

Life Behind the Bench: The Honorable Robert H. Bork's Perspective

By: John M. Lockwood¹

“It’s an isolated job.”² “It’s like a life sentence to the Law Review.”³ In a [1992 oral history interview](#) for the D.C. Circuit Historical Society, the Honorable Robert H. Bork does not paint the position of D.C. Circuit judge with the grandeur many might expect. A former partner of the firm Kirkland & Ellis, Yale law professor, and Solicitor General, Bork began his service as a Circuit Judge on the D.C. Circuit in 1982, and resigned in 1988 after the Senate denied his confirmation to the Supreme Court.

After being sworn in to the D.C. Circuit, a colleague asked Judge Bork why he wanted to be a judge.⁴ Bork answered, “I lost my last two cases and I figured my fast ball is gone and it’s time to become an umpire,” leading Judge Bazelon to quip, “[I] hope you don’t think a curve ball is necessary.”⁵ Such banter, however, was not the norm. “They lock you away in this room,”⁶ and the workload limits the interaction between judges, Bork explained in his oral history. The high workloads caused Bork to feel like it was an “imposition” for someone to drop in on him or

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² Oral history interview of Hon. Robert H. Bork, sponsored by the Historical Society of the District of Columbia Circuit, at 3 (March 13, 1992), available at www.dcchs.org.

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 3-4.

⁶ *Id.* at 3.

others to talk over a case.⁷ Surprised by the lack of day-to-day collegiality among judges, Judge Bork described the process as an “assembly line.”⁸

Even when sitting on a case with other judge’s, the interaction was minimal. Judge Bork said that attempts to win over a vote or rewrite an opinion rarely happened.⁹ When they did occur, “it happens . . . usually as a result of a memorandum rather than a face-to-face meeting. Occasionally a phone call.”¹⁰

As a result of increased workloads, Judge Bork said we may never see another Learned Hand: “There simply isn’t the time to deliberate in the way they use to.”¹¹ Because of the lack of time, Bork explained the importance of coming to the Court “with some intellectual capital” as “you don’t gain it while you’re in the Court because there’s no time.”¹² While ideally our courts would have the capacity to fully delve into all aspects of a case, Judge Bork explained, “[y]ou can’t sit down and read a book . . . about a case or a law review article, or even all of the cases that are cited. You read the important ones and the ones that counsel designate as important and the ones your clerk tells you are important.”¹³ Bork went on to explain that the increased reliance on law clerks helped fill the void.

Judge Bork also raised concern with the appointment of relatively young people to the bench. After serving for 25 years or so, he felt they become “jaded” and

⁷ *Id.* at 4.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 5.

¹² *Id.*

¹³ *Id.*

“very bored.”¹⁴ Bork, a Yale law professor before joining the bench, said that being a judge is not like teaching a course in which you become an expert in a field of law, but more like an umpire “calling balls and strikes, which is not the most exciting thing in the world.”¹⁵ For Bork, the dullness was compounded by the heavy number of regulatory cases before the D.C. Circuit “which are not very interesting as law.”¹⁶

Judge Bork’s experience on the Court of Appeals may differ from those of other judges, and it certainly seems different from the layman’s perception. For him, interaction and discussion with colleagues—the proverbial collegial atmosphere—were absent. On the other hand, the former professor noted one silver lining, “you have law clerks for company.”¹⁷

¹⁴ *Id.* at 5-6.

¹⁵ *Id.* at 5.

¹⁶ *Id.*

¹⁷ *Id.* at 3.