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September 18, 1992

Brian Lamb
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400 N. Capital Street, Suite 650 NW
Washington, D.C.

Tape
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Hope Landy
x460P

Dear Brian:

This is in reference to your interview with Mr. Terry Eastland of August 25, 1992 concerning his forthcoming book. During the course of this interview it was noted by Mr. Eastland that the names of Robert Bork and Antonin Scalia were submitted by the Justice Department to Attorney General Meese to select one for nomination to the Supreme Court by President Reagan.

While both men had similar legal backgrounds and qualifications as partners in law firms, law school professors, Justice Department Attorneys and Judges on the Washington D.C. Federal Court of Appeals, Bork was clearly the senior in legal experience with 33 years at age 59 in 1986 to Scalia with 24 years at age 50 the same year. Why then did the Attorney General recommend Scalia over Bork for the nomination? To my knowledge neither this question or its answer were raised in the interview. The apparent answer was revealed in a press analysis following the Scalia nomination. With less than three years remaining of Reagan's term it was uncertain if another Supreme Court vacancy would occur to nominate the other candidate. (During the preceding 4-year Carter presidency no vacancy had occurred.) This being the case, the thinking was that it would be wiser to nominate the younger man, Scalia, since he could expect to be on the Supreme Court 9 years longer than Bork to carry on the Reagan legacy.

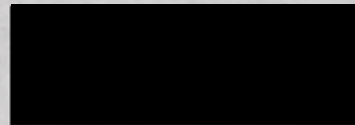
When, in fact, another court vacancy did occur in 1988, to which Bork was nominated, an event had occurred following Scalia's confirmation and that was the election of 1986 which changed the Senate majority from Republican to Democrat resulting in Bork's rejection to the Court for reasons both political and ideological. It is my opinion that had Bork been nominated in 1986 logically, as the senior more experienced candidate, he would have been confirmed by the then Republican

Senate majority. While his legal philosophy was similar to Bork's, Scalia, I also believe would have been confirmed by a Democratic Senate majority on the basis of a more acceptable response to the issues raised. Also, to the extent that the above answer to this question has validity, it would appear that the Attorney General outdid himself and the Reagan administration in the strategy of recommending the younger man to the first vacancy.

A further twist is worthy of note from the Meese decision and that is the recent Supreme Court case upholding Roe vs. Wade by a one vote 5 to 4 majority. Among the 5 was Justice Kennedy, confirmed by the Senate following the Bork rejection. Had Bork been confirmed in 1986 and then Scalia in 1988 there would have been no Kennedy nomination so it appears safe to say that Roe vs Wade would have been overruled much to the satisfaction of Reagan, Meese and the Bush administration.

Perhaps this letter should have been addressed to Mr. Eastland for any comment or response he would care to make but I do not have his address so would you forward the enclosed copy to him or if you will forward his address to me I will then mail him a copy.

Sincerely yours,



P.S. I thoroughly enjoy your program on C-Span. There is nothing like it on any other network.