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October 29, 1987

Dr. Hector P. Garcia
American GI Forum of the U.S.
1315 Bright Street
Corpus Christi, Texas 78405

Dear Dr. Garcia:

Thank you for your thoughtful letter on my Chairmanship of the Senate Select Committee on the Iran-Contra investigation. I appreciate your kind words and your support for my efforts to serve our nation.

On Monday, October 5th, I met with Judge Robert H. Bork. I wanted to meet and talk with him personally before reaching a final decision on his nomination.

After the President submitted Judge Bork's name to the Senate on July 7, 1987, I received an avalanche of reading material on his educational background, scholarly achievements and professional prowess. Like many other Americans, I was impressed with his accomplishments and the many articles that he has authored. I was also impressed with Judge Bork's academic record.

I disagree with some of the objections that have been raised against Judge Bork's nomination. I do not question Judge Bork's qualifications to serve on the Court because he once entertained ideas that today seem questionable. Further, I do not condemn him for experimenting with different political philosophies, or for changing his mind over time.

I also do not fault Judge Bork's mastery of law. However, I believe a Supreme Court Justice requires more than technical legal ability. To put it simply, Supreme Court decisions should not be rendered in a vacuum. Rather, Justices must appreciate the "real world" consequences of their decisions.

There is a difference between technically applying legal rules and achieving justice. A legal technician could logically argue that there is no constitutional basis for prohibiting discrimination on the basis of sex, sexual preference, or race. However, in my view, the Supreme Court exists to pursue justice and not just to conduct exercises in logic. The Supreme Court is not a debating society convened to determine who has the most powerful intellect.

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I agree with Judge Bork that we must be unfailingly loyal to the Constitution and to its framers' intent. However, I cannot understand or accept his very narrow assumptions about the intentions of those who founded our nation. I believe the framers differed on too many issues to resolve them in detail. Accordingly, they deliberately used language that invites us to continue the process of shaping a just and decent society. I am certain that they expected us to be flexible, realistic, sensitive, and compassionate.

The Supreme Court, through the years, has embraced these values to uphold not only the words but also the spirit of our Constitution. The Court has been called upon when the executive and legislative branches of government either refused or lacked courage to act.

These decisions embody the concept of domestic tranquility as contained in the Preamble of the Constitution of the United States. I do not recall any references to "domestic tranquility" in the volumes of testimony delivered before the Senate Judiciary Committee. However, I submit that it is a concept central to our constitutional system, which has, on many occasions, been preserved by Supreme Court decisions allowing people of disparate views and traditions to live and work together.

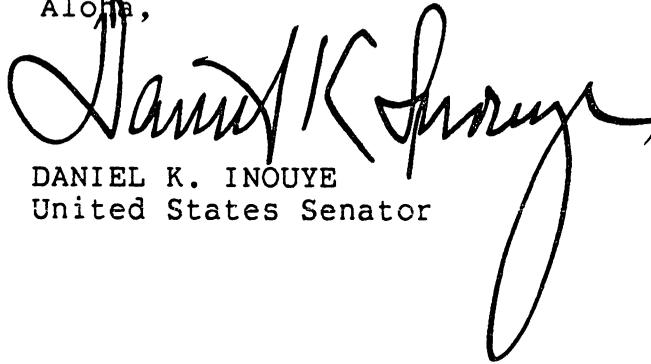
I believe a special place was reserved for the Supreme Court in our Constitutional system to provide for both continuity and change in our society, and to protect the inalienable and implicit rights of our people. I believe that Judge Bork's view of the Court diminishes its responsibilities and trivializes our system. Judge Bork may be a superior legal technician, but unfortunately he has not displayed an appreciation of the need for compassion, sensitivity and justice in constitutional interpretation.

Accordingly, I did not support the nomination of Judge Bork to serve on the United States Supreme Court.

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Thank you for sharing your positions on these matters of great importance to this country's future with me.

Aloha,

A handwritten signature in black ink, reading "Daniel K. Inouye". The signature is fluid and cursive, with a large, sweeping loop at the end of the name.

DANIEL K. INOUE
United States Senator

DKI/mcd