. WEYRICH: We are involved in the Bork confirmation process through the 721 Group, the particular coalition that deals with judicial matters. It's very active in the matter, as is just about everybody on our side.

Ms. WIESSLER: Can you tell us a little about what is going to be done from the anti-abortion standpoint. People for Abortion Rights had a press conference yesterday and described their points.

Mr. WEYRICH: Well, I don't speak for any of the pro-life groups in terms of our own effort. We would go beyond just the pro-life position in terms of Judge Bork because we are interested in his particular judicial philosophy and, I might add, I think that some of the pro-abortionists are making a mistake in over-interpreting Judge Bork's criticism of Roe vs. Wade because I know Judge Bork quite well, and I don't know him to be an ardent pro-lifer. I don't think, in fact, that that's an accurate description of him.

I do think that he is in favor of the kind of judicial temperament which will serve the country well, and in that connection he has been critical of Roe vs. Wade because of its inventiveness on the part of the Supreme Court.

But if this battle is only about abortion, then I think it may be somewhat of a strange battle because -- at least in my own discussions -- I can't tell you that Judge Bork is an ardent pro-lifer. I think that could have been said, for example, about Judge Scalia, who I think would fall into that category.

But I think what we're talking about -- more than just any particular issue -- is what kind of judicial philosophy that we ought to have in the court. It's interesting to me -- and I'm sure to Charlie [Charles E. Judd, executive vice president of Moral Majority] and others that have been involved in a lot of fights with me over the years -- that the very people who accuse us of requiring litmus tests for judges, and who made a big deal about Jerry Falwell, are now themselves requiring litmus tests for somebody on the Supreme Court.

It strikes me as being odd. I think we can document the fact that we never ever required a litmus test for people that we supported. But, now here they are, in fact, saying, "If you don't have the correct position on abortion, you can't sit on the court."

Frankly, those who are opposing the Bork nomination solely on the basis of philosophy and solely on the basis of positions on issues may come to regret it. If we go down this road, if in fact Judge Bork is not confirmed -- and, by the way, I am confident he will

(MORE)

be, but if, in fact, he should not be confirmed because of ideology, then two can play the game, and I think that we may well run into a situation where a President Biden or whichever one of the Democrats might happen to get elected, might find themselves in a position of not being able to get their nominees approved.

If we're going to solely appoint people and have them confirmed on the basis of ideology, then I think we have a situation where we may as well not have court deliberations. We'll know in advance what the outcome is going to be. We can put political hacks on the court as long as they pledge to follow the party platform or something of that sort. I think that's a problem. I particularly don't want to see the American court system go in that direction, even though I have very strong opinions about some of the views that have been expressed by the Supreme Court.

So, I think it's a very dangerous precedent, I think some of the wiser heads around here and some of the more thoughtful liberals understand that. You will notice that Judge Bork is getting significant support from, I would say, surprising sources. And it isn't because they agree with his positions. It's because they understand that, if we once go down this road, we will have a very different type of political system than we have today -- one without the checks and balances that the court system has provided -- because we will end up just simply appointing political hacks of a particular president who will not have the kind of judicial temperament, the kind of scholarly approach that I think Judge Bork represents.

By the way, I didn't like Judge Bork before he was Judge Bork in a lot of the things he did when he was with the Nixon administration. In fact, I was talking to my former boss the other day on the phone, and we were reminiscing about some of that.

Judge Bork has not been some long-time creature of the conservative movement who all of the sudden has been rewarded because of his faithfulness to conservative views. So, one should not look at this nomination in that way.

However, no one can deny -- and, in fact, his opponents do not deny -- that he is one of the most scholarly and thoughtful judges we have anywhere in the country, and I fear for the day when we will say scholarship and judicial temperament don't matter; what matters is the position on a particular issue which must be decided in advance in the absence of a particular case. While Mr. Bork may have opinions on particular cases, he doesn't have a case pending before him now as a Supreme Court justice, and to ask him in advance what his position will be and expect him to rule I think is a very dangerous precedent. And so, our efforts will be in that direction, far beyond any one particular issue.

Ms. WIESSLER: What was your problem with him during the Nixon administration?

Mr. WEYRICH: Well, he was generally on the wrong side of questions that we were interested in. As solicitor in Justice, he made a lot of different rulings, which, by the way, are going to come out. I have seen some documentation of some of the stuff and I've forgotten a lot of it. I gagged when I saw some of it.

Anybody that thinks that this fellow is a doctrinaire conservative has another thought coming. If you take a look at some of the things he was involved in, it's no wonder that Elliott Richardson feels comfortable in defending him. But, the point is that there is no question that the man is one of the more scholarly people whom I have ever encountered, and my people who work in that area -- Pat McGuigan and Jeff Troutt -- and some of those people have nothing but the highest regard for his views even when they disagree with him, and they do. But I think this kind of scholarship is the kind of thoughtfulness we want on the court and not some knee-jerk ideological person, even if that person were representing my point of view.

Place
Stamp
Here

The Honorable _____
U.S. Senate
Washington D.C. 20510

Dear Senator _____:

I believe that Judge Robert H. Bork would be a judge of great ability and competence on the Supreme Court. Do not be swayed by the special interests groups who oppose him because he refuses to bend the law in their favor.

Please push for immediate hearings and cast your vote in favor of Judge Bork. I will be interested to hear where you stand.

Sincerely,

THE WHITE HOUSE

WASHINGTON

July 24, 1987

MEMORANDUM FOR ARTHUR B. CULVAHOUSE, JR.
JAY B. STEPHENS
C. CHRISTOPHER COX
PATRICIA MACK BRYAN
BENEDICT COHEN

FROM: PETER D. KEISLER *PK*
SUBJECT: Justice Stevens/Bork Nomination

I noted at the staff meeting that Justice Stevens had made favorable remarks on the Bork nomination and that I expected to get the tape next week.

Attached for your information is an article from the Omaha World Herald which Senator Humphrey had inserted in the Congressional Record and which quotes Justice Stevens' remarks.

Attachment

vine giant of the law. The Bork inquisitors will look very small, indeed, if their partisan brickbats are measured against the breadth and excellence of Judge Bork's career as a judge, scholar, and public servant.

If one were to design the hypothetical background of a person ideally qualified for the Supreme Court, it would closely match the actual career of Robert Bork.

He received his law degree from the University of Chicago law school, one of the most prestigious in the Nation. He served with the highest distinction as a professor of law at Yale Law School, where he held two of the most distinguished chairs at that institution. His scholarly legal writings have been both prolific and profound, reflecting an appreciation and respect for our written Constitution that is exactly what we need in our judges.

Judge Bork served as Solicitor General of the United States from 1973 to 1977, the third highest post in the Justice Department. He served as the Justice Department's chief litigator before the U.S. Supreme Court. His performance in that capacity was exemplary in every respect, and it provides him with invaluable knowledge, understanding and respect for the high court as an institution.

Those who may now choose to distort Judge Bork's actions while Solicitor General in connection with the Watergate firing of Special Prosecutor Archibald Cox would do well to review the record and the facts before they embarrass themselves. The Senate Judiciary Committee carefully inquired into that matter in Bork's confirmation hearings for the D.C. Circuit Court in 1982. Bork candidly explained how his actions scrupulously maintained the integrity of the Watergate Special Prosecutor, with the selection of Leon Jaworski to replace Cox, and how the contrary course of refusing the President's order and resigning would have left the Justice Department leaderless and in disarray.

Elliot Richardson, whose knowledge and sensitivity to these events is second to none, has publicly endorsed the integrity of Bork's actions. And so did this body when it confirmed Judge Bork for the second highest court in the land in 1982, without a single objection based on the Cox incident or otherwise. When Senators voted then unanimously to confirm Robert Bork, they did so only after the conduct of Mr. Bork in the Cox firing had been closely scrutinized.

Indeed, the Senate's unanimous approval of Bork for the D.C. Circuit Court of Appeals is further testimony to the excellence and integrity which commends him for the Supreme Court. Members of this body have not been reluctant to vigorously oppose nominees for the Federal appeals courts and district courts when they harbor concerns such as insensitivity to civil rights and similar issues. Rightly or wrongly, it was such pro-

fessed concerns which resulted in the rejection of Jefferson Sessions to the Federal district court just last year. But no such concerns were raised to oppose Judge Bork when we confirmed him 5 years ago to the powerful D.C. circuit—and for good reason. After a full hearing before the Judiciary Committee, there was simply no basis for them. Today, some Senators would have us believe that 100 Senators in 1982 were grossly derelict in our duty when we confirmed Robert Bork unanimously to the D.C. Circuit Court of Appeals. Either the Senate acted as a fool in 1982, or some Senators are acting as fools in 1987.

Judge Bork's performance on the D.C. circuit has been truly outstanding, and fully compatible with the sound principles of judging which he expressed in his confirmation hearings. Judge Bork has authored or joined in over 100 majority opinions on the D.C. circuit and not one, not one of those 100 opinions has been reversed by the Supreme Court. Such a record would be inconceivable if, as alleged by his more rabid opponents, Judge Bork was an ideological extremist on the fringes of the judicial mainstream.

The reality is that Judge Bork's exemplary record in this regard demonstrates the utter illegitimacy of the calumnies now raised against him. The charge that Judge Bork is a judicial extremist simply proves too much. If Bork is an extremist, then so must be a majority of the Supreme Court itself. Indeed, the four more conservative members of the current Court would all be doomed to rejection under the various litmus tests being applied to Bork. And the other four would likewise be subject to rejection if the same ideological standard were imposed from the right instead of from the left.

Saner and more responsible voices from the liberal side have recognized Judge Bork's excellence and refuted these charges of ideological rigidity.

Judge Abner Mikva, a liberal and Judge Bork's colleague on the D.C. circuit, has openly expressed his admiration for his conservative colleague. Mikva has stated that:

I think Abraham Lincoln would have liked Judge Bork, and not just because they both spent their formative years in Illinois.

Geoffrey Stone, dean of the University of Chicago Law School, stated that:

If it were a person of lesser ability, I would vote against confirmation, but my own view is that Bork's capabilities are so unquestionable that he would make significant contributions.

Dean Stone added:

Bork is a four-star appointment. You usually don't get anyone with anywhere near his credentials.

And Lloyd Cutler, former White House counsel to President Carter, a man who calls himself a liberal Democrat, one of the most respected and knowledgeable lawyers in the Nation,

one of the most well known, has directly refuted charges from fellow liberals that Judge Bork is an ideological extremist. Cutler stated in a July 16 article in the New York Times:

Judge Bork is neither an ideologue nor an extreme right-winger, either in his judicial philosophy or in his personal position on current social issues. I base this assessment on a post-nomination review of Judge Bork's published articles and opinions, and on 20 years of personal association as a professional colleague or adversary. I make it as a liberal Democrat and as an advocate of civil rights before the Supreme Court.

Mr. President, just recently, Justice Stevens spoke in Colorado Springs; and according to the Omaha World Herald, dated July 18, Justice Stevens said that Robert H. Bork will be a "welcome addition" to the U.S. Supreme Court. "I think Judge Bork is very well qualified," Stevens said. "He will be a welcome addition to the Court."

Mr. President, I ask unanimous consent that this news clipping be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

JUSTICE STEVENS BACKS BORK

(By David Thompson)

COLORADO SPRINGS, COLO.—Robert H. Bork will be a "welcome addition" to the U.S. Supreme Court, a member of the court told a group of lawyers and judges meeting here Friday.

Supreme Court Justice John Paul Stevens, appointed to the court in 1975 by Republican President Ford, made what legal observers said was the first public appraisal of Bork by a sitting member of the court.

President Reagan's selection of the 60-year-old Bork, now a federal appeals court judge in Washington, D.C., has drawn strong criticism from liberals, women's groups and others.

The chairman of the U.S. Senate Judiciary Committee, Sen. Joseph Biden, D-Del., has scheduled hearings for September on the Bork nomination.

Stevens said he gave his recommendations on Bork to the chairman of the American Bar Association committee that has been asked to evaluate the president's selection.

"I think Judge Bork is very well qualified," Stevens told those attending the 8th U.S. Circuit Court Judicial Conference.

"He will be a welcome addition to the court."

Stevens—a moderate on what court observers and scholars have characterized as an increasingly conservative court—followed his endorsement by reading extensively from an opinion that Bork wrote earlier this year in a libel case.

The justice quoted Bork as decrying "mechanical jurisprudence," trying to force certain kinds of cases to meet a specified number of legal requirements.

Stevens quoted Bork as saying that there has to be "a continuing evolution" of judicial doctrine.

Stevens, like Bork, was a federal appeals court judge when he was appointed.

Stevens also offered observations about the newest member of the court, Justice Antonin Scalia, and the new chief justice, William Rehnquist.

Stevens said Scalia, regarded as a strong conservative before he stepped up to the Supreme Court last October, keeps an open

mind on cases while they are being discussed by the judges.

Stevens said Scalia has been known to change his views on a case between the time the justices begin their discussion and the time a final decision is rendered.

Scalia also has persuaded others on the court to change their minds during the same process, Stevens said.

The associate justice said a year's experience has shown Rehnquist to be "a fine chief justice."

Stevens also said the surprise retirement of Justice Lewis Powell—whom Bork has been selected to succeed—"was an emotional experience" for all members of the Supreme Court.

Stevens described Powell as "a gentleman and a friend to all members of the court."

The associate justice was one of a series of speakers at the annual conference conducted for federal judges and lawyers who practice in the seven states of the 8th Circuit, Nebraska, Iowa, the Dakotas, Missouri, Minnesota and Arkansas.

Approximately 60 lawyers and judges from Nebraska are attending.

Mr. HUMPHREY. Mr. President, these statements show that responsible liberals and civil rights advocates recognize that Judge Bork is a conscientious and principled jurist who will serve honorably on the Supreme Court.

As Lloyd Cutler stressed, "The essence of Judge Bork's judicial philosophy is self-restraint."

Self-restraint. That is an extremely crucial virtue for those appointed for life to so powerful position as the Supreme Court. It is the only thing that stands between conscientious adherence to our great written Constitution and presumptuous, anti-democratic policymaking by an imperial judiciary.

Judge Robert Bork has the kind of principled judicial restraint which makes him a trustworthy guardian of our Constitution. And he has the experience and scholarly capacity to cope with the complex and divisive disputes which the Supreme Court must ultimately decide.

So, Mr. President, I think it is time for Judge Bork's attackers to put aside their knives, put aside their strident, exaggerated, bitter rhetoric and reflect a bit on the responsibilities we must finally confront.

They should reflect on the breadth and the caliber of Judge Bork's career and consider very carefully the precedent they would destroy if they reject such a nominee.

Let them also reflect on the precedent they will set: the confirmation process for Supreme Court nominees is now to become bitterly partisan.

They should reflect on the Senate's unanimous approval of Bork's confirmation to the District of Columbia Circuit Court 5 years ago and consider why the accolades of 1982 should suddenly be transformed into the calumnies of 1987.

Finally, they should reflect on the value of our great Constitution and consider the damage we will do to it if we reject a nominee for the Supreme Court because he insists on adhering to that Constitution.

Mr. President, it distresses me greatly that a number of Senators in this body have already announced their opposition to this nominee before the nominee has even had an opportunity to speak one word before the committee that will consider his nomination in September. Senators are entitled to their opinions. We all have them. We all have our inclinations.

The PRESIDING OFFICER. The time of the Senator under morning business has expired.

Mr. HUMPHERY. I ask unanimous consent that I may continue another 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HUMPHERY. Senators have their inclinations. I have mine. I am inclined to support Judge Bork, but I have not cast my feet in concrete. I want to hear what he has to say. I want to see how he responds to questions. We may be sure that there will be tough questions, put to him in the Judiciary Committee.

I hope that other Senators, likewise, will refrain from taking a position for or against this nominee until they have had a chance to hear all the evidence. Can we not wait until the evidence comes in before we render a verdict?

It is especially distressing and really disturbing and disappointing to find that the chairman of the Judiciary Committee, the man who will preside over these hearings, which will form a means of our passing judgment on the nominee, will not only be this man's judge but also is already today, in the press, this man's prosecutor. The chairman has already made up his mind and has already announced that he is going to lead the opposition to the nominee, notwithstanding the fact that the same Senator 5 years ago was among the 100 who voted unanimously to confirm Robert Bork to the second highest court in the land.

Is it asking too much that we have fairness in this proceeding? Is it too much to ask that we have a higher level of ethics than ordinarily obtains around here on more mundane nominations? I think it is not asking too much, and I ask it. I ask it of my chairman, as a member of the Judiciary Committee.

Mr. President, those Senators present in this body now who likewise were present 5 years ago and who supported him as they all did 5 years ago and who now bitterly attack the man ask us to believe something that leaves us incredulous. They ask us to believe that in 1982 in confirming a man to the second most important court in this country that they discharged their responsibilities carelessly.

Is that not what they are asking us? They say now Robert Bork is a right-wing ideologist and an extremist, an ogre. Why did they not say that 5 years ago? What further evidence do they have today that they did not have 5 years ago except 100 opinions

all of which have been upheld by the Supreme Court?

So if Robert Bork, since his appointment to the Circuit Court for the District of Columbia, in the space of 5 years has become a rightwing extremist, an ideologist, an ogre and devil incarnate, and the Supreme Court upheld every one of his decisions, I think we have to assume also that the Supreme Court over the past 5 years has become peopled by disciples of the devil, if you believe the opponents. They leave us incredulous. They leave us aghast. Either they were extraordinarily careless in the discharge of their responsibility 5 years ago, or there is a great deal of hypocrisy about today.

It is grossly unfair. It is grossly and shamefully unethical.

I object further not only to the pre-judgment of the case by the very man who will chair the hearing, if he wants to be not only the prosecutor as he is in the press, he wants to be the judge, perhaps the jailer as well. How much more undemocratic can a man be?

I hope the chairman will stop and think and back up and reintroduce fairness and decency into this process.

Before I close, Mr. President, I want to complain further about the inordinate, the unfair, the unreasonable, the unconscionable delay in beginning hearings on this nomination. The Congressional Research Service which, as my colleagues know, is a nonpartisan entity of function of the Library of Congress conducted a survey which encompassed the last 25 years, which is to say the modern age of telecommunications and computers when we can obtain all kinds of information on nominees with great ease, of which advantage our forebears did not have at the turn of the century or earlier. But in the last 25 years in the modern era, the average length of time between the submission of a nomination by a President and the beginning of hearings by the Senate Judiciary Committee has been 18 days, actually 17.6, round it up to 18 days, when the Bork hearings begin if they begin on the date stipulated by the chairman, 70 days will have elapsed—7 oh. What just cause is served by this inordinate delay?

Some will say that figures lie, that I am distorting the record. That is not so. Anyone may look at this study. It is quite straightforward.

Some make the excuse, well, there is a recess intervening in this instance—

The PRESIDING OFFICER. The Chair will point out the additional 5 minutes granted to the Senator from New Hampshire have expired.

Mr. HUMPHREY. Mr. President, I ask unanimous consent that I might have an additional 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HUMPHREY. Mr. President, some may claim excuse that in this in-