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Bork's Shadow Looms Over Court Opening

Defeat of '87 Nomination a Model for Liberals, a Lesson for Conservatives

By Peter Baker
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The beard is gone. Once scraggly and reddish, it had long since turned scraggly and white, and so finally he shaved it off. "It was time to go," he said.

But if the cleanshaven Robert H. Bork is no longer recognized and approached at airports, his image remains vividly etched in the minds of official Washington. Now 18 years after his fireworks-filled confirmation battle and crushing defeat in the Senate, the long shadow of Bork hangs over another pending court appointment.

His name has been invoked from virtually the first moments after Justice Sandra Day O'Connor's retirement letter arrived at the White House on July 1. Remember Bork, both sides cry, with different messages in mind. For the left, he remains the archetype of judicial extremism, a frightening symbol to remind American liberals of the stakes involved in the latest court appointment. For the right, he has become the martyr to treacherous leftist politics, a living lesson in the importance of waging an all-out battle for a judicial nomination.

"Robert Bork represented the moment when the left decided they were not going to defer to the president in allowing him to make over the court," said Sean Rushton, executive director of the Committee for Justice, which was formed to support President Bush's judicial nominees. "And we've been at war ever since."

The lasting influence of the Bork fight in 1987 can be seen in the very existence of Rushton's organization. When President Ronald Reagan nominated Bork, liberals mounted a well-organized, well-financed campaign against him, and conservatives were slow and ineffective in responding. Rushton, just 12 at the time, recalls his mother wearing a "Block Bork" button.

As a result, conservatives working closely with the White House this time have assembled a number of committees already hard at work to support whomever Bush names -- from the Committee for Justice to the Judicial Confirmation Network to Progress for America. Broader conservative advocacy organizations such as the Family Research Council and the American Center for Law and Justice have laid out plans for aggressive public campaigning.

"We're not going to be caught flat-footed like we were with Bork," said a senior administration official who is not authorized to speak publicly on the matter.

Edwin Meese III, a veteran of the Bork battle as Reagan's attorney general and a key adviser to the current White House on court strategy, said Bush must not let his nominee be introduced to the American public by the other side. "One of the key things is not to let the left-wingers like Teddy Kennedy identify the nominee

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but to get the facts out to the public right away," Meese said, referring to the Democratic senator from Massachusetts.

C. Boyden Gray, a former White House counsel who founded the Committee for Justice at the behest of the president's aides, agreed: "Conservatives didn't have anything to say. There weren't any outside groups. There was no network help to support him. That's the biggest lesson. That's why we were asked to get started."

The lessons of Bork are shaping the Bush White House deliberations in other ways, presidential aides said. Rather than allow his nominee to twist for many weeks waiting for hearings that will not start until after the August recess, Bush has delayed announcing his selection to truncate the window of vulnerability.

And already Karl Rove, the White House deputy chief of staff and Bush's top political strategist, has called for limiting the scope of confirmation hearings, saying ideology should not be a subject of senators' questions as it was 18 years ago.

In an interview last week, Bork, 78, offered this advice to the nominee: "Tell them you're not going to say how you're going to vote because that's not proper interrogation. If you can't get away with that, I think you have to not say how you're going to vote but say 'This is problematic' and 'This isn't.' "

Bork did not follow this advice himself. His replacement as Reagan's nominee, Anthony M. Kennedy, did -- and cast numerous votes that were counter to Bork's views on issues such as abortion.

"A lot of conservatives are convinced that things would have been different if I had been confirmed," Bork said in the interview. "A lot of liberals think it would have been different, too, and they don't like it."

While conservatives still nurse grievances, liberals hold up the Block Bork campaign as a heroic moment in modern politics. "Keeping him off the Court ranks among the most important achievements of the progressive coalition over the past seven decades," Ralph G. Neas, who led the anti-Bork battle, wrote in an essay on the Web site of his group, People for the American Way. Bork's crusading style since his defeat has only reinforced their sense of vindication. "Since then, Bork's own words have confirmed that if we who opposed his confirmation were guilty of anything, it was understatement," Neas said.

The battle over Bork began July 1, 1987, when Reagan nominated him to succeed retiring Justice Lewis F. Powell Jr. Bork was already well known for his role in the "Saturday Night Massacre"; as solicitor general, he carried out President Richard M. Nixon's order to fire Watergate prosecutor Archibald Cox after two higher-ranking Justice Department officials refused and quit. Bork subsequently served as a federal appeals judge, making a mark as an "originalist" who believed in interpreting the Constitution as its framers intended rather than extrapolating it to fit changing circumstances.

Within 45 minutes of Bork's nomination, Kennedy delivered a blistering floor speech that set the tone for the battle to come. "Robert Bork's America," Kennedy declared, "is a land in which women would be forced into back-alley abortions, blacks would sit at segregated lunch counters, rogue police could break down citizens' doors in midnight raids, schoolchildren could not be taught about evolution, writers and artists could be censored at the whim of government."

More than 300 liberal groups joined together in a public campaign that dominated the dialogue during the Senate's August recess. Bork was accused of such things as favoring poll taxes to keep blacks from voting

and allowing industrial companies to sterilize child-bearing women. "By the time we got back at Labor Day, Bork was a dead letter," recalled Paul M. Weyrich, a conservative leader.

Bork and his supporters tried to rebut the charges as distortions, but his lecture-style performance at televised hearings probably hurt rather than helped, and the Democratic-controlled Senate rejected him 58 to 42. In a subsequent book explaining himself and his philosophy, "The Tempting of America," Bork predicted that the vote would not end the fight.

"That battle is over but the war in both our legal and general culture goes on," he wrote. "There will be more blood at the crossroads where law and politics meet."

His words now appear prescient. On the same day O'Connor stepped down this month, conservatives instantly invoked Bork and cast the coming battle for her successor as the sequel to his saga.

In a commentary posted on the Internet that day, William Kristol, editor of the Weekly Standard, described Oct. 23, 1987 -- the date of the Bork vote -- as "a day that lives in conservative infamy" and said, "Now 18 years later, George W. Bush has the chance to reverse this defeat, and to begin to fulfill what has always been one of the core themes of modern American conservatism: the relinking of constitutional law and constitutional jurisprudence to the Constitution."

Two days later, the Bork battle was replayed on Sunday talk shows. "Can we imagine what this country would be like today if Judge Bork had gone onto the Supreme Court with his views about civil rights and other issues?" Kennedy asked on ABC. On CNN, Sen. Arlen Specter (Pa.), a Republican who opposed Bork, said: "If his 'original intent' stood, we'd still be segregating the United States Senate with African Americans on one side and Caucasians on the other side."

Bork shot back on CNN the same day: I know Specter, and the truth is not in him."

Today Bork has become a symbol and his name is used as a verb, as in "to bork" a political opponent. "It's a form of immortality," he said with dour mirth.

He serves as a scholar at the Hudson Institute in Washington, giving speeches and writing books. He professes to have recovered from the bruising battle, but the old sentiments seem close to the surface. "The memories are always there," he said. "I don't dwell on them." Yet, at moments like these, when the battle plays fresh again echoed in the Washington political surround sound, he thinks about it with unvarnished antipathy.

"There was a massive political campaign against me and there was no political campaign on my behalf," he said. "I'm sure I did some things wrong, but to say the ultimate outcome would have changed because of those things is like blaming the Johnstown flood on a leaky faucet." Nor has he retreated from the positions that fueled the flames. "I haven't had any radical revisions of my views," he said.

Bork has eagerly joined the fray over O'Connor's successor. In a column in the Wall Street Journal last week, he castigated the current Supreme Court, writing that it has "denigrated marriage," protected pornography, guaranteed "abortion virtually on demand," "whittled down capital punishment," "mounted a campaign to normalize homosexuality," allowed "discrimination at the expense of white males" and created a justice system "tipping the balance in favor of criminals."

And then he wrote perhaps the only thing both sides agree on. "The struggle over the Supreme Court is not just about law: it is about the future of our culture."

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