

WILLIAM BRADFORD REYNOLDS\*

Bob Bork was a man of chosen words and high principle. Some described him as hard nosed and rough hewn, but that is simply grudging acknowledgment that the man said what he meant and meant what he said. I first met Bob more than forty years ago. It was a fleeting encounter. He had been nominated by President Nixon to succeed Erwin Griswold as the next Solicitor General of the United States and I was about to leave the Office of the Solicitor General after three wonderful years as an Assistant to the Solicitor General. Bob was making his rounds in the Justice Department, courtesy calls at the various offices. He was wearing a rumpled jacket—invariably a rumpled jacket—and smoking a cigarette (never newly lit and never totally spent, but always in his grasp). In those days, smoking inside government offices was still allowed. The introduction was pleasant enough, but certainly not effusive. I remember thinking that the man was not exactly typecast as the government's principal Supreme Court barrister, but there was a presence about him (undoubtedly influenced by foreknowledge of his towering intellect) that left little doubt he was more than up to the task ahead. As events unfolded, the task rapidly grew far more complex, and demanded a measure of courage and integrity rarely seen before or since. Others far closer than I to Watergate, the "Saturday Night Massacre," and Bob's abrupt elevation to Acting Attorney General of the United States can best testify to the man's remarkable fortitude, unyielding integrity, and superb leadership as he guided the Justice Department through what were, in the opinion at the time of virtually everyone, its darkest hours.

Fast forward to the mid-1980s, into the second term of Ronald Reagan's Presidency. I was back in the Justice Department, serving as an Assistant Attorney General and Counselor to then-Attorney General Meese. Bob Bork was a federal judge on the United States Court of Appeals for the District of Columbia Circuit, having been nominated in the first term of the Reagan Presidency and confirmed without much fanfare by the

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United States Senate. One of my responsibilities was to assist the Attorney General in the selection and confirmation of federal judges, including Supreme Court Justices. With Chief Justice Warren Burger's departure from the High Court the previous term, we had successfully moved then-Justice William Rehnquist to the "center seat" and elevated Antonin Scalia to the seat left vacant by then-Justice Rehnquist's elevation. At that time, there was much discussion and enthusiasm for nominating Judge Bork to the vacant chair, with President Reagan among Bob's strongest advocates. When it was decided that a Rehnquist-Bork tandem would draw more political fire from the Left than a Rehnquist-Scalia tandem, the President opted for the latter, but only after making it clear to all in the room that, given another opportunity to name a Supreme Court Justice, Bob Bork was his choice.

That opportunity came sooner than expected, when Justice Lewis Powell announced his intention to step down at the end of the Court's 1986 Term. Judge Bork was the immediate choice to fill the seat. He was unquestionably the best qualified legal scholar among the short list of impressive potential candidates developed by the Administration; he had twice been comfortably confirmed by the United States Senate, once for the position of Solicitor General of the United States and once to be a judge on the D.C. Circuit; and his overall reputation was impeccable, both personally and professionally. Although it was recognized that some opposition would likely come from the Democratic side of the aisle, those of us well versed in the confirmation ritual had little doubt that Judge Bork would be confirmed by the full Senate.

As is now well known, that was not to be! The confirmation process turned ugly almost from the outset. Senators on the Left, and most of their staffs, launched a relentless campaign of character assassination, fed by lies, half-truths, and innuendo, all calculated to demonize Bob Bork in the public's eye. The mainstream media unapologetically joined the fray, not as neutral observers factually reporting the judge's opinions and positions, but as dishonest brokers content to knowingly mischaracterize Bob as a woman-hater, a closet racist, and an enemy of the poor and downtrodden. It mattered not to the Judge's detractors that their assertions had not a kernel of truth—they were on a mission to defeat his nomination to the Supreme Court by any means necessary, and, dedicating themselves to that cause, they shamefully abandoned Senate decorum, honest debate, and moral decency.

In the end, it was not Bob Bork's character they had assassinated, but their own. Sadly, what was left of the confirmation process lay in shambles. No longer was it a thoughtful inquisition calibrated to take the true measure of the nominee. Instead, senators charged their staffs to dig for the smallest indiscretion (don't we all have one or more of those) and build it into an apparent character flaw of monumental proportions. If little could be found, total fabrication was encouraged, as we witnessed but a few years later in the despicable display during the confirmation proceedings of Supreme Court Justice Clarence Thomas. In back room parlance, the marching orders to staffers on the Democratic side were, more often than not, "Bork the candidate"; if successful, they gloated among themselves that the nominee "had been Borked."

Remarkably, Judge Bork remained stoic throughout the ordeal. Do not misunderstand: He was intensely frustrated, principally with some of his White House "handlers" who continuously insisted that he undergo a confirmation makeover—shave his beard, smile more, even soften some of his stated positions in decided cases. There also was the mainstream media, which was decidedly in the opposition camp and cared little about what the law actually said and everything about policing political correctness—according to what it perceived to be politically correct—a failing then that has reached epidemic proportions among journalists today. Nonetheless, Bob remained true to his convictions.

Fortunately, he had beside him two pillars of strength: his lovely wife, Mary Ellen, whose enduring faith and devoted caring were indispensable, and Raymond Randolph, now a judge on the D.C. Circuit and one of the very few individuals I know who is universally regarded as Judge Bork's intellectual equal. I spent many hours during the confirmation process listening to Bob and Ray discuss the law, Judge Bork's controversial decisions, the baseless criticism from the likes of Senators Kennedy, Leahy, and Biden, and how best to respond. There were no apologies considered, as Bob had nothing to apologize for; there was no thought of modulating legal positions, as Bob had already considered and discarded possible modulations in arriving at his decisions; and there was no serious thought of undergoing a confirmation makeover, as such a charade would present the Judge as something and someone he was not.

There are many who, with hindsight, insist that a softening and bending of both personality and legal insight would have served Bob Bork well with the Senate and likely secured his confirmation. But such afterthoughts disregard the character of

the nominee. Judge Bork was not a man to come to his views lightly, nor to conveniently abandon them when they invited controversy. That was his strength, not his weakness, and were the men and women who judged him in the Senate Chamber of similar metal, he would have served the nation with distinction as a Supreme Court Justice.

The vote went the other way, and though the jurisprudential loss was immense, there was a silver lining which in the ensuing years burned ever brighter. Bob Bork immersed himself in his writings as the years passed, and in the books he since authored we have a wealth of wisdom that he might well have never shared with us, and certainly not as extensively, if he had sat as a Supreme Court Justice. As underappreciated as he seemed to be to many while he was with us, it is inevitable that Bob Bork's legacy will continue to grow, and the full measure of appreciation he deserves will certainly be more widely embraced in the years ahead.