

These are grand terms—terms that to this day both stir and confound us. But let me quote from one of the most distinguished witnesses to appear before the committee: Shirley Hufstедler, a former Court of Appeals Judge and the Secretary of Education under President Jimmy Carter. This is what Judge Hufstедler had to say about these terms.

They are words of passion. They are words of dedication. They are words that cannot be drained of their emotional content. \* \* \* None can be cabined without destroying the soul of the Constitution and its capacity to encompass changes in time, place and circumstance.

From these "words of passion" comes a tradition of Supreme Court jurisprudence that has recognized fundamental principles of liberty. I have touched upon these principles before. They have been expressed in different ways, but we understand the message they convey:

The right to be let alone.

Ordered liberty.

Postulates of respect for the liberty of the individual.

Values deeply rooted in this Nation's tradition.

This is how the Supreme Court has defined concepts as old as the Magna Carta. This is how Justices Brandeis, Frankfurter, Harlan, and Powell have approached the Constitution, among many others—this is how most Americans have come to approach the Constitution.

The writings and testimony of Judge Bork show him to be at odds with this tradition and history. Indeed, had his philosophy been the governing one for this country, the Supreme Court would not have served—as we all know it has—as the last bulwark of protection for our rights when the Government has unduly intruded into the realm of individual liberty.

Senator Sam Ervin our late colleague, was fond of quoting an eloquent educator about the ties between the Magna Carta, the English Petition of Right, the Declaration of Independence and the U.S. Constitution—

These are the great documents of history. Cut them, and they will bleed with the blood of those who fashioned them and those who have nurtured them through the succeeding generations.

Can the Senate take the risk of confirming to the Supreme Court someone who does not recognize certain fundamental rights that are imbedded in the fiber of our Constitution—that are embedded in the fiber of our Nation?

I think the answer—after detailed and extensive hearings, after a serious debate on the floor of the U.S. Senate—is clear.

The Nation cannot take that risk.

I urge the rejection of Judge Robert H. Bork to be an Associate Justice of the U.S. Supreme Court.

CONCLUSION

Finally, let me add a personal note.

There has been much talk about a smear campaign, about a personal attack on Judge Bork, about the damage that has been done to his honor and his integrity, and even about how people may be gloating or joyfully congratulating themselves about Judge Bork's defeat.

This Senator will have none of this. Throughout these proceedings, I have respected Judge Bork's honor and I have believed in his integrity. I continue to do so.

There can be no joy for this Senator in defeating a person of Judge Bork's personal caliber. Although we try not to take defeats of this kind personally—and the people in this body know the anguish of defeat well—judicial nomination battles always involve just one person at a time, and they can become intensely personal to the nominee. I find no joy in this situation.

I do have a solemn responsibility as a U.S. Senator, and I have attempted to discharge it. I could not shrink from the conflict in deep constitutional principle that I have with Judge Bork.

But let me make this clear: I do not consider what has happened here to count against Judge Bork's honor and integrity, and I hope no one in the country does. Still, it is with a heavy heart for the man and his family that I urge my colleagues to vote against Robert Bork, for I suspect this is a post he wanted very much, and I fear others might misunderstand the kind of judgment that this body is making.

For Judge Bork and his family, I ask that no one make that mistake.

And to Judge Bork and his family, I can only wish them well.

Mr. President, I can see you are about to lift your gavel and I am probably wearing on the patience of my colleagues, but I congratulate all those who have chosen to engage in the debate on principle and hope and pray the President of the United States sends us a woman or a man next upon whom we can all be in agreement.

I yield the floor.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from South Carolina has a minute.

Mr. THURMOND. Mr. President, I would like for the Presiding Officer to admonish the audience in the galleries there will be no outburst when the outcome is announced.

The PRESIDING OFFICER. The Senator from South Carolina is correct. The Chair advises those in the galleries expressions of approval or disapproval are not permitted and will not be tolerated. Those in the galleries are asked to refrain from audible conversations during the calling of the roll and the vote is announced.

The Senator from South Carolina has approximately 45 minutes.

Does he yield back his time?

Mr. THURMOND. I yield back the remainder of my time.

The PRESIDING OFFICER. The Senators yield back the time. All time is gone.

The question is, Will the Senate advise and consent to the nomination of Robert H. Bork, of the District of Columbia, to be an Associate Member of the Supreme Court.

Mr. WALLOP. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask that order be maintained in the Senate, that Senators remain at their seats and that the clerk repeat the responses after each response.

The PRESIDING OFFICER. Regular order will be followed.

The clerk will continue calling the roll.

The assistant legislative clerk resumed and concluded the call of the roll.

The result was announced—yeas 42, nays 58, as follows:

[Rollcall Vote No. 348 Ex.]

YEAS—42

Armstrong	Grassley	McConnell
Bond	Hatch	Murkowski
Boren	Hatfield	Nickles
Boschwitz	Hecht	Pressler
Cochran	Helms	Quayle
Cohen	Helms	Roth
D'Amato	Hollings	Rudman
Danforth	Humphrey	Simpson
Dole	Karnes	Stevens
Domenici	Kassebaum	Syrms
Durenberger	Kasten	Thurmond
Evans	Lugar	Trible
Garn	McCaIn	Wallop
Gramm	McClure	Wilson

NAYS—58

Adams	Fowler	Packwood
Baucus	Glenn	Pell
Bentsen	Gore	Proxmire
Biden	Graham	Pryor
Bingaman	Harkin	Reid
Bradley	Heflin	Riegle
Breaux	Inouye	Rockefeller
Bumpers	Johnston	Sanford
Burdick	Kennedy	Sarbanes
Byrd	Kerry	Sasser
Chafee	Lautenberg	Shelby
Chiles	Leahy	Simon
Conrad	Levin	Specter
Cranston	Matsunaga	Stafford
Daschle	Melcher	Stennis
DeConcini	Metzenbaum	Warner
Dixon	Mikulski	Weicker
Dodd	Mitchell	Wirth
Exon	Moynihan	
Ford	Nunn	

The PRESIDING OFFICER. On Rollcall No. 348, the nomination of Robert H. Bork, the yeas are 42, the

nays are 53, the nomination is not confirmed.

Mr. BYRD. I move to reconsider vote by which the nomination was rejected.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The President will be immediately notified of the Senate's action.

### LEGISLATIVE SESSION

#### MILITARY CONSTRUCTION APPROPRIATIONS, FISCAL YEAR 1988

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session to consider H.R. 2906, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 2906) making appropriations for military construction and for the Department of Defense for the fiscal year ending September 30, 1988, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Appropriations, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets, and the parts of the bill intended to be inserted are shown in italics.)

H.R. 2906

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 1988, for military construction functions administered by the Department of Defense, and for other purposes, namely:

#### MILITARY CONSTRUCTION, ARMY (INCLUDING RESCISSIONS)

For acquisition, construction, installation, and equipment of temporary or permanent public works, military installations, facilities, and real property for the Army as currently authorized by law, and for construction and operation of facilities in support of the functions of the Commander-in-Chief, **[\$908,160,000]** *\$974,630,000*, to remain available until September 30, 1992: *Provided*, That of this amount, not to exceed **[\$133,120,000]** *\$120,120,000* shall be available for study, planning, design, architect and engineer services, as authorized by law, unless the Secretary of Defense determines that additional obligations are necessary for such purposes and notifies the Committees on Appropriations of both Houses of Congress of his determination and the reasons therefor: *Provided further*, That of the funds appropriated for "Military Construction, Army" under Public Law 98-473, **\$6,800,000** is hereby rescinded: *Provided further*, That of the funds appropriated for "Military Construction, Army" under Public Law 99-173, **\$28,000,000** is hereby rescinded.

#### MILITARY CONSTRUCTION, NAVY (INCLUDING RESCISSIONS)

For acquisition, construction, installation, and equipment of temporary or permanent

public works, naval installations, facilities, and real property for the Navy as currently authorized by law, including personnel in the Naval Facilities Engineering Command and other personal services necessary for the purposes of this appropriation, **[\$1,380,855,000]** *\$1,505,072,000*, to remain available until September 30, 1992: *Provided*, That of this amount, not to exceed **[\$148,855,000]** *\$130,000,000* shall be available for study, planning, design, architect and engineer services, as authorized by law, unless the Secretary of Defense determines that additional obligations are necessary for such purposes and notifies the Committees on Appropriations of both Houses of Congress of his determination and the reasons therefor: *Provided further*, That of the funds appropriated for "Military Construction, Navy" under Public Law 98-473, **\$6,800,000** is hereby rescinded: *Provided further*, That of the funds appropriated for "Military Construction, Navy" under Public Law 99-173, **\$19,400,000** is hereby rescinded.

#### MILITARY CONSTRUCTION, AIR FORCE (INCLUDING RESCISSIONS)

For acquisition, construction, installation, and equipment of temporary or permanent public works, military installations, facilities, and real property for the Air Force as currently authorized by law, **[\$1,115,950,000]** *\$1,179,014,000*, to remain available until September 30, 1992: *Provided*, That of this amount, not to exceed **[\$121,036,000]** *\$115,000,000*, shall be available for study, planning, design, architect and engineer services, as authorized by law, unless the Secretary of Defense determines that additional obligations are necessary for such purposes and notifies the Committees on Appropriations of both Houses of Congress of his determination and the reasons therefor: *Provided further*, That of the funds appropriated for "Military Construction, Air Force" under Public Law 98-473, **\$6,300,000** is hereby rescinded: *Provided further*, That of the funds appropriated for "Military Construction, Air Force" under Public Law 99-173, **\$18,500,000** is hereby rescinded: *Provided further*, That none of the funds appropriated for planning, design, or construction of military facilities or family housing may be used to support the relocation of the 401st Tactical Fighter Wing from Spain to another country.

#### MILITARY CONSTRUCTION, DEFENSE AGENCIES (INCLUDING TRANSFER OF FUNDS) (INCLUDING RESCISSIONS)

For acquisition, construction, installation, and equipment of temporary or permanent public works, installations, facilities, and real property for activities and agencies of the Department of Defense (other than the military departments), as currently authorized by law **[\$564,886,000]** *\$597,865,000*, to remain available until September 30, 1992: *Provided*, That such amounts of this appropriation as may be determined by the Secretary of Defense may be transferred to such appropriations of the Department of Defense available for military construction as he may designate, to be merged with and to be available for the same purposes, and for the same time period, as the appropriation or fund to which transferred: *Provided further*, That of the amount appropriated, not to exceed **[\$62,800,000]** *\$55,000,000* shall be available for study, planning, design, architect and engineer services, as authorized by law, unless the Secretary of Defense determines that additional obligations are necessary for such purposes and notifies the Committees on Appropriations of both

Houses of Congress of his determination and the reasons therefor: *Provided further*, That of the funds appropriated for "Military Construction, Defense Agencies" under Public Law 98-473, **\$1,900,000** is hereby rescinded: *Provided further*, That of the funds appropriated for "Military Construction, Defense Agencies" under Public Law 99-173, **\$5,300,000** is hereby rescinded.

#### NORTH ATLANTIC TREATY ORGANIZATION INFRASTRUCTURE (INCLUDING RESCISSION)

For the United States share of the cost of North Atlantic Treaty Organization Infrastructure programs [for the acquisition of personal property,] for the acquisition and construction of military facilities and installations (including international military headquarters) and for related expenses for the collective defense of the North Atlantic Treaty Area as authorized in military construction Acts and section 2806 of title 10, United States Code, **[\$376,000,000]** *\$386,000,000*, to remain available until expended: *Provided*, That of the funds appropriated for "North Atlantic Treaty Organization Infrastructure" under Public Law 99-173, **\$8,000,000** is hereby rescinded: *Provided further*, That of the funds appropriated in this Act for NATO infrastructure, no more than 35 per centum may be utilized to support non-construction activities.

#### MILITARY CONSTRUCTION, ARMY NATIONAL GUARD

##### (INCLUDING RESCISSION)

For construction, acquisition, expansion, rehabilitation, and conversion of facilities for the training and administration of the Army National Guard, and contributions therefor, as authorized by chapter 133 of title 10, United States Code, and military construction authorization Acts, **[\$158,052,000]** *\$194,925,000*, to remain available until September 30, 1992: *Provided*, That of the funds appropriated for "Military Construction, Army National Guard" under Public Law 99-173, **\$2,500,000** is hereby rescinded.

#### MILITARY CONSTRUCTION, AIR NATIONAL GUARD

##### (INCLUDING RESCISSIONS)

For construction, acquisition, expansion, rehabilitation, and conversion of facilities for the training and administration of the Air National Guard, and contributions therefor, as authorized by chapter 133 of title 10, United States Code, and military construction authorization Acts, **[\$126,475,000]** *\$165,716,000*, to remain available until September 30, 1992: *Provided*, That of the funds appropriated for "Military Construction, Air National Guard" under Public Law 98-473, **\$200,000** is hereby rescinded: *Provided further*, That of the funds appropriated for "Military Construction, Air National Guard" under Public Law 99-173, **\$3,300,000** is hereby rescinded.

#### MILITARY CONSTRUCTION, ARMY RESERVE (INCLUDING RESCISSION)

For construction, acquisition, expansion, rehabilitation, and conversion of facilities for the training and administration of the Army Reserve as authorized by chapter 133 of title 10, United States Code, and military construction authorization Acts, **\$95,100,000**, to remain available until September 30, 1992: *Provided*, That of the funds appropriated for "Military Construction, Army Reserve" under Public Law 99-173, **\$1,800,000** is hereby rescinded.