

Specter Says Bork's Rejection Sets Precedent

By Al Kamen
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Sen. Arlen Specter (R-Pa.), a key figure in the defeat last October of Judge Robert H. Bork's nomination to the Supreme Court, said yesterday that those proceedings "have established the important precedent of the Senate's right to reject" a nominee solely on the basis of his judicial philosophy.

Specter, in a commencement address to the graduating class of New York University School of Law, said the hearings on Bork and his successor, Justice Anthony M. Kennedy, established that "judicial philosophy is an appropriate subject for in-depth questioning by the [Senate] Judiciary Committee." Future nominees who do not respond to such questioning probably won't be confirmed, he said.

In his prepared speech, his first major address on the bitter confirmation battle over Bork, Specter responded to Bork allies and others who criticized the process as too political and who charged that the lopsided 58-to-42 vote against Bork was engineered by liberal interest groups and an anti-Bork media blitzkrieg.

The Senate "was not significantly influenced, if at all," he said, "by the media advertising campaigns. Senators have been involved in too many media advertising campaigns themselves to be unable to separate fact from fiction or hard evidence from hyperbole.

"Charges have been made that southern Democrats opposed Judge Bork because of the polls and the 'radical ultra-liberal groups [who] made it plain to dissenters [senators] that this would be a decisive issue for their reelection.' My observation of southerners on the [Judiciary] committee and on the floor convinces me this was not true."

Specter said the battle was not sparked by Bork's opponents but by President Reagan, whose "social agenda was at stake" in the nomination. "The stage was set for a battle royal" when Reagan nominated Bork, he said.

"Before any special interest group had any chance to

mobilize its supporters, public interest flared," he said, recalling a previously scheduled town meeting in Pennsylvania held two days after the nomination.

"The attendance and emotions were much higher than usual, because my constituents wanted to hear about and talk about Judge Bork. At one meeting, two shouting antagonists had to be restrained from having a fist fight."

Specter, who with two conservative Democrats joined six other Democrats in the committee's 9-to-5 vote against Bork, said Bork was "not rejected by straw voters responding to a media blitz in a national election campaign. Judge Bork was rejected by . . . the biggest margin on a Supreme Court nominee in history because his views were so extreme—perhaps the most extreme of any nominee who ever had been considered by the Senate."

Specter criticized as "probably unwise and certainly unseemly" announcements made by opposing and supporting senators even before the committee heard witnesses.

He also said it was "similarly inappropriate for senators to announce their positions in an informal manner prior to the nomination coming to the floor, so that more than 51 senators had committed themselves in advance. The Senate, which prizes its reputation as the world's greatest deliberative body, had nothing to deliberate when the time for floor debate arrived."

Specter noted that, before Bork; Chief Justice William H. Rehnquist answered only a few questions on his judicial philosophy during his confirmation hearings and that Justice Antonin Scalia answered "virtually none."

"It may be in the final analysis that Supreme Court nominees have answered as many questions as they have had to in order to win confirmation," he said. "For them it appears to have been a political judgment under a doctrine of pragmatic elaboration.

"In the future," Specter said, "Supreme Court nominees will probably have to follow the precedents of Justice Kennedy and Judge Bork in order to be confirmed."