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“A Matter of Great Importance”: Interest Groups, the Senate Judiciary Committee, and Supreme Court Confirmation Hearings*

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Abstract

As Senator Arlen Specter once explained, the Supreme Court confirmation process is a “matter of great importance” to the president, the nominee, senators, and the public at large. The public cares who sits on the Court, and interest groups play a key role in disseminating information about the nominee and his or her qualifications for the job. In this paper, we focus on one piece of interest groups’ involvement in Supreme Court confirmation hearings: their decision to send senators summarized information about the nominees via briefing books. We use a combination of archival research and text analysis to examine the briefing books that organized interests sent to Senator Specter during Robert Bork’s nomination, which we then compare with the information provided by “official” sources (the White House) as well as the less formal ones (constituents). Our research suggests that interest groups highlight the controversial areas of a nominee’s tenure, while official sources highlight qualifications and constituents speak about the nominee in more general, affective terms.

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When Justice Lewis Powell announced his retirement from the Supreme Court on June 26, 1987, President Ronald Reagan took less than a week to announce that he was nominating D.C. Circuit Judge Robert Bork to replace him (Toobin 2008). Reagan and his counselors were confident they had a slam-dunk choice with their conservative pick; Bork had a sterling academic record that made him eminently qualified for the position, and the Senate had unanimously confirmed his ideological ally, Antonin Scalia, to the Court the year before (Toobin 2008). Unfortunately for Bork, however, the Democrats who now controlled the Senate firmly disagreed with Reagan’s assessment. Less than forty-five minutes after Bork became the nominee, Democratic Senator Ted Kennedy took the Senate floor to lambaste the decision, describing “Robert Bork’s America” as

“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, and the doors of the federal courts would be shut on the fingers of millions of citizens for whom the judiciary is – and is often the only – protector of the individual rights that are at the heart of our democracy” (Kennedy 2009, 406).

Where Reagan saw conservative bona fides, Kennedy saw a judicial philosophy that would be catastrophic to everyone he aimed to represent (Kennedy 2009). Kennedy began engaging with people who could raise awareness of the nomination beyond his speech, asking legal scholars and advocates for African Americans and women to put pressure on other senators to deny confirmation (Kennedy 2009). By the time Bork appeared before the Senate Judiciary Committee in mid-September, more than 80 groups mobilized to oppose Bork’s nomination, while the White House and almost 30 other groups rallied in support of him (Cameron et al. 2018). The intense focus on the nomination’s outcome made the confirmation hearings both high profile and contentious, with senators probing Bork’s thoughts on everything from his beard to a woman’s right to choose. By late October, a majority of senators believed that

Bork was not right for the Supreme Court, and the Senate voted 58-42 to deny Bork a seat on the nation's highest court (Toobin 2008).

Robert Bork's nomination to the Supreme Court is a watershed moment in Supreme Court history, at least in part because it brought about a seismic shift in interest groups' participation in the process. Outside interests began consistently getting involved in Supreme Court nominations starting with Clement Haynsworth's nomination in 1969, with an average of 10 interest groups participating in each of the nine nominations that occurred between him and Scalia in 1986 (Cameron et al. 2018). Fast forward to the post-Bork era, and this number rises to an average of 30 groups per nomination (Cameron et al. 2018). Why? Because Bork's eventual defeat showed outside interests they could wield enough power to influence senators' votes on Supreme Court nominees (Steigerwalt 2010). True, presidents select their nominees with an eye toward success (Nemacheck 2008), and presidents control the initial conversation about the nominee (Johnson and Roberts 2004), but interest groups can influence the public reception of that message. They can mobilize their constituents around or against a nominee and pressure senators to listen to their thoughts (Caldeira, Hojnacki and Wright 2000). They can also conduct valuable research on nominees' backgrounds and provide their analyses to senators (as well as their constituents) for review and reflection, supplementing the information they already have (Caldeira and Wright 1998; Caldeira, Hojnacki and Wright 2000; Steigerwalt 2010). Senators who dismiss interest groups' concerns risk electoral failure, because those groups can also utilize their resources to attack those senators seeking to retain their offices (Epstein and Segal 2005). After Bork, interest groups knew they could influence senators' approaches to Supreme Court nominees, and they turned that influence into power over the process.

In this paper, we seek to better understand the information that interest groups provide senators when they organize and lobby for or against a Supreme Court nominee. Research clearly establishes that interest groups' *presence* in the confirmation process can directly or indirectly influence senators' behavior (by, for example, lobbying the senator or

seeking to influence the constituents to whom senators are attuned, respectively) (Caldeira and Wright 1998; Epstein and Segal 2005; Kastellec, Lax and Phillips 2010; Steigerwalt 2010). Interest groups use a variety of tactics to do this (Caldeira, Hojnacki and Wright 2000). We focus on one tactic – information provision via briefing books and letters – to answer one question – what are interest groups and constituents *saying* to senators? More specifically, what information are interest groups providing that makes them so influential? And how does it differ from the “official” information provided by the nominee and the White House? We look to the Senate Judiciary Committee for answers, as senators task that committee with collecting information about a nominee and disseminating it to the rest of the Senate for consideration before the final vote (Collins and Ringhand 2013). Using content analyses of briefing books and constituent letters sent to Senator Arlen Specter during the Bork hearings, we find that interest groups help senators condense a nominee’s lifetime of decisions, publications, course lectures, and speeches down to small categories with headlined topics, and they highlight information that even the officials tasked with vetting the nominee might not expect to see covered.

By conducting this analysis, we provide two key contributions to the study of Supreme Court nominations and confirmations. First, we analyze the information that interest groups provide senators, something other analyses in this field have not yet accomplished. Interest groups use a variety of tactics when lobbying senators about executive branch nominees, but many of those tactics involve information provision, either to constituents or to the senator directly (Caldeira, Hojnacki and Wright 2000). Members of the Judiciary Committee specifically and senators more generally need information from interest groups to bolster the data they already have about a nominee (Steigerwalt 2010). With that said, nobody has studied the content of the provided information to see what makes it useful. We use the White House and interest group briefing books as well as constituent letters to a senator to examine their messages. Because we have data from three different sources, we are also able to compare how interest groups’ concerns match the concerns outlined in constituent

letters as well as the government’s own thoughts regarding the nominee. We are providing an initial examination into the informational value of these important documents.

Secondly, we are the first researchers to use a senator’s personal papers to systematically and empirically analyze interest group behavior. Here, we follow in the steps of scholars like Howard and Roberts (2015), who also use personal papers to study a broader process. Scholars who study Supreme Court confirmations have used raw counts of interest group activities (Epstein and Segal 2005; Farganis and Wedeking 2014), interviews (Caldeira and Wright 1998; Caldeira, Hojnacki and Wright 2000; Steigerwalt 2010), and newspapers (Cameron et al. 2018; Cameron, Kastellec and Park 2013) to examine interest groups’ involvement in the process, suggesting that scholars get creative when studying influence. By using Specter’s papers, we offer a new approach to examining interest groups and their attempts to influence Supreme Court confirmations.

Supreme Court Confirmations and Interest Groups

Article II, Section 2 of the United States Constitution tasks members of the Senate with advising the president on Supreme Court nominations and consenting to their appointments, a duty that senators treat as uniquely important. This treatment stems from senators’ motivations; senators, like any other congressional representative, are reelection-oriented (Mayhew 1974; Fenno 1978; Grimmer 2013), which means they focus their attention on anything their constituents find interesting. Supreme Court nominations draw attention from the media as well as interest groups (Collins and Ringhand 2013; Cameron, Kastellec and Park 2013), which greatly increases the likelihood that a senator’s constituents will hear and care about their senator’s response to a High Court nominee (Kastellec, Lax and Phillips 2010). Consequently, senators care about this particular nomination and confirmation process more than they care about many other executive appointments. Senators historically treat inaction or disruption in the process as politically untenable (Chiou and Rothenberg 2014) and avoid utilizing the dilatory tactics that plague less visible nominations, like holds

(Howard and Roberts 2015), blue slips (Black, Madonna and Owens 2014), and filibusters (Binder and Maltzman 2009). The Senate Judiciary Committee *traditionally* schedules hearings for the nominee regardless of the surrounding political climate (Farganis and Wedeking 2014), and the committee always releases the nominee to the floor for a vote.¹ Importantly, these hearings typically end with a new justice sitting on the Court, as the president purposefully selects his nominee with an eye toward confirmation and the Senate offers some level of deference to him on these appointments (Krutz, Fleisher and Bond 1998; Nemacheck 2008; Moraski and Shipan 1999).

While senatorial norms should essentially guarantee a nominee a successful floor vote, the nomination and confirmation process is contentious enough to always put a nominee's confirmation in question. Presidents purposefully select ideologically extreme nominees (Cameron, Kastellec and Park 2013); senators are hostile in their questioning of nominees (Farganis and Wedeking 2014); a senator's ideological similarity to the nominee is crucial for a positive vote even if the nominee is eminently qualified (Epstein et al. 2006); partisanship has turned nominations into battlegrounds for scoring political points (Lee 2009; Smith 2007); and interest groups are more involved in the confirmation process than they were even forty years ago (Cameron, Kastellec and Park 2013). In short, senators put Supreme Court nominees through a combative process, with defeat being a real possibility the entire time.

The force behind this combative process is the Senate Judiciary Committee, the standing committee responsible for investigating Article III judicial nominees. The members' collective goal is to serve their colleagues by collecting and dispersing information about the nominee to aid in knowledgeable confirmation decisions (Collins and Ringhand 2016; Hamilton 2003). Committee members take this role seriously, understanding that confirmed nominees will influence policies made and interpreted by the judicial branch (Steigerwalt 2010). Their information comes from four different formal sources: (1) the nominee ques-

¹Republicans' refusal to schedule hearings for Merrick Garland in 2016 and Democrats' later decision to use the filibuster against Neil Gorsuch's 2017 nomination remain aberrations to senatorial norms (Berenson 2017; Flegenheimer 2017).

tionnaire, which contains information about a nominee’s background, education, financial interests, work experiences, and past decisions; (2) the FBI background check conducted at the request of the White House; (3) the American Bar Association’s investigation of the nominee; and (4) the nominee’s hearing before the committee (Steigerwalt 2010). Senators also collect information during so-called “courtesy calls,” or pre-hearing visits by the nominee to senators’ chambers for one-on-one conversations with whichever senator wants to speak with the nominee (McMillion 2018). The confirmation hearing draws the most attention, as it is the televised portion of the investigation (Farganis and Wedeking 2014). Senators on the committee use the hearing to question nominees about their thoughts on civil liberties, judicial decision-making, legal philosophy, and past Court rulings (Farganis and Wedeking 2011; Solberg and Waltenburg 2015). This is also where senators grandstand, asking the nominee questions that constituents and the party faithful asked and answered (Schoenherr, Lane and Armaly 2018). Supreme Court confirmation hearings provide Judiciary Committee members with the opportunity to complete an important task while also scoring political points, suggesting that senators have every incentive to do this part of their job well.

Before Judiciary Committee members get to the confirmation hearing, however, they have to review the nominee’s background and approach to the law. After all, it is difficult to score political points without knowing where they can be scored. The nominee questionnaire (complete with the text of the nominee’s ten most important decisions), the FBI report, and the ABA investigation provide senators with a starting point for their research, and each party also has its own investigatory committee that scrutinizes the nominee as well (Epstein and Segal 2005; Steigerwalt 2010). The White House also typically provides summarized information about the nominee (Davis 2017), which ostensibly helps the senators make it through the information (though presidents undoubtedly use these summaries to highlight the good part of a nominee’s record, not the bad). Senators on the Judiciary Committee and their staffs are expected to sort through this mountain of information and use the confirmation hearing to clarify anything *not* covered in the provided documents.

Judiciary Committee members then summarize *their* findings and provide them to the rest of the Senate. Importantly, senators complete this task while fulfilling their more general responsibilities, including investigating around 46 lower court judges every year² and reviewing legislation that falls under the committee’s jurisdiction (Epstein and Segal 2005). Given that time is finite, senators struggle to read, condense, and analyze in an appropriate amount of time (Steigerwalt 2010). Interest groups, however, have the resources to focus on one nominee’s background and the time to analyze her background closely.

When it comes to the Senate Judiciary Committee, interest groups exchange a service – analyzing nominee’s backgrounds and providing committee members with the highlights – for influence. Outside interests are able to exert influence by controlling how much of their analyses get passed on to senators. This information can include, but is not limited to, written analyses of a nominee’s voting record, highlights of relevant speeches and decisions (Caldeira, Hojnacki and Wright 2000; Steigerwalt 2010), projections on how a nominee will vote once he or she is confirmed, and data on how constituents feel about the nominee (Caldeira and Wright 1998). Groups that support the nominee will direct the senators toward details that make the nominee look good, like a nominee’s “restraint” or the number of times the Supreme Court upheld the nominee’s lower court decisions, while groups that oppose the nomination will direct senators toward problems in the nominee’s record. Interest groups provide senators with information, but that information is purposefully biased in a way that benefits the group that curated it.

After an interest group locates the information that supports its preferred outcome, the group must choose how to disseminate it. It can engage in grassroots lobbying and encourage people to contact public officials regarding a nomination (Caldeira, Hojnacki and Wright 2000; Cohen 1998). This public lobbying, which utilizes everything from protests to mass mailers to robocalls, encourages citizens to contact their senators and pressure them to follow groups’ recommendations. Less visibly, interest groups can also use their resources to

²<https://www.uscourts.gov/sites/default/files/apptsbypres.pdf>

provide senators with information via briefing books and other written documents. Regardless of how an interest group chooses to appeal to a senator, publicly or privately, a senator who chooses to ignore their material does so at his potential electoral peril; the same groups that mobilize to support or oppose Supreme Court nominations can also mobilize in support of or opposition to senators based on their voting behavior (Epstein and Segal 2005; Scherer 2005).

Interest groups' exchange of information for influence in the Supreme Court nomination and confirmation process have proven to be wildly successful transactions. The minute an opening appears, groups mobilize in preparation of supporting or rejecting the president's nominee (Cameron et al. 2018). Presidents consult different interest groups about nominees and seek their approval before they announce their selections (Nemacheck 2008). The information that interest groups provide regarding a nominee's record and constituents' feelings about her can influence how a senator votes on a nominee (Gibson and Caldeira 2009), and nominees who find themselves fighting a lopsidedly-large number of opposition groups are less likely to secure confirmation (Cameron, Kastellec and Park 2013). Interest groups influence the confirmation process, and information provision is one of their paths to obtaining that influence.

Examining Interest Groups' Information

Information provision is a tactical process. Presidents provide independent explanations of their nominees' records when they feel it will be useful to do so, and they consequently provide this information in varying formats (Davis 2017). Steigerwalt (2010), who interviewed a former senator and several Senate staffers about judicial nominations, found that interest groups are strategic in whom they target with research. Liberal-learning interest groups only contact ideologically sympathetic senators or moderate senators who might "flip" and vote with the Democrats. They did not waste their resources appealing to conservative senators, as they were unlikely to use the information provided. Conservative groups,

on the other hand, typically provided senators with very little information about a nominee, something that conservative senators found endlessly frustrating as they too would like interest group help in sorting through information (Steigerwalt 2010).³

To examine the information provided by interest groups, then, we find ourselves focusing on the documents that organized interests provided to one senator in particular: Senator Arlen Specter. Specter was a notoriously independent Republican (and, later, Democrat) on the Senate Judiciary Committee who voted on the winning side of every one of the thirteen nominations he saw between 1981 and 2010 (Lockman and Schertzer 2017). Both parties were convinced that his vote was crucial for validating or invalidating a nominee’s credentials (Specter and Robbins 2002), which made him an obvious target for “flipping” and therefore a target to receive information from interest groups. Additionally, Specter was a mainstay on the Judiciary Committee starting in 1981, suggesting he knew how to handle the job in the televised age. This is particularly important given that C-SPAN’s decision to begin airing the hearings in 1981 inherently changed senators’ approach to the process (Farganis and Wedeking 2014). Finally, Specter’s personal papers are available to researchers through the Arlen Specter Center for Public Service (Specter 2018), providing scholars with a peek into the interest group process they would not otherwise have, given that no other senators who served concurrently with Specter have released their papers.⁴

In order to systematically examine the types of information interest groups provided Senator Specter, we went to the archives at the University of Pittsburgh and began by

³Importantly, anecdotal evidence suggests conservative interest groups got more involved in Supreme Court confirmation hearings around then-Judge John G. Roberts’s hearings in 2005 (Taylor 2009) and played an especially prominent role during now-Justice Brett Kavanaugh’s nomination in 2018 (Nelson 2018). Given our decision to focus on the Bork hearings, however, probing this change is beyond the scope of this paper. We discuss this more in the conclusion.

⁴Three other senators’ papers would also be ideal for this project – those from Joe Biden, Orrin Hatch, and Ted Kennedy. All three sat on the Judiciary Committee around the same time as Specter and were some of its most senior members. Democrats Biden and Kennedy would have received information from liberal-leaning interest groups seeking to influence a nomination, and Hatch, who showed a willingness to vote for Democratically-nominated judges like Ruth Bader Ginsburg, would have also been a target. Yet none of their papers are publicly available at this time. Biden and Hatch are both still alive and have not yet announced plans for releasing their Senate papers, and Kennedy’s library is still cataloging the papers from his almost fifty years of Senate service.

photographing nearly every document contained in the archives relating to Supreme Court nominations.⁵ We focused our activities on typed material (more on that momentarily) and did not include anything handwritten, including Specter’s notes on the nominee’s materials, handwritten speech drafts, handwritten letters, and notes passed between the Senator and his staff or other senators. We also excluded photographs. Throughout our data collection, we noticed Senator’s Specter’s abundant collection of political cartoons surrounding Supreme Court confirmations. Unfortunately, these witty illustrations and handwritten materials are unable to be processed by our software. All in all, our collection efforts produced almost seven thousand photographs spanning 877 documents. Upon full review of the documents we collected, we unfortunately discovered that many of the nominee’s files were incomplete. One file that was not, however, was Robert Bork’s. 57% of the pictures that we took came from Specter’s files on Robert Bork, and the Senator’s staff clearly took pains to keep as much information as was possible for the hearing that made Specter famous. Consequently, we focus our analysis in this paper on Judge Bork’s nomination, Senator Specter’s most complete files.

Because most of the documents we photographed spanned multiple pages and therefore multiple photographs, we grouped the photographs of the same documents together, then divided those documents into one of seven categories: (1) briefing books; (2) cases; (3) letters; (4) news media (e.g., newspaper clippings, magazines, etc.); (5) nominee background (e.g., law review articles written by the nominee, copies of the nominee’s speeches, and other written work); (6) Specter’s notes; and (7) office communication. With the documents gathered and organized, we then sought to turn these photographs into computer-readable text files. Photographs alone would only enable us to read the documents outside of the library, but we wanted to do more systematic research using the text itself, so we took pictures and essentially turned them into Word documents. To do this, we relied on a popular optical

⁵Specifically, our data came from Specter’s Legislative Files (Group 2 in the collection), where we focused on the Nominations, 1965-2010 collection, which is located in the Committee on the Judiciary, 1965-2010 files (Series 1, Subseries 3), see Specter 2018.

character recognition (OCR) software, ABBYY Finereader. OCR software reads typed text from the photographs we took and translates it into a raw text file, which we can then use to perform a wide variety of content analyses.

To see exactly how ABBYY works, see Figure 1. This is a photograph of a colorful letter sent to Specter by the National Conservative Political Action Committee just two days after Bork's failed confirmation. Figure 2 is a screenshot of the raw text file produced by ABBYY Finereader after running the photograph in Figure 1 through the optical recognition software. With this text file we can search for words, count their frequency, and utilize more complicated text analysis techniques to better understand the information contained within the documents that Specter received.

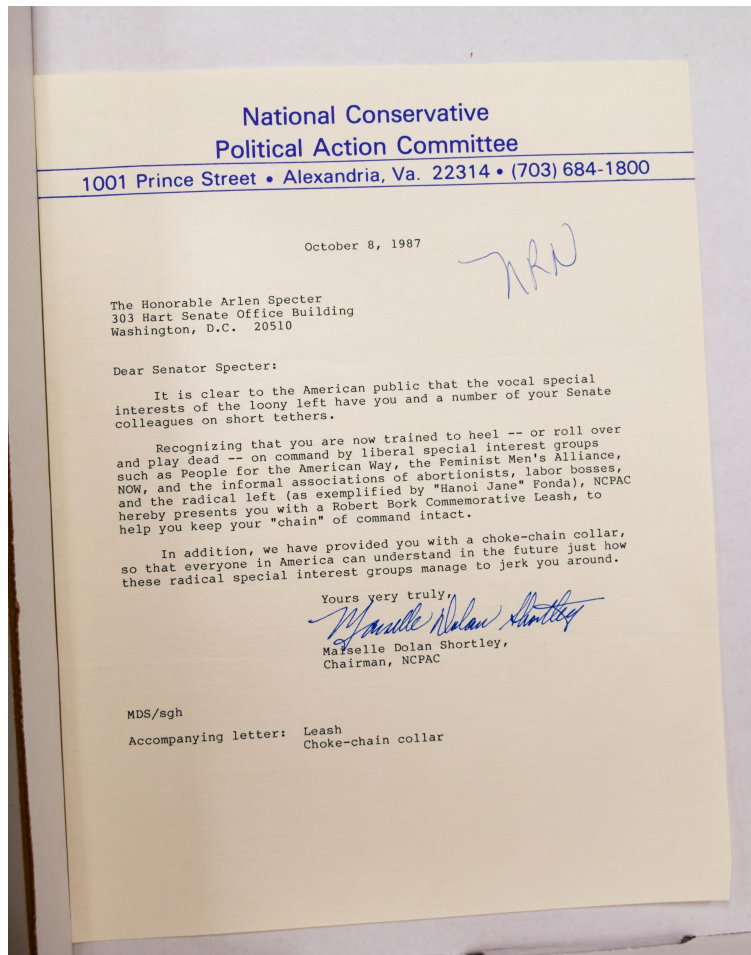


Figure 1: Photograph of a letter sent to Senator Specter by the National Conservative Political Action Committee (Specter 2018).

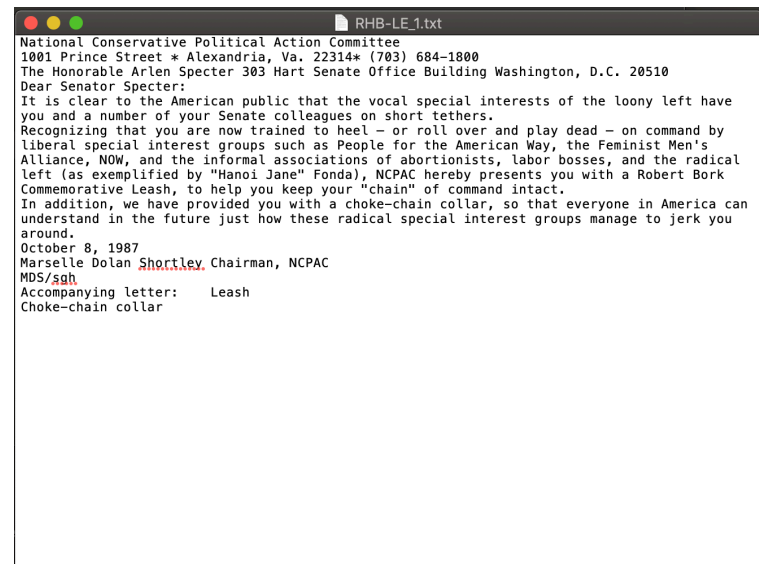


Figure 2: Screenshot of the text file generated by AB-BYY Finereader from the photo shown in Figure 1. All of the typed text is translated into the text file, but the handwritten text like Chairman Shortley's signature and the initials at the top of the letter are unreadable and therefore not carried over to the text file.

Methodology

After gathering the information and converting it to text, we decided to use an unsupervised topic modeling approach to systematically and empirically analyze the content of three types of documents contained in the Bork files: (1) briefing books compiled by the Reagan administration and sent to each senator; (2) briefing books compiled by interest groups and sent to Senator Specter; and (3) letters about the Bork nomination that Specter received and kept in his files. Our decision to focus on these three pieces of information is purposeful, as we want to study the information provided to Specter on a broad level while simultaneously comparing the interest groups' information to that provided by other sources, particularly the "official" information provided by the White House as well as the more grass-roots engagement by constituents via letters. We have two government briefing books; the Reagan administration prepared a seventy-five page book about Bork's background and distributed it to all senators in advance of his confirmation hearing (Davis 2017). Following the deluge of criticism on Bork's nomination, the administration also issued a separate and more comprehensive briefing book as a response to Bork's critics (Davis 2017). When looking at interest group briefing books, we went through the books from 23 different groups, nearly all of them liberal-leaning ones like the American Civil Liberties Union and the NAACP Legal Defense Fund. Finally, we examined the texts of 72 constituent letters sent to Specter. These letters came from friends, former representatives, professors at the major law schools in Pennsylvania, and national groups, all involving short notes and personalized pleas to Specter regarding the nominee.

If our goal is to identify the topics covered in organized interest groups' briefing books so that we can compare them to the information provided by constituent letters and the White House itself, then we need to find a way to systematically work through the information contained in the documents. Historically, people collected data like this by hand, reading through each book and keeping track of each topic that was discussed between its

covers (Grimmer and Stewart 2013). Such collection would result in a list of all the concepts discussed in each book and across all the books, along with a measure of the frequency with which each topic got mentioned.

There are two problems with this human-assisted approach, however. The first is that coding requires pre-established categories, which means that coding requires *ex ante* assumptions about the text under study that may or may not be in the data itself (Rice 2019). A coder’s job is to break text down into categories, and they do so by applying a set of pre-established rules to the document in front of them. A coder reading through the Legal Defense Fund’s discussion of poll taxes, for example, needs to know if he should categorize that section under “voting rights” or under “privacy.” To do this, coders make assumptions about the documents in front of them, including how broad they want to make the categories – do they want voting rights to be its own topic, or do they want voting rights to fall under the more generic civil rights? – and where to draw the line between categories – can polling taxes also be considered “discrimination”? True, coders can go back and modify their categories after coding, but there is still always room for human error when it comes to categorization (Rice 2019).

The second problem is that humans are imperfect coders regardless of the coding scheme. On a good day, when there are clear rules and a person is fully committed to coding, human-assisted coding is the gold standard for collecting data from text (Grimmer and Stewart 2013). But, realistically, coders are *human*. They get hungry, tired, and thirsty, all of which distracts them from coding at optimal levels (Schoenherr and Black 2019). They need time to code, and they need payment to do it. Worse, thirty years of post-Bork analysis have also left preconceived notions about the topics covered during the hearing in its wake, which could bias the coders before they even begin coding. Humans are not ideal for coding this kind of data, so we decided to utilize machine learning processes to do the work for us instead.

Unsupervised topic modeling alleviates the problems we just outlined. Topic modeling

uses word frequencies to identify latent concepts, or the topics contained in texts (Rice 2019). Rather than telling the computer which topics to look for, topic modeling tells researchers which words tend to be grouped together, letting researchers see the topics that were covered. The researcher then labels these groups of words as belonging to certain topics. Ultimately, the researcher decides how broad or narrow to make the topics by specifying how many concepts the model should identify, but the model does the rest of the work. Given the thousands of pages of text to examine, the fallibility of human coders, and our desire to avoid bringing preconceived notions of topics into the analysis, supervised topic modeling was the best option for this project.

Before analyzing the text, we preprocessed it. We removed punctuation, numbers, unnecessary white space, and “stopwords” like “the” or “and” from the text. Additionally, we broke all words down into their stems, so that words like “judge,” “judges,” and “judging,” all get treated as the same word during our analysis. Removing punctuation and stopwords and stemming the remaining words reduces the number of parameters under examination (Manning and Schutze 1999). This consequently makes it easier to draw inferences about the words used in a document. We cleaned our data and conducted our analyses using *quanteda*, an R package for text management and analysis developed by Kenneth Benoit and his colleagues (Benoit et al. 2017).

Analysis

Because our project is exploratory, our focus is more on content than it is on why the information is there in the first place. We thus start our analysis by looking at the information contained in the White House briefing books, which allows us to set a baseline of information – the information provided by the “official” keepers of Bork’s nomination, the people most invested in ensuring his confirmation. From there, we can see how interest groups diverged from the official line or maintained the status quo of information. Finally, we conclude with a look at constituent letters sent to Senator Specter throughout the course

of the hearing, with an eye toward identifying the information conveyed in these shorter documents.

We start our analysis of each of the three document types by looking at word clouds of the documents. Word clouds visually show the frequency with which certain words occur across a set of texts, helping researchers identify key words in documents. Figure 3 displays the word cloud of the top 100 words that appear in the White House briefing books. The words that are larger and toward the center of the cloud are the words that appear most frequently in the documents; as you move away from the center and toward the perimeter of the circle, the words that appear less frequently (though still frequently enough to be one of the top 100 words) are in green. Unsurprisingly, the most frequently-used words in the White House briefing books are “bork” and “judge.” Moving away from the center of Figure 3, however, shows the government briefing books focused on Bork’s record, with words like “religion,” “anti-trust,” “privacy,” and “discrimination” appearing frequently in the documents. This word cloud lacks sentimental words like “feel” or “support,” focusing instead on issue areas, which suggests the White House focused on Bork’s qualifications for the job and not peoples’ affective feelings toward his rulings.

single category, while the model with 20 categories provided repeated categories, including two nearly-identical Establishment Clause categories. Figure 4 shows some of the words that appear in each topic along with our interpretation of the topics those words represent. Of our fifteen categories, we threw out one because it contained mainly initials ("H," for example, which stood for Bork's middle name, Heron, or "v," as in the letter that separates the petitioner from the respondent in a case name). The remaining fourteen categories confirm our suspicions from Figure 3 that the White House focused on Judge Bork's past rulings and qualifications for the job.

Topic	Key Words
Replacing Powell	"powell," "liberty," "nomination," "individual"
Presidential power and Watergate	"cox," "fire," "prosecutor," "president"
Antitrust	"merger," "horizontal," "antitrust," "competition"
Price-fixing	"price," "fix," "vertical," "antitrust"
Nuclear power	"nrc," "nuclear," "market," "regulation"
Decision-making	"enforce," "decision," "veto," "amendment"
Federalism and equal protection	"federalist," "equal," "school," "clause"
Business	"consumer," "business," "interest," "challenge"
Establishment clause	"first," "amend," "speech," "religion"
Privacy	"precedent," "discrimination," "privacy," "protect"
Free speech and press	"press," "freedom," "libel," "speech"
Employment discrimination	"employ," "health," "standing," "policy"
Congress	"right," "action," "branch," "congress"
Judicial philosophy	"restraint," "decision," "philosophy," "citizen"

Figure 4: Table of topics included in the White House briefing books on Judge Robert Bork.

As Figure 4 shows, the White House focused at least part of its attention on the man Bork was replacing, Lewis F. Powell. Presidents pay attention to nominees who might change the balance of the Court (Krehbiel 2007; Moraski and Shipan 1999), and Reagan nominated Bork to replace Powell and his moderate swing vote (Toobin 2008). The White House understandably walked through Bork's suitability as a replacement for the senators, then. Beyond that logistical question, however, the White House almost exclusively wrote about Bork's academic and judicial work on different issue areas. They talked about his

specialty area, anti-trust law, as well as his views on privacy and free speech, two areas in which Democrats raised concerns about Bork's views. Importantly, the White House also spent time walking through his association with Watergate – after all, then-Solicitor General Bork was the one who fired Special Prosecutor Archibald Cox after the Attorney General and his deputy resigned rather than do it themselves (Nobel 1987). In all, the government supplied senators with information about Bork's engagement with thirteen different areas of law, all presented as factual and all undoubtedly analyzed with an eye toward confirmation.

Interestingly, one issue area the Reagan White House did not discuss was abortion. Kennedy's opening salvo established that Bork's rulings on abortion threatened the viability of *Roe v. Wade*, but the White House brushed past it. Its vague focus on privacy did not lead into a specific discussion of reproductive rights. Interest groups *did* talk about abortion, however. As Figure 5 shows, "abortion" was among the top 300 words used by interest groups in their briefing books, appearing 634 times. The government may have focused on Bork's qualifications, but the interest groups emphasized their problems with his rulings. Other words that appeared frequently included "women," "rights," and "justice." Based on the word cloud for these 23 briefing books, the interest groups provided different information than their White House counterparts did.

its briefing books. Organized interests' discussion of privacy focused on reproductive rights, and they explicitly discussed abortion and the Court's ruling in *Roe*. The interest groups hit exactly the topics that Kennedy outlined in his speech, even if the government did not. Like their government counterparts, they did not use affective language to do it, either; they, too, focused on just the facts.

Topic	Key Words
Explanations for sending	"citizen," public," "interest," "group"
Appointment and nomination	"senate," "nomination," "confirm," "reagan"
Legal jargon	"case," "state," "special," "supra"
Judicial decision-making	"decision," "decided," "reverse," "precedent"
Reports and overviews	"report," "view," "criticism," "posit"
Previous rulings	"en banc," "district," "dissent," "circuit"
Comparisons to other justices	"powell," "white," "black," "harlan"
Separation of powers	"constitution," "power," "executive," "legislative"
Civil rights and voting rights	"fourteenth," "racial," "poll," "black"
Free expression and free exercise	"first," "speech," "expression," "freedom"
Right to privacy	"privacy," "grawold," "protect," "marriage"
Equal protection and discrimination	"discrimination," "women," "sex," "race"
Abortion	"abort," "women," "wade," "physician"
Antitrust	"antitrust," "solicitor," "statute," "protect"

Figure 6: Table of topics included in the 23 briefing books regarding the Bork nomination that interest groups sent to Senator Arlen Specter.

Additionally, interest groups engaged in comparisons, something the White House did not do. Obviously, interest groups mentioned the now-departed Justice Powell, but they also brought up the other justices. They mentioned Justice Byron White (who wrote the dissenting opinion in *Roe*), Justice Hugo Black (a civil rights advocate), and Justice John Marshall Harlan II (an ardent advocate of adhering to precedent) (Woodward and Armstrong 1979). In doing so, the interest groups compared Bork's record to those of sitting and departed justices, offering a comparison of approaches.

While the White House and interest groups had clear agendas with their briefing books, the letters that Senator Specter received were more varied and less straightforward in their language. Figure 7 shows the word cloud of the 300 most-used words across the

72 constituent letters that Specter received. Compared to the clouds for the White House briefing books and the interest group briefing books, one thing is clear: fewer words stick out as obvious talking points. The words that are larger and toward the center of the cloud, like “supreme,” “senate,” and “constitution,” are generic terms one would expect to see in a letter about a Supreme Court nomination, and words like “abortion” and “anti-trust” appear on the perimeters, suggesting these letter writers focused on many different issues. This is to be expected from small groups and individuals crafting letters to members of the Senate Judiciary Committee. The White House had a unified strategy and composed two informational documents for the Senate. Similarly, interest groups had to craft equally-strong documents to either enhance or combat the White House’s talking points. These groups have bright political strategists who have the ability to compose a cohesive message. Conversely, individuals write letters about topics that are significant to them with regard to the nomination. A law school professor or practicing attorney likely differs greatly from your average Joe Constituent from Pennsylvania, and the letters show that.

of the same topics appear in the letters that appeared in the briefing books, like Bork’s role in Watergate (something the interest groups ignored, to an extent). But, more importantly, these letters contain emotional elements. Constituents talk about the Democratic response to Bork; they offer criticism, and they offer support. They talk less about the facts, which the White House and interest groups discussed with such care, and focus more on the impressions left on them by the entire affair. The constituent letters provide different information than their formal counterparts, given less explanation about Bork as a judge and more gut-feeling responses to the nominee himself.

Topic	Key Words
Appointment and nomination	"senate," "president," "nominee," "committee"
Bork's decision-making history	"opinion," "decision," "appeal," "circuit"
Separation of powers	"branch," "judicial," "executive," "power"
Bork's role in Watergate	"attorney," "special," "watergate," "prosecutor"
Organizations and groups	"women," "citizen," "congress," "league"
Legal groups	"public," "association," "legal," "fund"
Constituent emotion and understanding	"say," "fact," "know," "wish"
Emotions toward Bork	"constituent," "criticism," "view," "protection"
Emotions tied to Democrats	"left," "democrat," "want," "hear"
Expressions of support	"support," "will," "position," "decision"

Figure 8: Table of topics included in the 72 letters regarding the Bork nomination that people sent to Senator Arlen Specter.

Conclusion and Future Research

Writing in his memoirs in the early 2000s, Senator Arlen Specter recalled the impact that Senator Kennedy’s speech had on the Bork hearings, noting,

from the White House and interest groups were well-constructed, with groups producing beautifully-typed books that Senator Specter and his team did not mark up. For the most part, turning the original documents into readable text was unproblematic for these types of documents. Constituent letters were a different story, however. The letters had typos, ink smudges, and uneven spacing, making some of them difficult to read and process. Moreover, Specter and his staff clearly read these letters, as they contained hand-written notes and even, in a few instances, what looked like part of Specter’s lunch mashed into the page. Clearly, no one expected researchers to come through thirty years later and try to digitize the text on these letters. Consequently, we ended up with more noise – random letters appearing, other letters disappearing, words that did not match each other – in this part of the analysis than we had in the other parts.

“Kennedy crusaded against Bork. He rallied African-American ministers and leaders in the South. Hundreds of liberal organizations enlisted in the anti-Bork cause. Bork’s opponents launched a massive public relations campaign...The idea was to poison public opinion against Bork, to influence and pressure senators...The battle over Bork was so high-profile that it became almost compulsory for interest groups to join” (Specter and Robbins 2002, 321-322).

In Specter’s view, Kennedy’s speech and subsequent engagement with interest groups encouraged those groups to use all of their resources to defeat Bork’s nomination. The Judiciary Committee found itself inundated with information from these groups, though Specter claimed that he remained above the raucous fray (Specter and Robbins 2002). Organized interests wanted to influence the senators and alter their behavior, and they were mobilized and energized in their fight.

During the Bork hearings, interest groups did everything from buying television ads to sending mass mailings to directly lobbying senators to vote a certain way (Totenberg 2012). People for the American Way sent journalists and senators daily alerts about Bork’s nomination and almost forty percent of the nation’s full-time law faculty at accredited schools sent the Judiciary Committee letters saying Bork was unfit for a place on the Supreme Court (Specter and Robbins 2002). Less dramatically, interest groups also sent briefing books to the senators, providing them with summaries of the wealth of information that was available regarding Bork’s judicial philosophy and approach to certain types of cases. Judge Robert Bork had more material to sort through than any nominee before him; senators and the public had to sort through a public record of 80 speeches, 30 law review articles, and 145 circuit court opinions if they wanted to comprehensively review Bork’s record (Specter and Robbins 2002). Anyone providing senators with information had to pick certain battles to fight – to highlight one section of Bork’s record over another – leading to briefing books that were anything but unbiased in their examination of Bork’s career.

Using Senator Arlen Specter’s personal papers, we examined the information provided

by the people seeking to influence Specter’s vote on the Bork nomination. Specifically, we looked at the briefing books provided by the White House and liberal interest groups, as well as a collection of letters sent directly to Specter from constituents and interest groups alike. We utilized optical character recognition software to turn Specter’s papers into computerized text, and then we employed text analysis tools, including word frequencies and topic modeling, to empirically examine the content of the papers. Our goal was to identify what, exactly, was in those books and letters, and how the content differed across senders. We found that organized groups – the White House and interest groups – sent factual information while letter writers sent emotional appeals. The White House, first attempting to underscore Bork’s credentials and later attempting to rebut criticism of the judge, summarized that record in two briefing books they sent to senators (Davis 2017). Interest groups, mostly seeking to highlight the aspects of Bork’s record they deemed problematic, did the same, though, as our research shows, they covered different areas than the White House briefs. The letter writers, however, focused less on the substance of Bork’s record and more on their feelings about the nominee...based, at least in part, on the information the government and interest groups were pumping into the public sphere.

While our paper is the first to use the information provided to senators to study informational appeals, our decision to use archival data also has limitations. First and most importantly, the data we used for this project restricts its extension to other confirmation hearings. Our analysis focuses on one hearing, and, as we discuss throughout this paper, the Bork hearing was unique. Yet we exclusively focus on the Bork nomination because it had the most comprehensive set of nomination files in the Specter collection. Ideally, we would utilize a secondary data source, like the Senate Judiciary Committee’s files at the National Archives, to supplement the Specter papers and paint a more complete picture of nominations in the modern era, but the National Archives embargoes files for about thirty years before releasing them to the public. Consequently, our results are bound to the nomination under study. In future work, we would like to supplement the Specter files with information from

other sources as it becomes available.

Secondly, we see almost no information from conservative interest groups, leaving us to wonder how the right characterized the nomination and the nominee. The 23 groups that sent briefing books to Specter were liberal-learning groups like the American Civil Liberties Union (ACLU) and the National Abortion Rights Action League (NARAL). While conservative groups like the National Conservative Political Action Committee did send Specter a letter, they did not provide a briefing book with summarized information about Bork's record. Steigerwalt (2010) found that conservative groups were particularly lax in sending briefing books or background summaries to senators through the early 2000s, but anecdotal evidence suggests conservative groups got more involved starting with the Roberts nomination in 2005 (Toobin 2008). Consequently, the only conservative interest group we could study was the Reagan administration itself. Eventually, as data allows, we want to look at nominations with more involvement from conservative groups.

Moving forward, the logical progression of this research is to compare the topics covered in the briefing books with the topics covered in a senator's questioning. Specter, for example, mentioned that he spent two weeks doing his own research regarding Bork's record and firmly believed the interest groups did not influence his approach to the nomination (Specter and Robbins 2002). Did his questions overlap with the information provided to him by interest groups? And if they did, how much overlap was there? These are the next questions to ask and they encompass a promising avenue of future research.

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