

# A Man Named Bork

Is the American memory so short that President Ford can seriously contemplate naming Robert Bork of the Justice Department to succeed Justice Douglas on the Supreme Court?

Maybe it's worth reminding ourselves of how we first heard that name, Robert Bork. He was, you will recall, the third man.

First there was Elliot Richardson. When Nixon decided that the only way he could prevent the truth from coming out was to fire Archibald Cox, Richardson refused to do the job.

He got a lot of credit for the refusal. He went around the country receiving ovations for having stood up to the President.

In fact, he didn't stand up to the President. He tried as hard as he could to get the President's dirty work done. He tried to persuade Cox to accept a private and secret arrangement which undercut Cox' power and was contrary to the Senate's understanding of what the role of the special prosecutor would be.

Cox refused, and only then did Richardson resign. He didn't resign because he thought the President was wrong. At least, if he did, he didn't say so. Nor did he resign because he suspected that the President was not being honest, although he said later that about that time he began to have such suspicions. He resigned because he had made a public promise to the Senate of the United States at the time of his confirmation that he would not fire the special prosecutor. That was a condition of his employment. So there was nothing he could do except resign. It is a measure of the way the public faith was violated during the Nixon years that Richardson should become a hero for not doing what he had solemnly promised not to do.

More deserving of the hero's role was the second man, William Ruckelshaus. He had made no public promise. He simply thought that Nixon's orders were wrong,

and so he refused to carry them out. There is some question still as to whether Ruckelshaus resigned or was fired. But there is no question as to where he stood. He stood tall.

Which turned the spotlight on Robert Bork, the solicitor general. Bork had made no promise to the Senate; there was nothing to prevent him from carrying out Richard Nixon's dirty work except his own conscience. So Bork fired Archibald Cox.

True, he argued later that in his view of the law, a President's orders must be carried out, that a President must be master in his own house and that Richardson had no right to make promises which might conflict with the duty to carry out the President's orders. Even in historical vacuum, this is an authoritarian view.

But the Saturday Night Massacre did not take place in a historical vacuum. It took place at a time when it was clear that Richard Nixon was trying to hide something even though he said he had nothing to hide. It took place after Archibald Cox had made repeated requests for evidence and had been met with every weapon of delay which Richard Nixon could devise. It took place after Cox had threatened to issue a subpoena.

Bork had to make up his mind. He said he made it up because he was willing to recognize the President's right to discharge a member of the executive branch. But a lot of people thought he made it up because he was the one man in the Justice Department who was willing to do Richard Nixon's dirty work.

Whatever his real reason, he goes down in history as the man who went along. He might, minus the firestorm which ensued, have been the man who kept Richard Nixon from being brought to impeachment and to public judgment.

Is that the man the country will now want on its highest court?

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