PS1 for 7/16/87#ABOUT SUPREME COURT APPOINTMENTS

The most notable thing about Ronald Reagan's appointments to the U.S. Supreme Court is not that they are conservatives, but that NONE of his four nominees was appointed because of cronyism or backroom political deals. Since those are the routes by which many others reached the high Court, President Reagan should be complimented for conscientiously seeking out qualified, experienced, and scholarly justices.

It's pretty clear that the fight the Democrats are making on Robert Bork has nothing to do with scholarship or competence or experience, but a great deal to do with partisan politics. They see a chance to stick some darts into an already wounded President by using their easy access to television, where the ultra liberal ""powers that be'' no longer need comply with the Fairness Doctrine.

The Democrats have been trying to excuse their partisanship by arguing that they are only doing the same thing as the Republicans did when they defeated President Lyndon Johnson's nominee for Chief Justice, Abe Fortas, in 1968.

It's time to look at a little history and see what really happened. It is clear that Fortas was NOT defeated because of his leftwing ideology but because he was unsuitable for the position.

In June 1968, the then Chief Justice Earl Warren became apprehensive that Richard Nixon would be elected President in November and therefore able to appoint new justices to the Supreme Court. Not only did Warren not want any conservative justices appointed, but he had long harbored a bitter personal animosity toward Nixon.

So, Warren made a secret deal with Lyndon Johnson by which Warren (then in good health) would resign, thereby permitting Johnson to fill the vacancy, and Johnson would agree to give a Circuit Court of Appeals appointment to Thomas Kuchel, Warren's friend who was defeated

for the U.S. Senate by Max Rafferty in the June 5 California primary.

On June 26, 1968, Lyndon Johnson announced his nominations of Abe Fortas, then a Supreme Court justice, to be elevated to the Chief Justiceship and Homer Thornberry to the vacancy that Fortas' elevation would create. Those two appointments were the ultimate in government by crony.

Abe Fortas was Johnson's closest personal friend, adviser and lawyer. Thornberry was LBJ's own Congressman, whose career was notable only as a 100 percent supporter of Johnson.

Johnson had turned first to Fortas when his protege, Bobby Baker, got into trouble with the law. After LBJ's other close friend, Walter Jenkins, was arrested in the Washington, D.C., YMCA men's room, LBJ sent Fortas to local editors to try to keep the fact of this arrest out of the newspapers.

When the nominations went to the Senate, Abe Fortas' unsuitability came to light. What hurt Fortas the most was the evidence that, as a lawyer, he had represented purveyors of pornography, and after he was on the high Court, he had voted in Supreme Court cases to reverse 40 obscenity convictions.

Representatives of Citizens for Decent Literature testified at the hearings that the Supreme Court had upheld long-standing laws against obscenity -- until Fortas joined the high Court. Then, he cast the deciding votes which caused our country to be ""flooded with material that previously had been available only in the black market.''

Worse still, in one Supreme Court case, Fortas voted to acquit a publisher of pornography for whom Fortas had filed a brief before he went on the Court. Testimony before the Senate Judiciary Committee revealed that an FBI agent named Homer Young had been told by the owner of that company, William Hamling, that he had hired Abe Fortas as a lawyer because Fortas ""could fix anything no matter what

administration was in power.''

Hamling also said that he had paid Fortas $11,000 to get a valuable second-class mailing permit for his lewd magazine. That was the start of the postal subsidies granted to pornographic magazines through second-class permits.

It further turned out that Fortas accepted a $15,000 fee for lectures he did not write, after the money had been solicited by his law partner and donated by rich businessmen, one of whom had a son under conviction whose appeal was expected to come before the Supreme Court.

Nineteen Democrats joined with Republicans on the Senate roll-call vote in 1968 that defeated Abe Fortas. Some of those Democrats are still in the Senate: Robert Byrd (WV), Ernest Hollings (SC), and John Stennis (MS).

After the Senate vote, Fortas withdrew his name and later resigned from the Supreme Court. Senator Strom Thurmond, who (with Senator Robert Griffin) had led the battle against Fortas, said, ""This is the finest decision Justice Fortas has made since he went on the Supreme Court.''

Abe Fortas was NOT rejected because of ideology or partisanship, but because of many valid objections to his character and integrity. It is obvious that the attack on Robert Bork is just partisan posturing by the liberal Democrats.