

been a free-market experiment instead of a socialist one." This is unconscionable and obviously counterproductive.

6. Without throwing our weight around, use liberally the force of rhetoric and diplomacy to support regional efforts toward peace and freedom. The Central Americans have a direct incentive to see to it that the Sandinistas don't "export their revolution." That is clearly one objective of the Arias plan, hence the accord's provisions for signatory nations eventually to negotiate troop and armament levels, hence Arias's critical reaction when a Sandinista defector revealed in December the plans for a massive military buildup.

We should milk the Central Americans' resolve to deal with the Sandinistas for all it's worth. On-the-street surveys in Nicaragua's neighbors demonstrate that, when it comes to the Marxist regime in Nicaragua, the people closest to them seem to assess their intentions and virtues more realistically than the citizens of the United States and certainly more honestly than the denizens of Capitol Hill. According to polls conducted by Gallup's Costa Rican

affiliate, large majorities in Costa Rica, Honduras, El Salvador, and Guatemala believe that the government of Nicaragua treats its people unjustly and represents only a minority of its people.

This program focuses cleanly on the primary duty of government in a free society: defense of the nation. While it may pain us to see in Nicaragua an all-powerful state more oppressive than its Somocista predecessor, we simply cannot hope to solve this problem for the Nicaraguan people, by the coercive power of our state, and remain true to our principles of liberty and democracy. But we can and should encourage private citizens and Central Americans to take an active role in undermining the Sandinista state.

And to the extent that Nicaragua is our problem—that is, to the extent the Marxist Sandinista regime poses a potential threat to the security of the United States—we must address that problem directly at its source, by drawing a line which the Soviets and the Sandinistas must not cross.

of the individual has lost its mission under the Constitution," writes Siegan in his 1980 book, *Economic Liberties and the Constitution*. "In a society that extols private property and private enterprise, those who engage in economic activities in reliance on existing laws are entitled to be secure against arbitrary and confiscatory government actions." The Constitution's guarantee of due process and ban on laws "impairing the obligation of contracts," he believes, should invalidate, or at least restrict, a host of economic regulations—from zoning restrictions to the minimum wage.

These are controversial views. But Siegan is by no means the only legal scholar to subscribe to them, in one form or another. Nor would he be the only judge to have criticized court decisions that eroded economic rights.

His opponents are trying to stifle intellectual debate about the meaning of the Constitution. Siegan is a professor, whose writings reflect the theoretical work proper to the academy. But, his opponents imply, some legal theories are *verboten*—no matter how carefully argued or backed by evidence. "The Supreme Court has held to the contrary" is People For's favorite litany.

Unlike professors, appeals court judges are supposed to follow precedent—and Siegan has said that he will. If he strays, his rulings will be overturned or, more likely, he will find himself a minority of one in his own court.

But we have to wonder, since People For believes so strongly in the Supreme Court's infallibility, how that group would react to a scholar who decried the *Hardwick* decision, which upheld Georgia's sodomy statute. Or, in an earlier era, *Plessy v. Ferguson*—a landmark vote to support a law that infringed freedom of contract by forcing railroads to segregate passenger cars, regardless of what they or their customers wanted.

Siegan, says People For, "urges more stringent protection for property rights than individual liberties." This is a false dichotomy. Acting as if property rights were held by buildings rather than individuals is like saying freedom of the press belongs to the machines that do the printing. Life, liberty, and property—as the Constitution twice refers to basic rights—are intertwined. Judges who believe in protecting all three should not be banned from the bench. □

Banned from the Bench?

Virginia I. Postrel

Bernard Siegan, says People for the American Way, is as bad as Robert Bork—only worse: "Siegan's views are extreme and exhibit no commitment to the protection of liberty and individual rights."

People for the American Way is lying. And it is lying in a way that is dangerous to the individual liberties and independent judiciary it claims to support.

Siegan, a University of San Diego law professor, was nominated to the Ninth Circuit Court of Appeals over a year ago. Since then, apparently deliberate delays by his opponents have kept the Senate from voting on his nomination.

The debate over Siegan shows how debased the judicial nomination process has become—and how reluctant both Congress and lobbying groups are to make fine distinctions.

For starters, Siegan is *not* another Robert Bork. True, he believes that applying the intent of the Framers and a strict constructionist approach to the Constitution "is most consistent with the notion that justice demands the rule of law

and not of individuals."

But in defeating Bork, the Senate voted down a judge who would grant legislators more power over individuals. Siegan, on the other hand, would limit lawmakers' most cherished privilege—the ability to restrict, control, and outlaw individuals' economic choices.

And, while opponents nitpick about his esoteric approaches to such cases as *Brown v. Board of Education*, what they're really worried about are Siegan's economic views. These views make Siegan "not a judicial conservative but an ideologue of the right," says Harvard professor Laurence Tribe, a noted ideologue of the left. (Interestingly, Tribe's colleague Alan Dershowitz—the nation's leading civil liberties attorney—strongly backs Siegan.) Siegan's belief that the Constitution protects economic rights takes him "into the realm of the bizarre," says Mary D. Nichols of People For.

What are these weirdo views? "A judicial system more concerned to protect the power of government than the freedom

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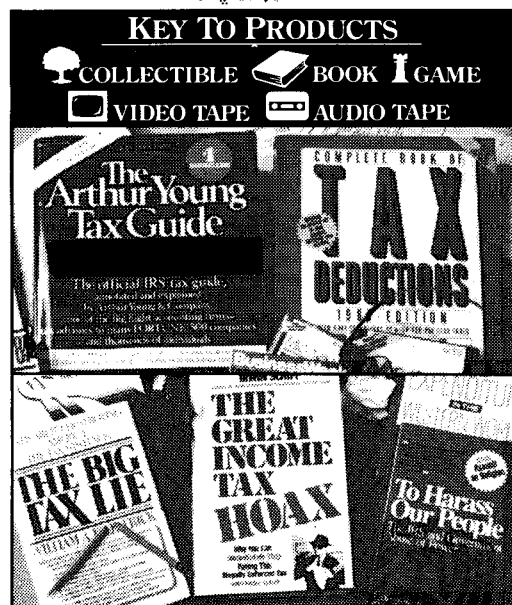
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brickbats

Illinois officials figure if they can't stamp out illegal drugs, they might as well try to make a buck off them. A new law requires drug pushers to buy tax stamps: \$5 for a gram of marijuana, \$250 a gram for other drugs, and \$2,000 for each batch of drugs not sold by weight. No dealers purchased the stamps, but several stamp collectors did. The law says dealers needn't fear incriminating themselves by buying the stamps. No one will even ask for their names. Dealers who are caught and don't have the stamps will be subject to four times the amount of the tax, a \$10,000 fine, and three years in prison.

Marina Pristavka, who worked in a Moscow optical-mechanical plant, was a model employee—so she's been sent to a psychiatric clinic. "She must be sick," said her boss. "She is not afraid to tell the truth, even to the authorities." Marina criticized lazy coworkers and seemed overly eager. Her boss told her to go to the clinic to cure her antisocial behavior. A physician there ordered her confined to a mental institution. Marina wrote a letter of complaint to a Soviet newspaper, which said the doctors had grossly violated regulations. Maybe Marina will learn her lesson and goof off.

Mail carrier Gary Craycroft thought he was just doing what any red-blooded American would do. He jumped into a driverless car and stopped it before it hit an elderly woman and a couple of gas pumps. Was the injured Floridian honored for his heroism? Not a chance. Jim Danahy, branch manager of his post office, issued a letter of reprimand, charging Craycroft with "an unsafe act resulting in personal injury" while on duty.

Peter Baghdasarian of Uxbridge, Massachusetts, thought he had a right to install a faucet in his home. The amateur plumber defied a state law saying plumbing must be done only by licensed plumbers. Then he invited a police offi-

SCOTT SANTRE © 1988 THE COMMERCIAL APPEAL



cer, the president of a plumbers' group, and a plumbing inspector to watch him turn on the spigot. The head of the Health Board promised to file a complaint.

"I pledge allegiance to the malt, hops, and water of which it stands, one brewery under the Fatherland..." Nonsense? Well, yes. But brewers in West Germany drafted a pledge to show their support for a 500-year-old law that says beer must be made only from malt, hops, and water. The action comes in response to the audacious opinion by Common Market officials that the 1487 decree, issued by Munich's Duke Albrecht IV, is a restraint of trade. Although beer containing other ingredients doesn't sell very well in Germany, the Munich Brewery Association explains that brewers want to demonstrate their loyalty to the law. Malt and hops, über alles?

New York City school custodians really know how to clean up. And we don't mean school buildings, we mean financially. According to a report issued by

the president of the city council, custodians are paid on average more than \$50,000 a year. Elementary school principals, by comparison, earn about \$55,000. Some janitors augment their salaries by "caring" for a second school temporarily. That doesn't mean they do any extra work—it means they pick up a second paycheck while the school looks for another janitor. Custodians aren't required to clean a rest room more than once a day, even if a child has an accident. And they don't have to move desks, repair doors, or clean graffiti unless they're paid extra. Nice work if you can get it.

An Honesty in Government award should go to Sen. Wyche Fowler Jr. (D-Ga.). During a recent hearing, the senator looked at the clock and said, "Mr. Chairman, the hour is late, and so I won't end with the usual rhetoric." Committee chairman David Boren of Oklahoma was shocked. "If that sort of thing becomes a habit in the Senate," he said, "there's no telling where it might lead."

—Mark Edward Crane