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United States Senate

COMMITTEE ON THE JUDICIARY
 WASHINGTON, DC 20510 6275

July 15, 1993

Hon. Ruth Bader Ginsburg
 U. S. Court of Appeals
 Washington, D.C. 20001

Dear Judge Ginsburg:

Thanks again for your offer to meet with me; and, as you know, I would like to do that before the hearings are concluded.

In the meantime I do have one question which I would appreciate your answering before the hearing.

I have just read the article in the University of Illinois Law Review entitled "Confirming Supreme Court Justices: Thoughts on the Second Opinion Rendered by the Senate."

In that article you said, as I read it, that there should be a difference before Judge Bork's answers and responses from Chief Justice Rehnquist and Justice Kennedy. Referring to Judge Bork at page 114 you state:

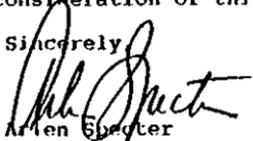
"The distinction between judicial philosophy and votes in particular cases having blurred as the questions wore on."

I would appreciate your providing me with examples of such questions to Judge Bork. I would be most interested in any such questions, as you see it, which were asked by me.

I hope this request is not unduly burdensome; but it would obviously be helpful to me in preparing questions for the hearings to have your specific views on which questions, you think, went too far with Judge Bork.

Thank you for your consideration of this request.

Sincerely,



Arlen Specter

AS/ml
 HAND DELIVER

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT
WASHINGTON, DC 20001RUTH BADER GINSBURG
UNITED STATES CIRCUIT JUDGE

July 16, 1993

The Honorable Arlen Specter
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Specter:

Thank you for your letter of July 15, and for your kindness in offering to meet with me soon so that we may become better acquainted.

Your letter refers to my article "Confirming Supreme Court Justices: Thoughts on the Second Opinion Rendered by the Senate," published in 1988 in the Illinois Law Review. You called my attention, specifically, to a sentence on page 144. The sentence comments that, although Judge Bork explained at the outset of his hearings that he would not say how he would vote in any particular case, "[t]he distinction between judicial philosophy and votes in particular cases . . . blurred as the questions and answers wore on." You asked me to provide you with specific examples of such "questions to Judge Bork," and particularly such questions asked by you.

The sentence you cite was not designed to criticize the Senate for asking questions that blurred the line between general judicial philosophy and particular cases. Rather, my aim was to indicate, in the context of Judge Bork's stated intention to draw a line between the two, that in the course of his hearings it became increasingly difficult for him to do so. (I am just now, as you will appreciate, all the more sensitive to both the need to, and the difficulty of, adhering to the distinction.)

It has been five years since the Illinois article was published and I have long since discarded my notes for the article. At this distance in time, I am unable to cite particular exchanges in point. However, I can represent with assurance that my concern focused on instances in which Judge Bork, confronting a question of constitutional interpretation or judicial philosophy, descended the slope and answered in more detail than he first declared he would. As you know, the purpose of my article was to examine the historical antecedents to the modern problems facing the Committee and the nominees who come before it, not to suggest that the Senate or the Committee had overstepped its bounds in questioning.

I hope this brief explanation of the sentence at page 144 will suffice, at least for now. If you wish, I will be glad to review the transcript of Judge Bork's hearings anew and supply a more detailed response, once next week's hearing concludes.

Please call if there is anything further you would like me to supply before July 20.

Sincerely,


Ruth Bader Ginsburg