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# SENATE VOTING ON SUPREME COURT NOMINEES: A NEOINSTITUTIONAL MODEL

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$W$e develop and test a neoinstitutional model of Senate roll call voting on nominees to the Supreme Court. The statistical model assumes that Senators examine the characteristics of nominees and use their roll call votes to establish an electorally attractive position on the nominees. The model is tested with probit estimates on the 2,054 confirmation votes from Earl Warren to Anthony Kennedy. The model performs remarkably well in predicting the individual votes of Senators to confirm or reject nominees. Senators routinely vote to confirm nominees who are perceived as well qualified and ideologically proximate to Senators' constituents. When nominees are less well qualified and are relatively distant, however, Senators' votes depend to a large degree on the political environment, especially the status of the president.

$R$oll call voting in the U.S. Senate on nominees to the Supreme Court presents political scientists with an empirical puzzle and a theoretical challenge. The empirical puzzle stems from a curious pattern in the nomination politics of recent decades. In some cases, as shown in Table 1, the Senate routinely confirms the nominee. In these cases, liberal senators vote for conservative nominees and conservative senators vote for liberal nominees. For example, the most liberal members of the Senate recently voted to confirm judicial conservative Antonin Scalia. But on other occasions—including 9 of the 20 post-*Brown-v.-Board of Education* confirmations (see Songer 1979)—the confirmation becomes extremely contentious. In these cases many or even most senators vote against the nominee, and voting becomes ideologically polarized. The recent rejection of Robert Bork illustrates this case.

We therefore face some puzzling questions: Why are some votes consensual? Why are some votes contentious? And what determines voting decisions in both cases? Satisfactory answers to these questions must explain the apparent switching process between the consensual and conflictual votes and the variance within the conflictual votes.

Satisfactory analysis of roll call voting on Supreme Court nominees must do more than solve an empirical puzzle, however. It must also respond to the theoretical challenge raised by the "new institutional" approach to congressional policy making (McCubbins and Sullivan 1987).

The political science literature abounds with historical studies (Abraham 1974;

## Table 1. Nominee Margin and Vote Status

| Nominee | Year | President's Status[a] | Margin | Vote[b] |
|---|---|---|---|---|
| Warren | 1954 | strong | 96–0[c] | consensual |
| Harlan | 1955 | weak | 71–11 | conflictual |
| Brennan | 1957 | weak | 95–0[c] | consensual |
| Whittaker | 1957 | weak | 96–0 | consensual |
| Stewart | 1959 | weak | 70–17 | conflictual |
| White | 1962 | strong | 100–0[c] | consensual |
| Goldberg | 1962 | strong | 100–0[c] | consensual |
| Fortas 1 | 1965 | strong | 100–0[c] | consensual |
| Marshall | 1967 | strong | 69–11 | conflictual |
| Fortas 2 | 1968 | weak | 45–43[d] | conflictual |
| Burger | 1969 | weak | 74–3 | consensual |
| Haynsworth | 1969 | weak | 45–55 | conflictual |
| Carswell | 1970 | weak | 45–51 | conflictual |
| Blackmun | 1970 | weak | 94–0 | consensual |
| Powell | 1971 | weak | 89–1 | consensual |
| Rehnquist 1 | 1971 | weak | 68–26 | conflictual |
| Stevens | 1975 | weak | 98–0 | consensual |
| O'Connor | 1981 | strong | 99–0 | consensual |
| Rehnquist 2 | 1986 | strong | 65–33 | conflictual |
| Scalia | 1986 | strong | 98–0 | consensual |
| Bork | 1987 | weak | 42–58 | conflictual |
| Kennedy | 1988 | weak | 97–0 | consensual |

[a]The president is labeled "strong" in a non-election year in which the president's party controls the Senate and "weak" otherwise.

[b]A vote is labeled "conflictual" when less than 90% of the votes cast are cast on the winning side and "consensual" otherwise.

[c]Voice vote.

[d]Vote on cloture—failed to receive necessary two-thirds majority.

Blaustein and Mersky 1978; Cole 1934; Danelski 1964; Friedman 1983; Grossman and Wasby 1972; Harris 1953; McHargue 1949; Schmidhauser 1979; Scigliano 1971; and Warren 1923) and statistical studies (Palmer 1983; Segal 1987) of Senate confirmation of Supreme Court justices. Few studies, however, address the puzzle of confirmation voting directly in terms of the roll call votes of individual senators over many confirmation votes. In fact, only three studies begin to address the puzzle at all (Felice and Weisberg 1988–89; Rohde and Spaeth 1976; Songer 1979). These studies all find evidence that the ideology of *senators* plays a role in controversial votes. By running separate models for each nominee, however, they are unable to determine to what extent the ideology or qualifications of the *nominee* affects opposition. Further, because they restrict their attention to controversial votes, they cannot explain why some votes are controversial while others are not. Songer's declaration remains true: "There have been no systematic explanations why a majority of nominations remain essentially noncontroversial" (1979, 929). Moreover, no analysis of confirmation voting has yet employed insights from the new institutionalism. In short, the empirical puzzle remains a mystery and the theoretical challenge has been left unanswered.

First, we discuss institutional issues in confirmation voting. Second, based on

this analysis, we develop a spatial model of roll call voting on confirmations. Using newly generated data on nominees, we then test the theoretical model.

## A Neoinstitutional Perspective on Confirmation Voting

A neoinstitutionalist perspective suggests that votes on Supreme Court nominations depend on (1) the goals the senator pursues during the confirmation process, (2) the choices confronting the senator at each stage during the sequence of votes (or "agenda") leading to a filled vacancy on the Court, (3) the foresight the senator exercises in moving from one stage to the next in a multistage agenda, and (4) the payoffs the senator receives as a consequence of his or her choices (for related references, see Krehbiel 1988).

With respect to motivation, we imagine senators asking themselves, "Can I use my actions during the confirmation process to gain electoral advantage? Or if I am forced to account for my votes, can they be used against me? What is the most electorally expedient action for me to have taken?" Hence, we follow Mayhew (1974), Fenno (1978), and Fiorina (1974) in analyzing how the prospect of explaining behavior in Washington influences the behavior of representatives. We recognize (as did Mayhew, Fenno, and Fiorina) that senators often have additional goals in mind as they make highly visible decisions. Among these goals may be furthering a vision of good public policy and enhancing power and prestige within the Senate (Dodd 1985; Fenno 1973; Kingdon 1981). But a narrower focus on the electoral connection often captures much of the motivation of senators, provides a useful base line for more complex models, and offers an attractive, direct path to the statistical analysis of confirmation roll call voting.

In light of the electoral connection, a senator is likely to view roll call voting as an opportunity for position taking and credit claiming. The senator can generally expect to gain electorally (or at least not to lose electorally) from voting as constituents wish and can expect to incur losses from flouting constituents' desires, regardless of the actual outcome of a vote. In addition, to the extent that the senator's vote actually sways the outcome, the senator may claim credit for a good outcome or receive blame for a bad one (Mayhew 1974; Weaver 1986).

Position taking and credit claiming must take place within the agenda of voting opportunities offered during the confirmation process. This agenda operates fairly simply: First, the president nominates a candidate; the Senate then votes on this candidate. If the nominee is approved, the process ends. If the nominee is rejected, the president nominates another candidate and the Senate votes on this candidate. The process continues until the seat is filled. In the twentieth century, the process has never proceeded past three votes and rarely past two.

As this agenda involves a potential series of votes, strategic voting is a possibility. For example, in an early stage of the agenda a senator might vote against a nominee constituents actually favor in order to create the opportunity to vote for an even better nominee at a later stage. Or a senator might vote for a nominee constituents oppose to block the confirmation of an even worse subsequent nominee.

Because strategic voting requires misrepresenting one's true motivation, it can present difficulties for senators compelled to explain roll call votes to their electorate. Under most circumstances, better chances for position taking and credit claiming result from what Denzau, Riker, and Shepsle (1985) call rationally nonstrategic behavior, that is, apparently sincere voting. We have suggested elsewhere (Cameron, Cover, and Segal 1989) that rationally nonstrategic voting is

almost always a better choice for senators than strategic voting when casting roll call votes on nominees to the Supreme Court.

The presence of strategic voting presents major problems for regression-based approaches to roll call voting (Krehbiel and Rivers 1985, 1988). On the other hand, rationally nonstrategic voting is observationally indistinguishable from sincere voting. A statistical analysis of roll call voting in confirmation politics can therefore proceed in a straightforward way.

## A Spatial Model of Confirmation Voting

What factors would electorally minded senators care about when judging the merits of Supreme Court nominees? Both the public record and common sense suggest that the public's principal concerns in nomination politics (whenever that concern becomes manifest) are the characteristics of nominees. Two characteristics in particular receive close scrutiny in hearings and in the press: (1) the nominee's professional competence and (2) the nominee's judicial philosophy. The importance of high qualifications is exemplified by the universal ridicule heaped on Senator Roman Hruska's defense of Judge G. Harold Carswell's manifest mediocrity: "Even if he [Carswell] were mediocre, there are a lot of mediocre judges and people and lawyers. They are entitled to a little representation, aren't they, and a little chance" (Baum 1981, 47). The importance of judicial philosophy is suggested by the attacks by liberals on judicial conservative Robert Bork and those by conservatives on judicial liberals Thurgood Marshall and Abe Fortas. Ideologically proximate nominees will be attractive, poorly qualified nominees unattractive, and nominees who are both ideologically distant and poorly qualified very unattractive.

In addition, the president is not a passive bystander but an active participant in the nomination process. The president has nominated a particular person to satisfy his own constituents and possibly to further his own policy objectives. Failure to send the confirmation through the Senate harms the president's prestige, his reputation for competence, and possibly his popularity and his ability to govern (Neustadt 1960; Ostrom and Simon 1985). Therefore, the president is likely to bring his political resources to bear to help his nominee. In general, the president will have more political resources to deploy—and can deploy his political resources more effectively—when his party controls the Senate and when he is not in the fourth year of his term. In addition, presidential resources are not likely to affect every senator the same way. First, the president's resources will probably carry greater impact on members of his own party. Second, presidential resources are much more likely to change a senator's votes when the senator is more or less undecided on the basis of the nominee's characteristics.

Ideology can be considered a spatial characteristic; nominee qualifications and the strength of the president are nonspatial or valence characteristics of a nominee; party status is a nonspatial characteristic of a senator. Hence, define five variables, $I_j$, $X_{ij}$, $U_j$, $S_j$, and $P_{ij}$. $I_j$ is a measure of nominee $j$'s ideology, ranging from zero (a very conservative nominee) to one (a very liberal nominee). $X_{ij}$ measures the ideal or desired ideology for nominees held by senator $i$'s constituents at the time of nominee $j$, as perceived by senator $i$. $U_j$ measures nominee $j$'s (lack of) qualifications, ranging from zero (highly qualified) to one (poorly qualified). $S_j$ and $P_{ij}$ measure, respectively, whether the president is strong at the time of nominee $j$ (i.e., whether the president's party controls the Senate in a nonelection year) and whether senator $i$ is from the

same party as the president at the time of nominee $j$.

Slightly modifying a well-known spatial model incorporating both spatial distance and valence dimensions (Enelow and Hinich 1982; Enelow and Hinich 1984, secs. 5.1–2), senator $i$ votes for nominee $j$ if

$$U_j + \|I_j - X_{ij}\|^2 + U_{j*}\|I_j - X_{ij}\|^2 \\ - S_j - P_{ij} < D_{ij*}, \qquad (1)$$

where $D_{ij*}$ is the "critical distance" or value separating acceptable from unacceptable nominees and $\|I_j - X_{ij}\|^2$ is the simple squared Euclidean distance, in this case just $(I_j - X_{ij})^2$. (See Cameron, Cover, and Segal 1989 for formal definitions of "acceptable" and "unacceptable" nominees.) The inclusion of an interaction term between distance and lack of qualifications, suggesting that nominees who are both ideologically distant and poorly qualified are very unattractive to senators, follows familiar precedent in spatial models (Enelow, Hinich, and Mendell 1986).

Assume the critical distance for senator $i$, $D_{ij*}$ has two components, namely, $D_{ij*} = \delta^* + \epsilon_{ij}$ where $\delta^*$ is a distance or value common to all senators over all nominations and $\epsilon_{ij}$ is an unobservable distance specific to each senator for each nomination. Then equation 1 can be rewritten as

$$U_j + \|I_j - X_{ij}\|^2 + U_{j*}\|I_j - X_{ij}\|^2 \\ - S_j - P_{ij} - \delta^* < \epsilon_{ij}. \qquad (2)$$

If $\epsilon_{ij}$ is normally distributed with zero mean and variance $\sigma^2$, equation 2 may be estimated as a probit equation, to wit,

$$P(V_{ij} = 1) = \Phi(\alpha_0 + \alpha_1 U_j + \alpha_2 D_{ij} \\ + \alpha_3 U_{j*}D_{ij} + \alpha_4 S_j + \alpha_5 P_{ij}),$$

where $D_{ij} = \|I_j - X_{ij}\|^2$ and $\Phi$ is the cumulative normal probability density function.

Presidential influence may appear to enter the model linearly; but because the probit model is intrinsically nonlinear, presidential influence has a much greater impact on senators near $P(V_{ij} = 1) = .5$ than $= .0$ or 1.0, as indicated earlier.

## Data

The dependent variable consists of the 2,054 confirmation votes cast by senators from the nomination of Earl Warren to the nomination of Anthony Kennedy.

To determine perceptions of nominees' qualifications and judicial philosophy we conducted a content analysis from a source that contains comparable information on each nominee since Earl Warren, statements from newspaper editorials from the time of the nomination by the president until the vote by the Senate. We selected four of the nation's leading papers, two with a liberal stance (the *New York Times* and the *Washington Post*) and two with a more conservative outlook (the *Chicago Tribune* and the *Los Angeles Times*). We note here that the data are reliable and appear to be valid.[1] Table 2 displays the ideology and qualification scores for the nominees from Earl Warren to Anthony Kennedy.

The spatial model requires a measure of senators' ideal points. Moreover, if the distance metric is to be meaningful, this measure must be comparable with that of the nominees. In the absence of a direct measure of the perceived preference of senators' constituencies about nominees' judicial philosophy, we have developed an inferential measure using senators' liberalism ratings calculated by the Americans for Democratic Action (ADA). The method we employ is based on the theory of predictive mappings in the spatial theory of voting and has been discussed at some length elsewhere (Cameron, Cover, and Segal 1989).[2]

We define a dummy variable $S$

("strong") which takes the value one when the president's party controls the Senate and the president is not in the fourth year of his term, zero otherwise. We define a dummy variable $P$ ("party") which takes the value one when a senator is of the same party as the president, zero otherwise.

Table 3 provides summary statistics on the variables used in the model.

### Table 2. Nominee Ideology and Qualification Scores

| Nominee | Ideology | Qualifications |
|---|---|---|
| Warren | .75 | .74 |
| Harlan | .88 | .86 |
| Brennan | 1.00 | 1.00 |
| Whittaker | .50 | 1.00 |
| Stewart | .75 | 1.00 |
| White | .50 | .50 |
| Goldberg | .75 | .92 |
| Fortas 1 | 1.00 | 1.00 |
| Marshall | 1.00 | .84 |
| Fortas 2 | .85 | .64 |
| Burger | .12 | .96 |
| Haynsworth | .16 | .34 |
| Carswell | .04 | .11 |
| Blackmun | .12 | .97 |
| Powell | .17 | 1.00 |
| Rehnquist 1 | .05 | .89 |
| Stevens | .25 | .96 |
| O'Connor | .48 | 1.00 |
| Rehnquist 2 | .05 | .40 |
| Scalia | .00 | 1.00 |
| Bork | .10 | .79 |
| Kennedy | .37 | .89 |

Note: .00 is the most conservative and 1.00 the most liberal score possible. .00 is the least qualified and 1.00 the most qualified score possible.

## Results

The maximum likelihood estimates of the coefficients in our model may be summarized succinctly:[3]

$$P(V_{ij} = 1) = \Phi\ [1.80 - 1.20U_i$$
$$(15.31)\quad(-4.44)$$
$$- 1.19D_{ij} - 9.97U_j \cdot D_{ij}$$
$$(-4.50)\quad(-9.80)$$
$$+ 1.39S_j + .74P_{ij}]^3 \qquad (3)$$
$$(8.97)\quad(6.50)$$

(MLE's/SE's are in parentheses; $\chi^2 = 985.9$; estimated $R^2 = .746$; percentage correct $= 93.0$; and percentage improvement $= 53.5$.)

As the estimates in equation 3 indicate, the overall fit of the model is extremely good: the $\chi^2$ is significant at $p < .001$; the proportion of votes explained correctly by the probit equation is 93%; the pseudo-$R^2$ for the equation is approximately .75; and the percentage improvement in predicted votes over the margin is a little over 53%. All of the estimated coefficients take the predicted sign, are significant at $p < .001$ or greater, and are of reasonable magnitudes.

As the results indicate, confirmation voting is decisively affected by the ideological distance between senators and nominees. Equally important, as indicated by the virtually identical parameter estimates on the $U$ and $D$ terms, are the qualifications of the nominee. Overwhelmingly, however, it is the interaction

### Table 3. Dependent and Independent Variables

| Variable | Mean | Variance | Minimum | Maximum |
|---|---|---|---|---|
| Vote | .850 | .123 | .00 | 1.00 |
| Squared Euclidean distance (D) | .243 | .070 | .00 | 1.00 |
| Lack of qualifications, $1 - Q$ (U) | .195 | .063 | .00 | .89 |
| Strong president (S) | .372 | .234 | .00 | 1.00 |
| Same party status (P) | .500 | .250 | .00 | 1.00 |
| Distance $\times$ lack of qualifications (UD) | .045 | .011 | .00 | .89 |

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## Table 4. Examples of Voting Probabilities

| Ideological distance | Lack of Qualification (0 = most qualified, 1 = most unqualified) | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | .0 | .1 | .2 | .3 | .4 | .5 | .6 | .7 | .8 | .9 | 1.0 |
| .0 | .96 | .95 | .94 | .93 | .91 | .88 | .86 | .83 | .80 | .76 | .73 |
| .1 | .95 | .93 | .89 | .85 | .79 | .72 | .64 | .56 | .47 | .38 | .30 |
| .2 | .94 | .89 | .82 | .73 | .61 | .52 | .36 | .26 | .14 | .10 | .05 |
| .3 | .93 | .85 | .73 | .58 | .41 | .26 | .14 | .07 | .03 | .01 | — |
| .4 | .91 | .79 | .61 | .41 | .23 | .10 | .04 | .01 | — | — | — |
| .5 | .89 | .72 | .51 | .26 | .10 | .03 | .01 | — | — | — | — |
| .6 | .86 | .64 | .36 | .14 | .04 | .01 | — | — | — | — | — |
| .7 | .83 | .56 | .26 | .07 | .01 | — | — | — | — | — | — |
| .8 | .80 | .47 | .14 | .03 | — | — | — | — | — | — | — |
| .9 | .77 | .39 | .10 | .01 | — | — | — | — | — | — | — |
| 1.0 | .73 | .31 | .05 | — | — | — | — | — | — | — | — |

*Note:* Examples assume a weak president and a Senator not of the president's party.

of qualifications and ideology that determines the votes of senators.

As probit estimates are not readily interpretable in terms of probabilities, we provide in Table 4 examples of voting probabilities for varying levels of ideological distance and qualifications. Senators, even opposition senators serving with a weak president, will vote for a poorly qualified nominee if the nominee is ideologically close (e.g., Southern Democrats for Clement Haynsworth). They will vote for an ideologically distant nominee if the nominee is highly qualified (e.g., liberal Democrats for Anthony Kennedy). Ideological distance, however, becomes paramount for nominees with even moderate questions concerning their qualifications. Alternatively, we could say that qualifications become paramount for nominees of even moderate ideological distance from senators.

Additionally, presidential influence and same party status have a powerful impact on voting probabilities, especially for senators who remain undecided after examining the characteristics of the nominee. For example, in the model a switch from a weak to a strong president raises to .92 the probability of a *yes* vote from a senator who was previously undecided. Similarly, same party status raises the probability of a *yes* vote from .5 to .78.

In order to solve the puzzle of confirmation voting, a model must not only explain individual votes but also correctly distinguish consensual from conflictual votes. In the sample of 22 votes, 13 are consensual and 9 are conflictual. As shown in Table 5, the model correctly identifies all of the consensual votes. It is almost as successful in identifying the conflictual votes; 7 of the 9 conflictual votes are correctly identified (78%). It fails to identify the Stewart and Marshall confirmations as conflictual; in these confirmations a group of conservative southern senators voted against the nominees. The model fails to capture the source of the senators' (apparently race-related) opposition.

The model must also account for variance in voting. A useful summary measure of the success of the model in accounting for the variation in the votes is mean absolute error. On average the model misidentifies only five votes per confirmation. Within the consensual

### Table 5. Actual Versus Predicted *No* Votes

| Nominee | Actual | Predicted |
|---|---|---|
| Warren | 0 | 0 |
| Harlan | 11 | 25 |
| Brennan | 0 | 0 |
| Whittaker | 0 | 0 |
| Stewart | 17 | 0 |
| White | 0 | 0 |
| Goldberg | 0 | 0 |
| Fortas 1 | 0 | 0 |
| Marshall | 11 | 0 |
| Fortas 2 | 43 | 36 |
| Burger | 3 | 0 |
| Haynsworth | 55 | 46 |
| Carswell | 51 | 53 |
| Blackmun | 0 | 0 |
| Powell | 1 | 0 |
| Rehnquist 1 | 26 | 13 |
| Stevens | 0 | 0 |
| O'Connor | 0 | 0 |
| Rehnquist 2 | 33 | 35 |
| Scalia | 0 | 0 |
| Bork | 58 | 29 |
| Kennedy | 0 | 0 |

*Note:* Mean absolute error for all votes = 4.9; for consensual votes = .2; for conflictual votes = 11.6; r actual versus predicted = .91.

votes, however, the mean absolute error is almost zero. Within the conflictual votes, the mean absolute error is higher— 11–12 votes. The correlation between actual and predicted *no* votes is .91.[4]

Gauging the success of the model in terms of confirmation outcomes is not a straightforward task. The vote on the Fortas nomination as chief justice was 45 *yea* and 43 *nay*, but this majority was insufficient to invoke cloture, so the nomination was defeated. Even under current rules, it is reasonable to presume that no nominee will pass with more than the 43 "nays" received by Fortas. (In fact, no nominee this century has been confirmed with more than 33 negative votes.) If we use 43 as the number of negative votes needed to ensure defeat, the model correctly predicts the outcome of every nomination except Bork's and Fortas'.

## Conclusion

The model resolves the puzzle of confirmation voting straightforwardly. When a strong president nominates a highly qualified, ideologically moderate candidate, the nominee passes the Senate in a lopsided, consensual vote. Presidents have often nominated this type of candidate and consequently consensual votes have been fairly common. When presidents nominate a less well qualified, ideologically extreme candidate, especially when the president is in a weak position, then a conflictual vote is likely. Surprisingly, presidents have nominated quite a few candidates of this description, and conflictual votes occur periodically. In short, the behavior of senators emerges as sensible, predictable, and readily understandable; the real source of the puzzle in confirmation voting appears to be the behavior of presidents in choosing nominees.

Learning more about confirmation voting requires moving beyond our simple model of position taking. First, the framework assumes senators are "single-minded seekers of reelection," but we know this is not so. A more appealing framework would allow senators to trade off among competing goals in their roll call votes. In particular, to what extent do senators follow the (presumptive) desires of their constituents in confirmation votes, and to what extent do they "shirk" by voting their personal preferences? Second, future research might find it worthwhile to examine the role of interest groups in the nomination process. Finally, much more attention needs to be given to presidential selection of nominees.

In essence, we are suggesting the need to take a much more inclusive view of the nomination process. But an important issue then comes to the fore: What is properly exogenous and what is properly endogenous in the theory and models? For example, we treat the nominees' ideolo-

gies and qualifications as exogenous, but presidents presumably pick their nominees with the Senate's composition at least partly in mind. In addition, public perceptions of quality and ideology could be regarded as endogenous if interested parties can affect those perceptions. And any attempt to model interest group mobilization must confront the fact that their mobilization results from calculations by the groups and therefore must be regarded as endogenous as well. Solving these problems is likely to be the major challenge facing future analysts of confirmation voting and nomination politics more generally.

## Notes

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1. We have discussed details of the content analysis elsewhere (Cameron, Cover, and Segal 1989). The measures of ideology and qualification pass standard criteria for intercoder reliability; using $\pi$ as our index (see Krippendorff 1980), results of .72 for ideology and .87 for qualifications were achieved. Both figures are significant at $p < .001$. The ideology measure also passes the most stringent measure for validity, predictive validity. For confirmed nominees this measure is highly correlated with later votes on the Court dealing with civil rights and civil liberties (Segal and Cover 1989).

2. Tests reported in Cameron, Cover, and Segal 1989 indicate that the ideal points of senators can be measured on the same metric as nominee ideology scores. Our estimates are virtually unchanged if, following Wright and Berkman (1986), we use predicted, rather than actual, ADA scores. See n. 3.

3. Using predicted rather than actual ADA scores to determine $D_{ij}$ yields

$$P(V_{ij} = 1) = \Phi\ [1.56 - 1.67U_j - 1.20D_{ij}$$
$$(16.39)\quad (-7.84)\quad (-4.19)$$
$$- 5.85U_j{\cdot}D_{ij} + .99S_j + .42P_{ij}].$$
$$(-6.42)\qquad (8.65)\quad (4.55)$$

4. The model does not include dummy variables for individual nominees. Inclusion of such dummy variables drives the mean absolute errors to very low levels even in the conflictual votes and con-

siderably improves prediction of outcomes. However, the substantive interpretation of these "black box" factors is not very clear and prevents predicting out of sample.

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