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THE TEMPLATE-DRIVEN CONSTRUAL MODEL: AN APPLICATION TO
DECISION MAKING OF THE SENATE JUDICIARY COMMITTEE IN
SUPREME COURT JUSTICE NOMINATION HEARINGS

DISSERTATION

Presented in Partial Fulfillment of the Requirements for
the Degree Doctor of Philosophy in the Graduate
School of The Ohio State University

By
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* * * * *

The Ohio State University

1995

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In memory of Thomas M. Ostrom
ACKNOWLEDGMENTS

I am indebted to Tom Ostrom for the rigorous and enlightening training he provided me throughout my graduate career and the theoretical and research ideas he planted. I express heartfelt gratitude to Marilynn Brewer for her insightful and challenging commentary on the research and her gracious willingness to oversee the project after Thomas Ostrom was longer able. I sincerely appreciate the contributions of members of my dissertation committee, Peg Hermann, John Skowronski and Bob Arkin. The research assistance of Jennifer Davis is gratefully acknowledged. Thanks to all the members of the Invisible College who provided me years of intellectual stimulation and encouragement while I developed and conducted the research. My friends’ patient, jovial and loving support throughout the research is humbly acknowledged.

This research was supported by a grant from the National Science Foundation (DIR9113599) to the Mershon Center Research Training Group on the Role of Cognition in Collective Political Decision Making at The Ohio State University.
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Cognitive Psychology
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CHAPTER I
THE TEMPLATE-DRIVEN CONSTRUAL MODEL

Various decision making tasks involve matching one’s judgment to standards or decision criteria provided in the decision context. For example, some types of clinical decision making involve matching an interviewer’s impression of a client to diagnostic criteria associated with a particular disorder (Holt, 1978; Cantor, Smith, French & Messich, 1980). Another example is jury decision making which involves matching one’s judgement to standards of guilt supplied by a trial judge (Pennington & Hastie, 1986).

When individual decision makers arrive at a decision in a group setting, they can be implicitly or explicitly pressured to use specified criteria. In such a case, one feels pressure to prepare an explanation of how the criteria were used in the decision making. Accountability of this type certainly occurs during jury deliberations and can occur when a search committee makes a decision about the suitability of a candidate. Individual members can be required to articulate how their impressions of the candidate match particular criteria.
The general focus of the present research is on decision making of this type. The specific decision context examined is that of a Senate Judiciary Committee's decision making in controversial Supreme Court Justice nomination hearings.

Criteria Matching in Decision Making

The Story Model of Jury Decision Making

One of the few models developed in this general domain is the story model of jury decision making (Pennington & Hastie, 1986). This model explicitly incorporates the consideration of criteria into the process of decision making. In order to arrive at a decision of innocence or guilt, the model specifies that the juror matches a cognitive representation of the trial evidence against verdict criteria provided by the judge.

The model posits a three-stage process. The first stage involves constructing a cognitive representation in the form of a story narrative of the trial evidence. The constructed story allows the juror to evaluate and comprehend the trial evidence. Previous research in the text comprehension literature demonstrated that people have a stored cognitive representation of story structure (i.e., Rumelhart, 1975). A story contains such elements as an initiating event or goal, the reasons for subsequent actions, and the resulting outcome. For example, Pennington & Hastie provide the example of an initiating event in a
trial in which one person threatened another. This event instantiated the goal of the defendant intending to find and kill the other person. This, in turn, provided a reason for the defendant going home and getting a knife and then returning to the bar. After a fight at the bar, the result of the actions was that the person was killed.

In the second stage, the juror learns about what constitutes a particular verdict from the trial judge. A verdict representation is constructed containing specific attributes comprising the verdict category. For example, first degree murder includes the attributes of intent to kill and forethought. The final stage is a process of matching the story and the verdict criteria. If the match is not sufficient, the default judgment of innocence results. That is, the defendant is considered innocent until proven guilty.

The Story Model as a Template Matching Model

Template. In more abstract theoretical terms, the story model specifies a decision process of matching a constructed representation to decision criteria in order to make a decision. The criteria in this sense serve as a template onto which the cognitive representation is overlaid to determine if there is sufficient similarity. This process bears loose resemblance to the concept of template-matching in categorization and perception, in particular Neisser's (1967) description of prototypes as templates.
A stimulus is perceived as a particular object or classified as a member of a particular category if it sufficiently matches a template. The overlap does not have to be exact for there to be a match. Instead, a match need only be "reasonably good and better than any other" (Neisser, 1967, p. 50).

**Configural representation.** Another component of the story model is that a holistic representation is matched to the template. That is, the decision maker does not match isolated features or attributes to the particular attributes of the decision criteria. According to the story model, a story, not just specific pieces of evidence from the trial, is matched to the verdict category.

An implication of this configural approach is that the meaning or importance of a particular attribute may depend on the other pieces of information available. Each attribute is not evaluated independently. For example, depending on the other information available, the attractiveness of a defendant in a criminal trial may have different implications for guilt. Consistent with this reasoning, Sigall & Ostrove (1975) found that an attractive women is less likely to be convicted of crimes than an unattractive woman except if the crime is that of swindling an elderly man out of money. In this latter case, attractiveness has the opposite effect on the judgment - it is a negative attribute. An alternative model of how one
might make a decision involving criteria is exemplified by an additive model in which a person might decide if an alternative matches the criteria by assigning a value and an importance weight to each attribute. Next, one multiplies these terms and then sums them. One might then select the alternative with the highest value or determine if a given alternative surpasses a certain threshold value (Hastie, 1993; Hogarth, 1987).

The impressions we form of other people might also be explained by either additive or configural models (Ostrom, 1977). For example, Asch (1946) has specified that people are perceived as a gestalt, the meaning of any particular trait depends on the other traits making up the whole. Additionally, several person impression models specify that impression formation involves a configural process of categorization or the use of schemas (e.g., Brewer, 1988; Fiske & Neuberg, 1990; Schneider, Hastorf & Ellsworth, 1975). In contrast, Anderson’s information integration model (1965) specifies that impression formation results from a linear combination of traits. Specifically, each attribute of the target person is assigned a value and a weight and this information is then averaged to arrive at an impression.

Empirically, these two approaches are difficult to differentiate because of the robustness of both theories to account for the same effects (Ostrom, 1977). Ostrom argued that a promising approach to differentiating the
contributions of the two theories is to realize that "circumstances determine the relative importance of each" (Ostrom, 1977, p.502). Thus, occasionally it is possible to set up particular patterns that elicit a configural effect such as that in the study discussed above that looked at the effects of attractiveness on judgment.

An Application of a Template Matching Model to Senate Judiciary Committee Hearings

The focus of the present research is to analyze decision making in Senate Judiciary Committee Supreme Court justice nomination hearings in terms of template-matching decision processes (template driven-construal model, TDC). Similar to the jury decision making situation, the decision maker in this Senate context must make a dichotomous decision and is publicly accountable to particular criteria. Given these similarities in the two decision contexts, some aspects of the story model are applicable to decision making in this domain. In particular, the process of matching a configural representation to a template is relevant. However, there are important differences in the two domains that necessitate some adjustments and additions to a basic template model. First, the Senate Judiciary Committee member is evaluating attributes of a person rather than an event. Second, there is the political nature of the Supreme Court Justice nominations.
Description of the Decision Context

The Senate Judiciary Committee, a decision making body of about 14 members, decides on whether or not to recommend that a particular Supreme Court justice nominated by the President be confirmed by the full Senate. They conduct the first hearings in the nomination process of Supreme Court Justices and transmit their decision to the full Senate by means of a report of a vote of those who oppose and those who support the nominee, along with a committee report of the majority and the minority views. The hearings bear some similarity to a jury trial in that evidence about the nominee is presented throughout the hearings and the nominee and witnesses may be questioned about the validity and reliability of various accounts. However, the presumption of the decision is confirmation of the nominee. That is, the nominee is confirmed unless proven unqualified (Baum, 1982).

Template

One piece of information in the hearings is the recommendation of the American Bar Association (A.B.A.) regarding the nominee's confirmation (Baum, 1982; Watson & Stookey, 1988). The A.B.A. report includes an evaluation of the nominee in terms of three decision criteria - the nominee's competence, judicial temperament, and integrity. These criteria are explicitly outlined by the A.B.A. in a booklet (Appendix A). The decision criteria contain well
specified attributes, similar to the verdict criteria in jury decision making. Specifically, according to the A.B.A., professional competence includes intellectual capacity, writing and analytic ability as well as professional experience. Judicial temperament includes consideration of the nominee's open-mindedness, freedom from bias, and commitment to equal justice. Integrity includes the nominee's general legal reputation and his/her character.

Senators often mention during the confirmation hearings that they consider these A.B.A. criteria in their decision making process. For example, all but one of the Senators in the Robert Bork confirmation nomination hearing mentioned one or more of these criteria in their opening speeches (Mersky & Jacobstein, 1990). These criteria are thus hypothesized to serve as the template for the confirmation decision. Senators are held accountable by other Senators to base their decision on these criteria instead of on other criteria, such as ideology. Particularly in controversial cases, Senators may frame their decisions in terms of the criteria and may argue that others are not using the proper criteria. For example, in the Robert Bork nomination hearing, explicit discussion ensued over the boundaries of the judicial temperament criteria. Some Senators argued that it was appropriate to lessen the constraint on the consideration of ideology because they argued it was
relevant to the decision criteria. Bork's ideology was seen by some Senators as so extreme as to affect his judicial temperament. Others clearly argued that ideology was outside of the criteria and should not be taken into account (Mersky & Jacobstein, 1990).

**Configural Representation**

Part of the decision task in the confirmation hearing is to arrive at an impression or judgment of the nominee in order to determine whether the nominee meets the decision criteria. Similar to a jury trial, information about the target of judgment is presented during the hearing and this information may be conflicting and/or ambiguous.

In the jury setting, such evidence is evaluated by constructing a story. The goal of the juror is to determine the cause of the event (e.g., whether the defendant committed the crime). A time line of events is critical to this causal analysis because cause precedes the resulting effect. For example, motivation must be present before one can perform an intentional act. In the nomination hearing however, the goal of the evidence evaluation is not to determine the cause of past events so much as it is to determine what the future behavior of the nominee will be on the Supreme Court. What kind of a justice is this person likely to be? In the words of Senator Heflin as he was questioning Robert Bork, "I wish I was a psychiatrist... to
try and figure out what you would do if you got on the Supreme Court".

In trying to understand the ambiguous or conflicting evidence, factors that are likely to contribute to understanding what the nominee's future behaviors will be become critical. A time line of events does not necessarily increase one's ability to identify future behavior. Instead, attending to the nominee's attitudes, personality traits and goals is expected to help predict future behavior (e.g., Ajzen & Fishbein, 1977; Hogan, Desoto & Solano, 1977; Pervin, 1983; Reed & Miller, 1989; Trzebinski, 1989). In Supreme Court justice nominations, the cognitive representation is thus hypothesized to take the form of a person representation of the nominee. The person representation is hypothesized to contain components (e.g., attitudes, traits and goals) from which causes of past behavior can be determined and future behavior be predicted.

Particularly for controversial nominees, the hearing will contain ambiguous and conflicting information. In order to disambiguate the information about the nominee, one may need to determine which of many interpretations of an individual is the most accurate. In the story model, information is disambiguated by constructing multiple stories. The stories serve as a simulation of the events. The juror fills in elements of the story that are missing from the trial information with elements deduced from a
generic story framework. A decision maker may try several different stories or simulations and then determine which story is the most plausible (Pennington & Hastie, 1991).

Similarly, some researchers have argued that representations of people are structured as simulations of the target individual (Reed & Miller, 1989; Trzebinski, 1989; Park, 1986). For example, Reed & Miller propose that people possess action-oriented schemas that contain a representation of a person's goals and plans. When trying to understand a target, the perceiver may generate multiple possible schemas and choose the most plausible one.

Because prediction of the future behavior of the nominee is an important goal of the decision maker in the confirmation hearing context, the cognitive representation is hypothesized to take the form of a simulation of future actions of the nominee and their likely consequences. The person representation (containing traits, attitudes, goals) is constructed first and then embedded in the simulation. Additional components are hypothesized to be included in the person representation because they may facilitate the simulation of behaviors. Specifically, ability and experience are components which enable one to carry out one's goals and behavior (Heider, 1958). For example, a clever, experienced and crooked used car salesperson may be better able to devise and carry out a scheme to sell worthless cars than one who is less clever and experienced.
Cleverness, which is usually considered a positive attribute, can contribute to a negative judgment in such a context. Similarly, a highly competent nominee who has questionable integrity has the capacity to overturn relevant rulings or laws associated with his/her attitudes or ideology whereas a less competent nominee may not. Again, in this context, a usually positive attribute can have a negative impact on judgment.

In summary, the configural representation that gets matched to the template in this decision context is hypothesized to be a person representation of the nominee which includes traits and motives relevant to likely future actions and their consequences.

Decision makers are hypothesized to match the nominee representation to the template. In this decision context, because the template is described in positive attributes and the default is confirmation, the judgment may be one of determining if there is a sufficient mismatch to the template rather than a sufficient match to justify confirmation. Thus, if a mismatch to the criteria is not sufficient, then the default is confirmation. This is the matching rule represented in Figure 1.

Alternatively, the process could be described as one of determining whether there is a match to the negative instantiation of the decision criteria. Although the A.B.A. criteria are described in positive terms of what a
Figure 1 The Template-Driven Construal Model
nominee must be, perhaps the criteria are understood in terms of their opposites, what a nominee must not be. For example, if a judgment is that a nominee is biased, this matches sufficiently to the criterion of having a lack of integrity.

Additional Considerations of the Decision Making Process Due to the Political Context of the Decision

Different decision processes depending on political commitment. Even though the judiciary committee is comprised of politicians, the nature of the Supreme Court justice nomination decision is one that is ideally apolitical. A Supreme Court Justice nominee is supposed to be judged in terms of judicial temperament, which specifically includes an ability to divorce political beliefs from judicial rulings. The nomination hearings are also relatively free of political processes that normally may bind a politician to a pre-determined vote (e.g., logrolling). In this setting, no public goods, such as government dollars or services that would entail special benefit to one's constituencies, are being distributed. While it is true that ideological considerations, which may be considered a public good, may be involved, the possible constituency benefits are not immediate and concrete. The highly important nature of the task (a life time appointment) suppresses much of the apparent political maneuvering of committee members that may occur in other
Senatorial decision settings, allowing some room for movement in decision making. Given this high level of importance, in most nominations there is unanimous or near unanimous agreement on Senate Judiciary Committee from Senators of both parties on the qualifications of the nominee and the resulting vote (Table 1).

This context makes it possible for a Senator to remain uncommitted to a decision until the hearings begin. For nomination hearings with controversial nominees, there are Senators on the committee who are undecided before the hearing begins and whose decisions rest on a careful scrutiny of the information (Watson & Stookey, 1988). However, even though there is some minimization of political maneuvering, a majority of the committee members make their decisions before the hearings begin because of the political context (Watson & Stookey, 1988). The relevant context factors include among others, a shifting balance on the court and the political strength or weakness of the President (Baum, 1982).

Political factors were incorporated in the basic template model by modifying it to specify that some decision makers are committed a priori to a decision and some are not. The decision maker who is uncommitted to a decision is hypothesized to engage in the template matching process described above. These decision makers are accountable in their decision making to the specified decision criteria.
Table 1  Senate Judiciary Committee vote on Supreme Court nominations

<table>
<thead>
<tr>
<th></th>
<th>Year</th>
<th>Votes</th>
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<tbody>
<tr>
<td>Powell</td>
<td>1971</td>
<td>16-0</td>
</tr>
<tr>
<td>Rhenquist</td>
<td>1971</td>
<td>13-5</td>
</tr>
<tr>
<td>Stevens</td>
<td>1975</td>
<td>18-0</td>
</tr>
<tr>
<td>O'Connor</td>
<td>1981</td>
<td>17-0</td>
</tr>
<tr>
<td>Scalia</td>
<td>1986</td>
<td>18-0</td>
</tr>
<tr>
<td>Bork</td>
<td>1987</td>
<td>5-9</td>
</tr>
<tr>
<td>Kennedy</td>
<td>1988</td>
<td>14-0</td>
</tr>
<tr>
<td>Souter</td>
<td>1990</td>
<td>13-1</td>
</tr>
<tr>
<td>Thomas</td>
<td>1991</td>
<td>7-7</td>
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Research has suggested that accountable decision makers anticipate that their decision making process will be scrutinized. As a result, they monitor their decision making process so as to be as even handed and vigilant as possible (Tetlock, 1983). Thus, the uncommitted decision maker's impression of the nominee is hypothesized to be driven or impacted by the decision criteria. In other words, their decision process should fit the template-driven construal model (TDC model).

Decision makers who are committed a priori to a decision, on the other hand, are not expected to process their decision through template matching even though they are also accountable to the A.B.A criteria. The effects of accountability in this case are hypothesized to affect only the articulation of their decision making, not the actual
decision making process. When decision makers feel they are committed to a prior decision, they focus their resources on justifying and strengthening their position (Tetlock, Shitka & Boettger, 1989). For these decision makers, the template serves as a format for post hoc justifications of their decision.

Public defensibility of the decision resulting from template matching. Because the Senators on the Senate Judiciary Committee are politicians, an additional step is hypothesized to occur after the matching process. An uncommitted Senator may also have to decide whether there is evidence that makes one’s decision either publicly defensible or that may serve as an emotionally laden basis for opposition. For example, a Senator may believe the nominee is unethical because s/he has engaged in sexual harassment but the Senator decides the evidence is not publicly defensible because of questions surrounding the source of the evidence. Alternatively, the public defensibility assessment may affect the threshold level one must surpass in order to conclude there is a sufficient mismatch of the nominee representation and decision criteria. That is, if the evidence is not publically defensible, the judgment of the nominee would need to be much more negative than would normally be the case for one to oppose the confirmation.
The Senate Judiciary Committee hearings are an influential first step in the nomination process particularly in controversial nominations. Such nominations are marked by party division even before the hearings begin. The decision making of the uncommitted Senators, whose task is to resolve ambiguity and conflicting information surrounding the nominee, becomes pivotal in such cases for Senators trying to determine how they will vote or frame their decisions on the Senate floor.

Previous models of Senate Judiciary decision making have generally neglected the decision making process of these uncommitted Senators (e.g., Watson & Stookey, 1988; Baum, 1982). These models detail variables that determine whether a Senator will be pre-committed to a decision before the hearings begin. Baum’s (1992) model addresses how Senators decide whether to oppose a nomination. The primary determinant of the vote is the ideological match to the nominee’s policy views. Those who agree with the nominee’s policy views are unlikely to oppose the confirmation. If a Senator disagrees, then s/he must also be willing to oppose. Willingness to oppose is influenced by factors such as the strength of the President and interest group pressure (Figure 2). For example, Senators may be pre-committed to
ideological match

yes

no

political strength of president

interest group pressure

perceived qualifications of nominee

importance of nomination

willingness to oppose

no

yes

confirm

oppose

Figure 2 Baum's (1982) model of Senate Judiciary Committee decision making
or be willing to consider rejecting a nominee with questionable qualifications who was nominated by a weak President in an important nomination context.

A second model by Watson & Stookey (1988) describes the roles Senators take in the hearings and how they decide which role to take. A Senator who is uncommitted to a decision before a hearing is labeled "an evaluator" and is described simply as one who "evaluates the responses to all questions to determine the fitness of the nominee". Senators who are committed to their decision before the hearing take the roles of validator, educator or advertiser. Political factors such as partisanship and the ideological distribution in the Senate, or Senatorial factors such as the sense of loyalty to party and constituency consideration influence role selection (see Figure 3). For example, if a Senator is a partisan, the Senate majority is from the party opposite of that of the President’s, there is pressure from a Senator’s constituents to make a particular decision and the nominee is perceived to have some weaknesses, then Senators are likely to take one of the committed roles. If a Senator is not a partisan and the information about the nominee is ambiguous, then a Senator may take the role of an evaluator.

These two models identify who is likely to be uncommitted to a decision, but they leave open the critical question of how the uncommitted Senator evaluates the
nominee and reaches a final decision. The TDC model provides an account of the decision making process of the uncommitted Senators. The model focuses on the cognitive processing of the decision making and evidence evaluation of these decision makers. Because the same outcome may be achieved by more than one psychological process, the TDC model which focuses on decision process instead of solely on outcome can provide greater understanding of the decision. For example, two Senators may support a particular nomination but come to their decision by two very different processes.

In the next chapter, the plausibility of the TDC model is examined by analyzing transcripts of two controversial Supreme Court justice nomination hearings. The models by Watson & Stookey and Baum addressed the decision making of the Senators who are committed a priori to their decisions. The analysis in the next chapter thus focuses on the decision making of Senators who were not committed to a decision before the hearings began.
Figure 3 Watson & Stookey's (1988) model of Senate Judiciary decision making
CHAPTER II

A TDC MODEL PERSPECTIVE OF THE ROBERT BORK AND CLARENCE THOMAS SUPREME COURT JUSTICE NOMINATION HEARINGS

The Robert Bork and Clarence Thomas nomination hearings are the most controversial hearings that have occurred since 1970 as measured by the closeness of the Senate Judiciary vote and the length of the hearings (see Table 1). There was high level of uncertainty and ambiguity of the impressions of these nominees. Under such extreme conditions, the decision process outlined by the TDC model can be most clearly observed for the Senators who are uncommitted to a decision. Thus, these cases were selected for an examination of the TDC model. An additional aspect of these particular cases is that two different outcomes occurred, one in which the nominee was eventually confirmed (Clarence Thomas) and one in which the nominee was defeated (Robert Bork). This pairing of cases provides an opportunity to examine how the matching process and the decision default operate in actual cases.

Because of the public accountability in these hearings, some evidence of the decision process can be detected in the Senators' statements. Senate Judiciary Supreme Court
justice nomination hearings after 1970 include opening
statements by most, if not all, of the Senators and closing
statements by some of the Senators at the end of the
hearing. In an examination of the O'Connor hearings, Watson
& Stookey (1988) found that there was a close correspondence
between opening statements and the views expressed in
private by Senators and their staff.

Method

The opening and closing statements of Senators who were
uncommitted to a decision in the Robert Bork and the
Clarence Thomas Supreme Court Justice nomination hearings
were examined to determine whether or not the TDC model
provides a plausible description of the decision processes.
The present analyses do not address the decision making
process of Senators who are committed a priori to their
decision because these processes were addressed by previous
research (Watson & Stookey, 1988; Baum, 1982).

Materials

The verbatim transcripts of the opening statements of
Judiciary Committee members from the Senate Judiciary
Committee's Supreme Court Justice nomination hearings for
Robert Bork and Clarence Thomas were used in the present
investigation (Mersky & Jacobstein, 1990; The nomination of
Judge Clarence Thomas to be associate justice of the Supreme Court of the United States: Hearings Before the Committee on the Judiciary United States Senate, One Hundred Second Congress). Also, supplemental views written by individual Senators contained in the Senate Judiciary Committee report were examined (closing statements).

Procedure

The transcripts of the opening statements and the supplemental views of uncommitted Senators were examined for direct statements of specified components of the TDC model. Specifically, the presence of statements indicating alternative construals and the use of the template and the default decision rule were recorded.

Selection of Senators who were uncommitted to a decision. The TDC model specifies that there are two types of Senators, those who are committed to a decision before the hearing begins and those who are uncommitted. The TDC model delineates the decision process of the uncommitted Senators, and therefore the examination of the case studies focused on their statements (see Watson & Stookey (1988) and Baum (1982) for a description of the decision processes of committed Senators). The uncommitted Senators were identified by an expert coder from opening statements in the two hearings. These identifications were based on Watson & Stookey's (1988) description of the uncommitted Senator (evaluator) as "one who uses the hearings to gather and
evaluate information in making a decision on how to vote" 

The following statement made by Senator Spector during the Robert Bork nomination hearing illustrates the comments of an evaluator.

"I come to these hearings with an open mind and I am prepared to listen to your views on these subjects and to make a decision based upon what I hear significantly in this room. Your prior background cannot be ruled out and what I have read about you and what I know about you and your opinions and speeches and your Law Review article are of course important. But I think the central issue is what you will testify in this proceeding"

In contrast to the statements of evaluators, committed Senators' opening speeches contain justifications for the decision for which they are already committed. A quote from Senator Thurmond from the Clarence Thomas hearings illustrates this point.

"I believe Judge Thomas is well qualified to serve as a Justice of our nation's highest court. He possesses the integrity, the intellect, professional competence and judicial temperament to make an outstanding Justice."

A second coder blind to the identities of the Senators also coded the opening statements for evidence of prior commitment. Both coders identified four Senators who were uncommitted to a decision in the Robert Bork hearing: Senators Spector, Heflin, DeConcini and Byrd. These four Senators were also identified as uncommitted to a decision in an article in the Congressional Quarterly (1987). Both coders also identified Senators Spector, Heflin and
DeConcini as uncommitted in the Clarence Thomas hearing. One coder had identified a fourth Senator, Senator Simon as uncommitted to a decision. Through discussion, it was determined that he should be classified as a "validater", a Senator who is "reasonably certain about voting to confirm ...yet (he) also remains reasonably open to counter-evidence" (Watson & Stookey, 1994).

Results

Analysis of Opening Statements

The opening statements of the Senators who were uncommitted to a decision were examined for elements of the TDC model - alternative construals, template and the default decision rule in both cases.

Statements indicating ambiguity. The opening speeches of Senators who were uncommitted to a decision were characterized by statements indicating that ambiguity existed in their impressions of the nominee (Table 2 & 3). In most cases, two opposing construals of the nominee were outlined. For example, consider the quote from Senator Heflin in the Robert Bork hearing that captures the ambiguity in the impression (Table 2). Senator Heflin outlined distinct construals of Bork that used the same objective information, one which he claimed would lead to confirmation and one to opposition. Senators' statements indicated that for them, ambiguity also existed regarding the interpretations of past record or particular events that
Table 2 Statements indicating indecision and ambiguity regarding the nominee evaluation by Senators who were uncommitted to a decision in the opening speeches of the Robert Bork nomination hearing.

**Senator Heflin**

If the committee is convinced that you will balance society's need for law and order with individual rights and personal freedoms; that your jurisprudence is deferential to elected bodies; and that you do not have a proclivity for activism, then confirmation chances are enhanced. However, if evidence shows that you are intelligent but an ideologue - a zealot - that you are principled but prejudiced, that you are competent but close minded, then there is considerable doubt as to whether you will be confirmed by the Senate.

**Senator Deconcini**

Do I believe that faced with a difficult decision with wide ranging implications that you, Judge Bork, will listen carefully to both sides and then apply the appropriate law in an objective and unbiased way? Or will you find an intellectually supportable and highly articulated way to decide the case as you see fit and how you feel it should come out?

**Senator Spector**

In my own mind a good bit of the issue turns on whether many of your prior writings constitute professional theorizing or represent established judicial positions that you would vote on if you were on the Supreme Court of the United States.

**Senator Byrd**

Therefore our role in Senate is to determine whether your theory of judicial restraint is simply that of a constitutional conservative or whether it cloaks a private agenda, as some have said, to overturn those court decisions with which you disagree.
Table 3 Statements indicating indecision and ambiguity regarding the nominee evaluation by Senators who were uncommitted to a decision in the opening speeches in the Clarence Thomas nomination hearing.

Senator Heflin
If the Senate is persuaded that you will pursue an ideological agenda have a closed mind and will be a judicial activist, ignoring the will of the elected bodies, then the doubts will become impediments to your confirmation. On the other hand, if you testimony persuades us that you will dispense justice fairly and impartially and that you will listen and be open minded, then in my judgment doubts will be alleviated.

Senator Deconcini
I hope to find a jurist who is respectful of precedent rather than a jurist who is on a mission to impose his personal beliefs or hidden agenda on the country through broad sweeping opinions. I hope to explore through these hearings whether Judge Thomas was acting within his administrative capacity in carrying out the policy of the administration or whether he was unwilling to enforce laws that conflicted with his personal views (as chair of Equal Employment Opportunity Commission).

Senator Spector
The issue of affirmative action I think will be very important in these hearings for two reasons, one is to test your own development as a lawyer and your own philosophy of justice because at one point you had sanctioned affirmative action in terms of standards and goals and there has been a change in your thinking and you certainly are entitled to that but I think that is an issue which will bear some scrutiny. Beyond these issues, there are many other questions which we are going to have to go into to. So I think we will have subjects of real importance and I approach this hearing with totally an open mind.
might have affected the impression of the nominee. For example, as indicated in this quote from Senator Deconcini, there were questions surrounding Judge Thomas' controversial tenure as chair of the Equal Employment Opportunity Commission.

"I hope to explore through these hearings whether Judge Thomas was acting within his administrative capacity in carrying out the policy of the administration or whether he was unwilling to enforce laws that conflicted with his personal views."

The presence of ambiguity about the nominee impression indicates that Senators were uncommitted to a decision before the hearing began and that their decision process was focused on resolving ambiguity about the nominee as suggested by the TDC model.

Use of criteria. According to the TDC model, the A.B.A. decision criteria serve as a template in the decision making process of the uncommitted Senators. In their opening speeches in both the Bork and Thomas nomination hearings, all of the uncommitted Senators refer to at least one of the criteria as being a part of their decision process (see Tables 4 & 5). In the Bork nomination, all Senators who were uncommitted to a decision except Senator Spector mentioned all of the A.B.A. criteria.

There was argument before and during the Bork hearing about the definition and meaning of one of the criteria, judicial temperament. The presence of such argumentation lends support to the idea that Senators feel accountability
Table 4 Statements referring to the A.B.A. criteria by Senators who were uncommitted to a decision in the opening speeches of the Robert Bork nomination hearing.

Senator Heflin

We are told that President Reagan is entitled to have his nomination confirmed unless they are incompetent or dishonest. We are told by others however that President Reagan made his choice on the basis of ideology which some contend is an impermissible criterion. Still others say that is ideology is a permissible criterion for the President, then it is a permissible factor for the Senate to consider in evaluating this nomination.

Senator Deconcini

I will base my decision on you Judge Bork on your ability and experience, your temperament, your integrity and whether or not I believe you will decide the cases before you based on the Constitution, the statutes before you the regulations, and to some extent the traditional interpretations of these items.

Senator Spector

One of the threshold questions which you and I discussed was whether you thought it was appropriate to deal with the question of judicial philosophy.

Senator Byrd

As an equal partner with the president, in making these appointments, the Senate should consider the nominee’s integrity, candor, temperament, experience, education and judicial philosophy.
Table 5  Statements referring to the A.B.A. criteria by Senators who were uncommitted to a decision in the opening speeches of the Clarence Thomas nomination hearing.

**Senator Heflin**

In reviewing the qualifications of the nominee, I am of the opinion that an individual should possess at least the following three criteria. First, an understanding on the proper role of the judiciary under our constitution; second, an abiding belief in an independent judiciary and third, a deep commitment to equal justice under the law.

**Senator Deconcini**

I have often stated and believe that the Senate should give the President’s nominee the benefit of the doubt. The Senate has a right, indeed a constitutional obligation, to examine a nominee’s competence integrity experience and yes, his or her judicial philosophy.

**Senator Spector**

As I evaluate your judicial temperament in carrying out congressional will...
to the template. Senator Heflin summarizes the arguments in his opening speech.

"We are told that President Reagan is entitled to have his nomination confirmed unless they are incompetent or dishonest. We are told by others, however, that President Reagan made his choice on the basis of ideology, which some contend is an impermissible criterion. Still others say if ideology is a permissible criterion for the President, then it is a permissible factor for the Senate to consider in evaluating this nomination."

Default. If the match between the template and the construal of the nominee is not sufficient, the nominee should be confirmed. Explicit mention was found of this default by each of the uncommitted Senators in one of the two hearings. Specifically, Senator Specter and Senator Heflin in the Bork nomination hearing and Senator Deconcini in the Thomas nomination hearing mentioned the default (see Table 6).

In sum, before evidence was presented in the Bork and Thomas hearings, the Senators who were uncommitted to a decision outlined how they planned to make their decision regarding whether or not to support the confirmation of the nominee. The TDC model appears to provide a plausible description of these processes. Uncommitted Senators' statements indicated that they would be attempting to resolve ambiguity about the impression of the nominee and evaluating the nominee in terms of the A.B.A. criteria with a default of confirmation of the nominee.
Table 6  Statements referring to the decision default by Senators who were uncommitted to a decision in the opening speeches of the Robert Bork and Clarence Thomas nomination hearing.

<table>
<thead>
<tr>
<th>Senator</th>
<th>Statement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Heflin</td>
<td>We are told that President Reagan is entitled to have his nomination confirmed unless they are incompetent or dishonest.</td>
</tr>
<tr>
<td>Spector</td>
<td>My sense is that the President is entitled to appropriate deference in his selection of a Supreme Court nominee.</td>
</tr>
<tr>
<td>Deconcini</td>
<td>I have often stated and believe that the Senate should give the President's nominee the benefit of the doubt.</td>
</tr>
</tbody>
</table>
Analysis of the Closing Statements

After the final vote is taken at the close of the Judiciary committee hearings, a committee report is drafted. Summaries of the views of the majority and the minority are included in the report, as are supplemental views of some of the individual Senators. The Senators outlined in these how and why they made their decision.

The supplemental views written by the uncommitted Senators were examined. For those Senators who did not provide supplemental views, Senate speeches, in which they justified their decisions, were investigated.

The Robert Bork nomination. In the Bork nomination hearings, Senator Spector and Senator Heflin prepared supplemental views. Senator Deconcini gave a speech on the Senate floor shortly after the hearings in which he discussed his decision making. Senator Byrd offered no commentary and was not present for most of the hearing.

As suggested by the TDC model, the descriptions of the decision process given by all three uncommitted Senators included a description of the nominee with reference to the decision criteria (Table 7). All of these Senators argued that Judge Bork had sufficient competence and experience. Senator Spector argued that Bork had sufficient integrity as well. However in all cases, the Senators argued that there was "substantial doubt" or that "concerns had not been allayed" concerning Bork's judicial temperament. Senator
Table 7 Statements referring to the A.B.A. criteria by uncommitted Senators in the committee report of the Robert Bork nomination hearing

**Senator Heflin**

There is little question that Judge Bork is a jurist of outstanding intellect and qualifications. He is indeed an erudite scholar. His credentials and experience are unsurpassed. However, whether he is an extremist is a more difficult question to answer.

**Senator Deconcini**

I am going to vote against Judge Bork for a lot of reasons. There is nothing evil about the man. He is indeed a scholar and I recognize that he has devoted a great deal of his life to his family and I respect him immensely and to his profession as a teacher, a jurist, a lawyer and as a public servant. His personal life is not why he is being confirmed as not confirmed. He is being turned down for solid reasons...

Judge Bork has expressed views on the constitution that greatly disturb me.
I am concerned about Judge Bork’s predictability.
We have someone so far out of touch so far away from the mainstream of constitutional interpretation.

**Senator Spector**

In raising these doubts about Judge Bork’s application of settled law, on equal protection and freedom of speech, it is not a matter of questioning his credibility or integrity, which I unhesitatingly accept or his sincerity in insisting that he will not be disgraced in history by acting contrary to his sworn testimony, but rather doubts persist as to his judicial disposition in applying principles or law which he has so long decried.
Heflin specified that he remained in doubt as to which construal of Bork was the accurate one.

"I am in a state of quandary as to whether this nominee would be a conservative justice who would safeguard the living constitution and prevent judicial activism or whether on the other hand he would be an extremist who would use his position on the court to advance a far right radical judicial agenda."

Senator Heflin's decision process seems to indicate a mental simulation of both construals of the nominee similar to the process specified by the TDC model. Senator Deconcini also made a statement indicating that he had conducted a mental simulation of the nominee's future actions. He stated that he was concerned about Judge Bork's predictability on the Supreme Court.

All three Senators voted against the nomination. In justifications of their decisions in the committee report, the Senators discussed the decision defaults they used (Table 8). The decision could be described as resulting from a sufficient mismatch of the construal and the template criterion of judicial temperament. Thus, if a mismatch to the criteria is not sufficient, then the default is confirmation. Alternatively the process could be described as one of determining whether there is a match to the negative instantiation of the decision criteria. Although the A.B.A. criteria are described in positive terms of what a nominee must be, perhaps the criteria are understood in term of their opposites, what a nominee must not be. For
Table 8 Statements referring to the decision default by Senators who were uncommitted to a decision in the committee report for the Robert Bork nomination hearing.

**Senator Heflin**

When in doubt, don't.

I am in a state of quandary as to whether this nominee would be a conservative justice who would safeguard the living constitution and prevent judicial activism, or whether on the other hand, he would be an extremist who would use his position on the court to advance a far right radical judicial agenda.

**Senator Deconcini**

I began my consideration of Judge Bork's nomination with the presumption that the President's nominee aid office should be confirmed.

**Senator Spector**

I shall vote against Judge Bork on confirmation to the US Supreme Court because I believe there is substantial doubt as to how he would apply fundamental principles of constitutional law. This is a difficult vote since I will be opposing my president, (and) my party...

...after 12 days of hearings including 5 days when the judge was before us all my concerns had not been allayed...
example, Heflin mentions the term "extremist" instead of mentioning that Bork does not have judicial restraint. He also stated in opening speech that the president is entitled to have his nomination confirmed unless the nominee is "incompetent" or "dishonest". The same information may have been stated in terms of the lack of competency or honesty.

The TDC model specifies that the decision making of Senators who are uncommitted to a decision is based on an evaluation of the nominee and not on political factors. In the Bork nomination hearing, all three uncommitted Senators noted that their decisions were not politically based (Table 9). Senator Deconcini argued in his address to the Senate that he had attended to hearing information and not to his constituents in his decision making. He explicitly stated that he "excluded considerations as to what it may mean to (him) politically back home one way or another" and that it was not his "responsibility to base (his) decision of nominees on their political views." He continued on to argue that he actually favored a conservative appointment. Senator Heflin likewise argued that he favored a conservative appointment. Senator Spector acknowledged that his constituents might be disappointed with his decision but he noted:

"In the end politics and personalities must give way for me to my own judgment on the history and the future of the constitution."
Table 9 Statements referring to the lack of influence of political factors in the decision making by Senators who were uncommitted to a decision in the committee report speeches of the Robert Bork nomination hearing.

Senator Heflin

Frankly I favor a conservative appointment on the Court. I have supported three appointments that President Reagan has made on the Supreme Court.

Senator Deconcini

I excluded considerations as to what it may mean to me politically back home one way or another. It does not bother me that Judge Bork is a conservative. However I do not believe it to be my responsibility to base my decision on nominees on their political views. In the past I have voted for conservatives, for liberals, for moderates ...

Senator Spector

This vote is especially hard since I know I will be disappointing many constituents who feel so strongly in favor of Judge Bork although there may be about as many with equally strong feelings in opposition. In the end politics and personalities must give way for me to my own judgment on the history and the future of the constitution.
The Clarence Thomas nomination. In the Thomas nomination, Deconcini and Heflin prepared supplemental views and Spector gave a speech on the Senate floor shortly after the hearings closed in which he detailed his decision process.

As in the Bork nomination, uncommitted Senators mentioned the A.B.A. criteria in the justifications of their decision (Table 10). All three of the A.B.A. criteria were mentioned by each of the Senators.

Senator Heflin who opposed the nomination had argued that Thomas's competence and integrity were questionable and that because of the inconsistencies in his answers in the hearing, he had doubt about his judicial temperament (Table 11). Senator Heflin had inferred that Thomas might have been deceptive during the hearing in order to obscure his extreme right-wing views. Senator Spector similarly argued that there were questions surrounding Thomas' judicial philosophy. However, he stated that Thomas' competency and integrity were sufficiently remarkable that questions about his judicial temperament should not lead to opposition. Senator Deconcini also stated that Thomas had sufficient competence and integrity. He argued that he therefore believed Thomas's portrayal of his judicial philosophy despite apparent inconsistencies.

At the end of the hearing, there still remained substantial ambiguity regarding impressions of the nominee.
Table 10  Statements referring to the A.B.A. criteria by Senators who were uncommitted to a decision in the committee report of the Clarence Thomas nomination hearing.

**Senator Heflin**

During the course of the hearing Judge Thomas' answers and explanations about previous speeches article and positions raised thoughts of inconsistencies, ambiguities, contradictions, lack of scholarship, lack of conviction and instability.

Judge Thomas' responses suggest to me deceptiveness at the worst, muddleheadness at best... I came away from the hearings with a feeling that no one knows what the real Clarence Thomas is like or what role he would play on the Supreme Court if confirmed... His testimony before the committee in several instances contained outright disavowals of previous statements and positions further obscuring his constitutional philosophy.

**Senator Deconcini**

Nonetheless, I do believe Judge Thomas' testimony before this committee was revealing of his judicial philosophy and addressed several of my prior concerns... throughout the hearings we heard from several witnesses, many of whom know Clarence Thomas personally, speak with passion of his integrity. It is for this reason that I believe that Judge Thomas will not act contrary to his sworn testimony before this committee. I also believe that he was sincere in his pledge to this committee that he would carry with him the values of his heritage: fairness, integrity, open mindedness, honesty and hard work.

Judge Thomas will be a fair and open minded justice who will review every case as it is presented to him. I have little doubt that Judge Thomas will be a conservative jurist but he will be conservative by representing precedent and exercising restraint. I do not believe that he will use his position on the court to advance a conservative activist agenda.

**Senator Spector**

I support Judge Thomas for confirmation because he is intellectually, educationally, and professionally qualified. He will bring an element of diversity to the court. His previously stated opposition to following congressional intent is insufficient in my judgement to deny him confirmation...
Table 11 Statements referring to the decision default by Senators who were uncommitted in the committee report speeches of the Clarence Thomas nomination hearing.

Senator Heflin

I stated at the onset that Judge Thomas' own testimony could remove clarify decrease or increase any doubts which we in the Senate might have about his nomination. Most of these doubts still remain along with newly created doubts - the court is too important. I must follow my conscience and the admonition "when in doubt don't"

Senator Deconcini

I have always accorded the President's nominee the benefit of the doubt. But whether a Senator applies a burden of proof standard or a presumption of fitness criterion for confirming a Supreme Court nominee, a Senator still must arrive at the same conclusion in his or her analysis - can this individual be entrusted with the tremendous responsibility of protecting the rights embodied in our constitution?

Senator Spector

It is in my judgment that it is insufficient to deny Judge Thomas confirmation in the face of the other qualities which he brings to the bench.
This remaining ambiguity may have increased the likelihood that Senators would have interpreted the information about the nominee differently. Different attributions were given for the inconsistency of information regarding judicial temperament. In one case, the combination of a lack of competence and integrity in conjunction with a politically charged appointment matched the pattern one might have of a person being selected primarily for political reasons and not on the basis of their qualifications. However for another Senator, the nominee’s sufficient competency and integrity suggested that the nominee must be telling the truth because that is consistent with one’s expectations of people with high integrity. This illustrates the nature of construals that the TDC model outlines. The configural meaning of one element (judicial temperament) depends on the configuration of other elements (competence and integrity).

Senator Spector’s description of his decision process is consistent with the speculation discussed in the previous section that if there is a sufficient mismatch on a criterion, one opposes the nomination. Thomas’ lack of judicial restraint was not as clear as it was in the case of Bork. The difference between Senator Deconcini and Senator Spector’s decision making was that the ambiguity surrounding the judicial temperament appeared to be resolved for Deconcini in the construal stage. He concluded that Thomas matched all three of the decision criteria and outlined how
the presence of competence and integrity helped to clarify his construal of the nominee. For Senator Spector, the ambiguity about the judicial temperament appeared to be unresolved even in the matching stage of decision making. He argued that because the other two criteria were clearly acceptable, then the ambiguity about the third criteria did not matter.

As in the Bork hearing, the descriptions of the decision process in the Thomas hearing suggested that a mental simulation of the nominee and his future behavior was conducted. Senator Heflin used such a description to augment the justification of his arguments against Thomas.

"I came away from the hearings with a feeling that no one knows what the real Clarence Thomas is like or what role he would play on the Supreme Court if confirmed."

Senator Deconcini's description of Thomas contained a reference to simulation which he used to support his decision to support Thomas.

"Judge Thomas will be a fair and open minded justice who will review every case as it is presented to him. I have little doubt that Judge Thomas will be a conservative jurist but he will be conservative by representing precedent and exercising restraint. I do not believe that he will use his position on the court to advance a conservative activist agenda."

According to the TDC model, uncommitted Senators' decisions are not primarily politically based. Consistent with this, Senators who were not committed to a decision
indicated that their decisions were not politically motivated (Table 12).

I ideology as a Sole Criterion of Evaluation

In both the Thomas and Bork nominations, judicial temperament was the source of opposition. One might argue that the decision making thus appears to be influenced primarily by ideology. An examination of other difficult nominations suggests that ideology alone has not been a sufficient reason for opposition. Baum (1982) analyzed the critical factors in hearings of Supreme Court nominees who had difficult nominations and those who were defeated. Although ideology often played a significant role, it was not sufficient for rejection of a nominee. His analyses were based on the decisions of the full Senate, but these decisions are illustrative of concerns that the Senate Judiciary Committee had.

An example of a case in which the only objection was ideology was Rhenquist’s nomination. He was viewed by opponents as being too conservative on civil right issues. However, he was perceived as being extremely competent (Baum, 1982). Baum noted that opposing the nomination solely on the basis of ideology was insufficient justification for rejection even for extremely liberal Senators.

Fortas and Haynsworth were two nominees who were defeated because of ethical issues. Fortas was additionally
Table 12  Statements referring to the lack of influence of political factors in the decision making by Senators who were uncommitted to a decision in the committee report speeches of the Clarence Thomas nomination hearing.

Senator Heflin

I support a conservative court. My votes for Chief Justice Rhenquist and Justices O’Connor Scalia Kennedy and Souter support my philosophy in this regard. However I am not for an extremist right wing court that would turn back progress made against racial discrimination as well as progress that has been made for human rights and freedoms in recent years.

Senator DeConcini

Over the past few weeks we heard from various reputable groups and individuals who oppose the nomination...I do believe that opponents did have a right to be concerned about the nomination. But in making my decision to support, I balanced several important factors against Judge Thomas’ prior record, statements and writings.

Senator Spector

As a final point, I have not stated a position on Judge Thomas based on any political consideration...
seen as being too liberal and Haynsworth was seen as having a questionable judicial record (Baum, 1982). Carswell was opposed by civil rights groups. His judicial competence was questioned. Legal scholars testified to his "limited abilities and the unusually high portion of decisions which had been reversed on appeal" (Baum, 1982 p.53).

In all the defeated cases except Bork's, ideological opposition was combined with opposition on the basis of the other two criteria, competence and integrity. There was explicit discussion in the Bork case as to the boundaries of how extreme an ideology can be before being considered a threat to judicial temperament. In Bork's case, it may have been because Bork was viewed as extremely competent and adhered strictly to his ideology with great integrity that he was opposed. In terms of the TDC model, he had both the motivation and ability to carry out unacceptable future actions. Senator Leahy summarized this conceptualization in his opening speech.

"Robert Bork is an intellectual of the first order. He is a thinker, he is a philosopher. And he comes before this committee with a more comprehensive and clearly expressed judicial philosophy than any nominee to the Supreme Court in recent history. That becomes really the good news and the bad news depending upon which side somebody might fall on the nomination."

Discussion

The same Senators were uncommitted to a decision in both the Thomas and Bork Senate Judiciary Committee nominations hearings. This raises the question of whether
these individual approach all controversial hearings as uncommitted. Senator Spector argued in his speech to the Senate after the Thomas nomination that all Senators should adopt this strategy.

"I personally believe that it is vastly preferable for the Judiciary Committee member not to take positions until the hearings are over and that the better practice is for all Senators to await the floor debate. But in our body, the decision on how each Senator responds is a matter for each individual Senator's judgment."

However, all of the Senators who were uncommitted to a decision in the Thomas and Bork hearings were also political moderates. A moderate party affiliate may be less bound to use the ideological stance of the nominee as a primary basis for a decision and instead base their decision on the hearing evidence. In this sense, the moderates bear resemblance to the "cue taker role" identified by Stewart, Hermann & Hermann (1989) in their modeling of the 1973 Soviet decision to support Egypt. They argued that a policy maker whose commitment to a preference is weak and who has a weak organizational affiliation will base their position on situation specific information.

The TDC model outlines the decision process of uncommitted Senators regardless of whether they are uncommitted to a decision due to individual differences in decision making, extremity of party identification or because of situation specific factors such as controversy. Further research might examine the role of individual
differences in choosing to be uncommitted to a decision. Neither the Stookey & Watson (1988) nor Baum (1982) models of Senate Judiciary Committee decision making incorporates an individual difference factor.

The Usefulness of the Case Studies

The examination of the two case studies has served as a check of how well the TDC model maps onto real world decision making. Overall, the model appears to be plausible in that Senators mention the A.B.A. criteria and the default decision rule in their speeches. Their statements indicate that they have the goal of disambiguating their construal of the nominee by attending to hearing evidence. There was some suggestion that Senators who are uncommitted to a decision may process the hearing information by constructing a configural nominee representation that includes a simulation of future actions of the nominee on the Supreme Court. Additionally, their decision justifications suggest that their decisions were based on a matching process between the criteria and the construal and not political factors.

The case studies also served to raise issues and clarify aspects of the model regarding the default rule, the impact of ambiguity, and the role of individual differences in Senate Judiciary Committee decision making. For example, it appears that the default option could be reached by way of two different processes. One is if a mismatch to the
criteria is not sufficient, and the other is as a result of determining whether there is a match to the negative instantiation of the decision criteria.

Although the selection of statements from the two cases was guided by TDC model, the process is somewhat unconstrained. One criticism of this methodology is that one can selectively (whether intentionally or not) focus on statements that provide confirmation for the model.

In the next chapter, the TDC model is examined in the context of an experimental simulation of controversial nominations.
CHAPTER III

EXPERIMENTAL SIMULATION OF A

CONTROVERSIAL SUPREME COURT NOMINATION HEARING

One limitation of relying on evidence from a case analysis of the Senate confirmation hearings to provide support for the TDC model is that in the hearings, Senators have access to different amounts and types of information. Thus, it is difficult to determine precisely the effect of information on the decision processes. The second phase of the empirical examination of the model was to examine predictions of the model within the controlled setting of a laboratory simulation. This methodology allows one to examine the effects of variables relevant to the model by systematically varying them in the context of a hypothetical confirmation hearing.

In the confirmation hearings, there are two types of Senators, those who are decided about whether to oppose or support the nominee before the hearing begins and those who are not. In an attempt to model conceptually the two types of Senators, participants were recruited from two populations for participation in the experimental simulation. One population was comprised of individuals who
were committed to and involved in partisan activity. These were college undergraduates who were members of a student political organization, either the College Democrats or the College Republicans. The other population was comprised of individuals taking an introductory course in psychology who were not involved with either of the political organizations.

The TDC model posits that those Senators who are committed to their decision before the hearing begins do not base their decision on hearing evidence regarding the nominee. If they do mention evidence from the hearing, or the decision criteria outlined by the A.B.A., it is in the service of a post hoc justification of their decision. The decision process of Senators uncommitted to a decision involves actively using the A.B.A. decision criteria by matching a person representation of the nominee against the criteria. Thus, one difference between the decision processes of the two types of Senators would be evident in differential use of the A.B.A. criteria in the two decision processes. In the case of the individual who is committed to a decision, the decision criteria are used post hoc as a justification and in the other case, the criteria are used in processing and encoding the hearing information about the nominee.

In the experimental simulation, the A.B.A. criteria were provided to the participants and thus can be used as a
basis for assessing the decision process. Specifically, respondents who were either uncommitted or committed to a decision are expected to mention the decision criteria in their justifications of their decisions. However, committed respondents should mention the decision criteria less frequently in a description of the nominee than the uncommitted respondents because according to the model, only individuals uncommitted to a decision base their decision on an evaluation of the nominee.

Another difference between the decision processes of the two types of Senators is that the decisions of the committed respondents are hypothesized to be based largely on their commitment to their political party. One factor that was included in the experimental simulation was thus the political affiliation of the nominee in the hypothetical hearing. In addition, the party identification of the respondents was assessed. Respondents committed to their party are expected to more strongly oppose a nominee from another political party and more strongly support a nominee from the same party. For the uncommitted respondents on the other hand, the level of opposition or support should be primarily a function of the perceived match between the nominee evaluation and the decision criteria.
Method

Subjects

Respondents committed to their party. Twenty-three members of the Ohio State College Republicans and nine members of the Ohio State College Democrats participated in the experiment. The university organizations received monetary compensation based on the number of participants. Each participant was randomly assigned an experimental booklet.

Respondents uncommitted to their party. Ninety-three undergraduates participated in the experiment in partial fulfillment of an introductory psychology course requirement. Subjects participated in groups ranging from 4 to 8 persons per session. Each participant was randomly assigned an experimental booklet.

Because some of the research questions involve comparing effects of party identification at different levels of party commitment, participants in this uncommitted population were classified according to political leanings comparable to those of respondents committed to their party (i.e., Democrat or Republican). Individuals who identified themselves as either a Republican or a Democrat in a questionnaire completed in a mass screening session were solicited for participation.
Stimulus Materials

The American Bar Association guidelines for evaluating Supreme Court justice nominees and a description of nomination hearings were presented in a booklet (see Appendix A). Instructions in this same booklet indicated that participants in the experiment were to take the perspective of one of the Senators on the Senate Judiciary Committee who must evaluate a Supreme Court justice nominee.

A second booklet contained information about the political climate at the time of the nomination and a section from a nomination hearing transcript (see Appendix A). The political climate information included variables that Watson & Stookey (1994) have identified as surrounding controversial nomination hearings (see Figure 3). In such hearings there is an increased likelihood that some Senators will take the role of an evaluator. By including these variables in the simulation, it is possible for respondents to be either uncommitted to a decision (i.e., take the evaluator role) or committed to a decision (i.e., take the role of validater, advertiser or educator). The political and Senatorial variables included: an unpopular lameduck president with a Senate controlled by the opposite party, an evenly divided court, and mixed public reaction to the nomination. Two versions of political climate information were created in order to examine the effects of the ideological match variable specified by Watson & Stookey's
model. One version described the President as a conservative Republican with a Senate controlled by the Democrats and the other described the President as a liberal Democrat with the Senate controlled by the Republicans. The hearing transcript contained an ideological statement by the nominee that was created to be consistent with the stated ideology of the President (Conover & Feldman, 1981).

In addition, an informational variable was embedded in the transcript. The information about the nominee was ambiguous such that more than one interpretation of the nominee was possible. Specifically, an event in which the nominee was involved was described in such a way that based on a pilot study of the materials, at least two interpretations were possible, one potentially benign and the other potentially damaging. Two different versions of this ambiguous event were created. In one version, the nominee had argued against affirmative action hiring practices. One possible interpretation of this action is that the nominee is racist; another implication is that s/he has an attitude that affirmative action is discriminatory. In the alternative version, the nominee ruled on a case consistent with views of an environmental group from which s/he had received campaign funds. One possible interpretation of this event is that the nominee is biased in his/her rulings and can be influenced; another
implication is that the nominee has the stated pro-environmental attitude.

A response booklet contained several questions designed to assess each respondent's decision process. The first instructions in the booklet were for respondents to make a binary choice, either supporting or opposing the confirmation of the nominee. Next, the question "How committed are you to this decision" (hereafter referred to as decision commitment) was asked. A verbally labeled seven-interval rating scale was provided with the endpoints of "0 not at all committed" and "6 completely committed". Participants were also asked to "briefly explain how you made your decision to support or oppose Judge Jones' confirmation" (hereafter referred to as the decision justification question) and asked "in your own words, describe the nominee, Judge Jones" (hereafter referred to as the person description question). Another question, "Was the President (who nominated the candidate) a Democrat or a Republican?", was used to check that participants had actually attended to the experimental information. See
Appendix B for the complete set of questions included in the booklet.

**Procedure**

Prospective participants completed a questionnaire two to four weeks prior to the experiment which contained various background questions (e.g., the respondent’s party identification).

When participants arrived for the study, they received a booklet which contained the A.B.A. guidelines, the information about nomination hearings and experimental instructions. After respondents had finished reading this, they were given the second booklet to read which contained the political climate and hearing transcript.

Respondents then received the response booklet. After completing the questions they were debriefed and dismissed.

**Design**

Respondents, who were identified with either the Democratic or Republican party and were committed to their party or not, were randomly assigned to one of two different versions of the transcript event (affirmative action protest or environmental ruling) and one of two versions of the nominee’s party affiliation (Democrat or Republican). One exception to this assignment is that all politically committed participants were administered the scenario involving the affirmative action protest.
Results

To check that respondents had actually attended to experimental material and thus at least minimally participated in the simulation, responses to the question "Was the President (who nominated the candidate) a Democrat or a Republican?", were examined. As a result of failing to correctly identify the political party of the President, eleven uncommitted participants were eliminated from the following analyses.

Coding of Decision Justification and Person Description

In order to examine the decision processes of respondents in the simulation, the qualitative responses of the decision justification question ("Briefly explain how you made your decision to support or oppose Judge Jones confirmation") and the person description question ("In your own words, describe the nominee Judge Jones") were coded. The main focus of the analyses is to determine whether and to what degree the person evaluations are driven by the criteria.

Mentions and the valence of mentions of the A.B.A. criteria. Both the decision justification question and the person description question were content coded for the mention of the A.B.A. decision criteria in the same manner. The actual descriptions of the three decision criteria, judicial temperament, integrity and competence provided in the A.B.A. guidelines served as a basis for the coding
categories (see Appendix A). Responses to each of the two questions were scored as "1" for each match to any of the actual words provided in each of the three categories of the A.B.A. description or for a close synonym of the words. Responses were scored as a "-1" if a negation of the actual words in the A.B.A. description or a close antonym was present (e.g., narrow mindedness as an antonym for open-mindedness). Responses that did not contain any mention of the decision criteria received a score of zero.

Synonyms were identified a priori based on examining responses in a pilot study. These were "ability to express oneself", "good credentials" or "good background" for professional competence; "fairness" and "racist" for judicial temperament; "honesty", "trustworthy" "hardworking" and "persistent" for integrity.

One coder blind to the hypothesis and experimental conditions and an expert coder blind to experimental conditions independently recorded the mention of the decision criteria. For the decision justification question, intercoder correlations were R=1.00 for temperament, R=.97 for integrity and R=1.00 for competence. For the person description question, intercoder correlations were R=.94 for temperament, R=.98 for integrity and R=.99 for competence.

Overview of Analyses Regarding Party Commitment

The TDC model specifies different decision processes depending on whether a Senator is politically committed to
their party or not. Senators who are undecided about the nominee before the nomination hearings tend to be political moderates. Conversely, the committed Senators tend to be more strongly identified with their party and committed to voting in a party consistent manner.

In the analyses of the simulation results, two variables were used to differentiate participants according to their prior partisanship. One, party commitment, was defined by whether the participants were recruited from the psychology course (uncommitted to a party) or from the College Republicans and College Democrats (committed to a party). The second, strength of party identification, was defined by responses on a seven point rating scale to a question in the pre-experimental questionnaire which assessed the extent of identification. In some of the analyses, this continuous measure of strength was broken into three categories, weak identification (a response of three or less) moderate identification (a response of four) and strong identification (a response of five or more).

One research question is whether strength of party identification and party commitment predicts the mention of the A.B.A. decision criteria (e.g., competence, judicial temperament and integrity) in the qualitative responses. Other examinations involve determining whether the mention of the A.B.A. decision criteria in the qualitative responses and the valence of the mention (positive or negative) are
predictors of commitment to the decision of whether to support of oppose the nominee and also the direction and level of that commitment.

**Party Commitment and Strength of Party Identification as a Predictor of the Mention of Decision Criteria**

*Strength of party affiliation.* One implication of the TDC model is that as party identification becomes stronger, individuals should base their decision more on their party identification and less on the hearing evidence about the nominee. Recall that according to the TDC model, if an individual is basing his/her decision on the hearing evidence about the nominee, they match the person description to the decision criteria. The A.B.A. criteria thus should be evident in both the person description and the decision justification. On the other hand, if the individual is not basing his/her decision on the hearing evidence, the A.B.A. criteria are expected to be present only, if at all, in the justification of their decision. Thus, in the experimental simulation, these individuals should mention fewer of the decision criteria in their description of the nominee but not necessarily mention fewer of the criteria than the less strongly identified individuals in justifying their decision.

To examine this hypothesis, a measure of the mention of criteria was calculated. A respondent received a score of "1" for each criterion they mentioned at least once in their
responses to the decision justification question and to the person description question. For each question, the number of criteria mentioned was tabulated, for a total score that ranged from 0 to 3.

A regression analysis was conducted in which strength of party identification was used to predict mention of the criteria. For the person description, strength of party identification was a significant predictor ($B=-.31 \ p<.01$). As expected, as party identification became stronger, individuals explicitly mentioned fewer of the criteria in the description of the nominee. For the justification question, strength was not a significant predictor ($B=-.14 \ p<.28$).

**Party commitment.** A second variable, party commitment, was used to differentiate participants according to their prior partisanship. Party commitment was defined by whether the participants were recruited from the psychology course (uncommitted to their party) or from the College Republicans and College Democrats (committed to their party). Thus, individuals vary both in terms of their party commitment and their political identification. When the continuous measure of identification strength was divided into three categories, weak identification (a response of three or less) moderate identification (a response of four) and strong identification (a response of five or more) all politically committed participants were categorized as
strongly identified (ratings of 5 or above on the extent of party identification question). However, this category also contained 17 politically uncommitted as well. Although participants from both populations reported being strongly identified, those who are politically committed may make their decision of whether to oppose or support the nominee more on a basis of party identification than politically uncommitted respondents. The categorical identification strength variable produced similar results as the continuous strength measure. For the decision justification question, an ANOVA performed on the three level strength variable did not produce a significant effect ($F(2,60)=1.11$, $p.<.3350$). For the person description, there was a significant effect of the strength variable on mention of criteria ($F(2,60)=4.45$, $p.<.0159$).

The means in Figure 4 show that respondents committed to their party did explicitly mention fewer criteria in the person description than those uncommitted to their party in the strongest identification category. One implication of these findings for the present investigation is that respondents who are committed to their party may be the most appropriate ones on which to base analyses involving the two different types of decision processes outlined in the model.
Figure 4  The mention of criteria in the person description as a function of strength of party identification
Determinants of Decision Commitment and Direction of the Decision

Direction of decision. The respondents who are committed to their party are hypothesized to make their decision based on party identification. Overall, more respondents voted against the nominee (oppose \( n=31 \), support \( n=21 \)). This outcome is different than would be expected if they were using the decision default of confirmation.

As the frequencies in Table 13 indicate, significantly more respondents voted against the nominee when there was a party mismatch \( (X^2(1)=4.24, \ p.<.04) \). However, when the decisions of committed and uncommitted respondents were examined separately, the effects were not significant for respondents committed to their party \( (committed X^2(1)=.73, \ p.<.39; \ uncommitted X^2(1)=4.20, \ p.<.04) \) (Table 14 & 15).

Decision Commitment. In the simulation, decision commitment was defined as a participant's response to the question "How committed are you to this decision?" Regardless of the direction of the decision, commitment to supporting or opposing the nominee is expected to be affected by two variables. Decision commitment should be stronger for those who used more of the criteria in their decision making and also for those who are more strongly identified with their party.

A regression was performed using the mention of criteria and party identification to predict decision
Table 13  Frequencies of the direction of the decision as a function of party identification mismatch between respondent and the nominee

<table>
<thead>
<tr>
<th>Decision</th>
<th>support</th>
<th>oppose</th>
</tr>
</thead>
<tbody>
<tr>
<td>match</td>
<td>14</td>
<td>16</td>
</tr>
<tr>
<td>mismatch</td>
<td>7</td>
<td>25</td>
</tr>
</tbody>
</table>

Table 14  Frequencies of the direction of the decision as a function of party identification mismatch between respondent and the nominee for the respondent uncommitted to their party

<table>
<thead>
<tr>
<th>Decision</th>
<th>support</th>
<th>oppose</th>
</tr>
</thead>
<tbody>
<tr>
<td>match</td>
<td>9</td>
<td>12</td>
</tr>
<tr>
<td>mismatch</td>
<td>3</td>
<td>18</td>
</tr>
</tbody>
</table>

Table 15  Frequencies of direction of decision as a function of party identification mismatch between respondent and the nominee for the respondents committed to their party

<table>
<thead>
<tr>
<th>Decision</th>
<th>support</th>
<th>oppose</th>
</tr>
</thead>
<tbody>
<tr>
<td>match</td>
<td>5</td>
<td>4</td>
</tr>
<tr>
<td>mismatch</td>
<td>4</td>
<td>7</td>
</tr>
</tbody>
</table>
commitment. When the decision justification question was used in the regression, only strength of identification was a significant predictor of decision commitment and this effect was in the opposite direction as predicted. As strength increased, decision commitment decreased. The total variance accounted for by the model however was extremely low ($R^2 = .09$) (Table 16). When the person description question was used, neither variable was a significant predictor of decision commitment (Table 17) and again, the total variance accounted for by the model was very low ($R^2 = .10$).

**Level of commitment to and direction of the decision.**

For the strongly identified respondents, party identification is expected to influence the decision commitment as well as the direction of the vote. Specifically, those respondents who are assigned to the nominee that was from a different party (party mismatch) are expected to have been more strongly opposed if they are using party identification as a basis of their decision. Further, to the extent that the person impression formation is involved in the decision making, the valence of the mention of the criteria (positive or negative) should predict the strength and direction of commitment to the vote.

In order to examine these hypotheses, a variable indicating direction and level of decision commitment was
created by multiplying the level of decision commitment by the direction of the decision (support=positive; oppose=negative; the possible range is -7 to +7).

A regression was performed with the mention of positive and negative criteria in the decision justification, party mismatch and strength of party identification predicting the

<table>
<thead>
<tr>
<th>Table 16</th>
<th>Results of regression analysis with mention of criteria and strength of party identification predicting decision commitment for the decision justification question</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Model 1</td>
<td>Model 2</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>B</td>
<td>p</td>
</tr>
<tr>
<td>criteria</td>
<td>-.23</td>
</tr>
<tr>
<td>strength</td>
<td>-.23</td>
</tr>
<tr>
<td>strength*criteria</td>
<td>-.66</td>
</tr>
<tr>
<td>R²</td>
<td>.09</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Table 17</th>
<th>Results of regression analysis with mention of criteria and strength of party identification predicting decision commitment for the person description question</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td></td>
<td></td>
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<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Model 1</td>
<td>Model 2</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>B</td>
<td>p</td>
</tr>
<tr>
<td>criteria</td>
<td>.28</td>
</tr>
<tr>
<td>strength</td>
<td>-.15</td>
</tr>
<tr>
<td>strength*criteria</td>
<td>-.45</td>
</tr>
<tr>
<td>R²</td>
<td>.10</td>
</tr>
</tbody>
</table>
direction and level of decision commitment. As the results in Table 18 indicate, the mention of negative criteria in the decision justification question and party mismatch were significant predictors of direction and level of decision commitment. Mention of positive criteria was a marginally significant predictor. When there was a mismatch, respondents were more strongly opposed than when there was a match in party identification. The more respondents mentioned negative criteria in their responses, the more they were committed to opposing the nominee; the more they mentioned positive criteria, the more they were committed to supporting the nominee. There were no other significant predictors nor interactions.

A second regression was performed with the same variables for the person description question (Table 19). The mention of negative criteria was a significant predictor of direction of decision commitment with this measure, a three-way interaction of mention of negative criteria, strength of party identification and party mismatch was also a significant predictor of direction and level of decision commitment.

To further examine the three-way interaction between mention of negative criteria, strength of party identification and party mismatch, two path analyses with the variables positive mention of criteria, negative mention of criteria, party mismatch and strength of party
identification were performed using Lisrel. One analysis was conducted with only the weak identifiers (a response of three or less on the identification question). For weak identifiers the mention of criteria is expected to predict the vote but the party mismatch is not. For the weak identifiers this was the case, the only significant paths in the model were from mention of positive and negative criteria to predict the direction and level of decision commitment (see Figure 5).

A second path analysis was conducted with strong party identifiers (a response of five or more on the identification question). To the degree that strong party identifiers mention criteria, one might expect that the party of the nominee would predict the type of criteria mentioned. That is, if the nominee was a party mismatch,
Table 19: Results of regression analysis with mention of positive and negative criteria, party mismatch and strength of party identification predicting direction of decision commitment for the person description question.

<table>
<thead>
<tr>
<th></th>
<th>Model 1</th>
<th>Model 2</th>
<th>Model 3</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>( B )</td>
<td>( \beta )</td>
<td>( B )</td>
</tr>
<tr>
<td>pos.criteria</td>
<td>.53 .37</td>
<td>pos.criteria</td>
<td>.54 .37</td>
</tr>
<tr>
<td>neg.criteria</td>
<td>-3.15 .01</td>
<td>neg.criteria</td>
<td>-3.16 .01</td>
</tr>
<tr>
<td>IDmismatch</td>
<td>-.62 .17</td>
<td>IDmismatch</td>
<td>-.95 .53</td>
</tr>
<tr>
<td>strength</td>
<td>-.05 .86</td>
<td>strength</td>
<td>-.06 .83</td>
</tr>
<tr>
<td>IDmis*strength</td>
<td></td>
<td>IDmis*strength</td>
<td>.07 .82</td>
</tr>
<tr>
<td>neg<em>IDmis</em>strength</td>
<td></td>
<td>neg<em>IDmis</em>strength</td>
<td>.33 .03</td>
</tr>
<tr>
<td></td>
<td>( R^2 = .40 )</td>
<td>( R^2 = .40 )</td>
<td>( R^2 = .46 )</td>
</tr>
</tbody>
</table>
Figure 5  Path model of relations between party mismatch, mention of positive and negative criteria and level and direction of decision commitment for weak party identifiers.
more negative criteria would be mentioned and if a match, positive criteria mentioned. Party mismatch would be expected to directly predict direction and level of decision commitment without being mediated by the mention of criteria. However, when strong identifiers from the sample of respondent uncommitted to their party were included in the model, the expected results were not obtained. Only mention of negative criteria was a significant predictor of direction and level of decision commitment. There was also a marginally significant path from party mismatch to mention of positive criteria.

Using only the population of respondents committed to their party, a pattern closer to the predictions emerged. Party mismatch significantly predicted both the mention of positive and negative criteria. The mention of negative criteria mediated the impact of party mismatch on the direction and level of decision commitment (Figure 6).

Although criteria were mentioned by both strong and weak identifiers in the person description, the results suggest they are mentioned for different reasons. For weak identifiers, the mention of criteria is directly associated with the level and direction of the decision commitment independent of the effects of party identification. For the strong identifiers, party identification had an indirect effect on the level and direction of the decision commitment via the mention of negative criteria. This provides further
Figure 6 Path model of relations between party mismatch, mention of positive and negative criteria and level and direction of decision commitment for strong party identifiers without respondents who are uncommitted to their party.
support of the hypothesis that the weak identifiers use criteria in the forming of the evaluations of the nominee but that the strong identifiers do not. To the extent that strong identifiers use the criteria in the description of the nominee, it is in the service of a post hoc construction.

The lack of association between strength of identification and the responses to the decision justification question may result from both strongly and less strongly identified individuals mentioning the criteria for very different reasons. In the case of the more strongly identified, the mention of the criteria resulting from post hoc justification and in the other case because the decision process involved matching the person description to the criteria.

In summary, while both respondents committed and uncommitted to their party were found to mention the decision criteria in their justifications of their decisions, committed respondents mentioned the decision criteria less frequently in a description of the nominee than respondents who are uncommitted to their party. These results provide support for the TDC model’s assertion that decision makers committed to their party base their decision largely on commitment to the political party while the respondents who are uncommitted to their party base their decision primarily on an evaluation of the nominee. In the
next section, the nominee evaluations of the respondents who are uncommitted to their party are more closely examined.

The Decision Process of Respondents who are Uncommitted to their Party

Respondents who are uncommitted to their party are expected to form an evaluation of the nominee and then match this representation to the decision criteria. Support for this hypothesis was found in the analyses discussed above in that the uncommitted do mention more of the decision criteria when describing the nominee than the committed. Furthermore, the mention of criteria in the person description predicts the level and direction of the decision and is not determined by whether the nominee is or is not from the same party as the respondent. To assess the predictions of the model with respect to uncommitted decision makers, analyses of the responses of the politically uncommitted participants were examined further. For these analyses, data from both the affirmative action protest and the environmental ruling scenarios were included.

Configural effects on attribute meaning in the person description. The TDC model specifies that the person evaluation that is formed during decision making is configural, that is, the positive or negative implications of any attribute within the overall impression depends on
the configuration of other attributes in the context of the decision criteria.

One way to examine this is to determine whether there is an interaction between the mention of negative and positive criteria in the impressions in predicting the direction and level of decision commitment. Specifically, does the use of positive and negative criteria have nonadditive effects such that the presence of a positive criterion may not increase (or perhaps actually decrease) the evaluation in the context of the presence of negatives? A regression was performed using data from both transcript versions with mention of negative and positive criteria predicting direction and level of decision commitment. Both the mention of positive and negative decision criteria in the person description question were significant independent predictors of direction and level of decision commitment. Contrary to a configural prediction, the interaction between mention of negative and positive criteria was not significant (Table 21).
Table 20  Regression analysis results with mention of positive and negative criteria predicting the level and direction of decision commitment for the person description question for the respondents who are uncommitted to their party

<table>
<thead>
<tr>
<th></th>
<th>Model 1</th>
<th></th>
<th>Model 2</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>B</td>
<td>P</td>
<td>B</td>
<td>P</td>
</tr>
<tr>
<td>pos.criteria</td>
<td>1.27</td>
<td>.02</td>
<td>pos.criteria</td>
<td>1.55</td>
</tr>
<tr>
<td>neg.criteria</td>
<td>-2.42</td>
<td>.01</td>
<td>neg.criteria</td>
<td>-1.85</td>
</tr>
<tr>
<td>pos*neg</td>
<td></td>
<td></td>
<td>pos*neg</td>
<td></td>
</tr>
<tr>
<td></td>
<td>-.98</td>
<td>.29</td>
<td></td>
<td></td>
</tr>
<tr>
<td>R²</td>
<td>.27</td>
<td></td>
<td>R²</td>
<td>.28</td>
</tr>
</tbody>
</table>

Configuration of the decision criteria in the person evaluation. Another way to examine whether the attributes comprising the person description are configural is to determine whether there are particular combinations of decision criteria that relate to final decisions. Specifically, the judgment of competency may be a positive or a negative attribute depending on the configuration of the other decision criteria. For example, I argued in the previous chapter that for some Senators, competency appeared to be a negative attribute of Robert Bork in the context of the negative evaluation of his judicial temperament and integrity.

In order to examine the impact of this same configuration within this simulation, the mean direction and level of decision commitment was computed for different
combinations of the criteria. The valence of the judicial temperament and integrity criteria in the person description were combined to create a "configural context" variable - positive, negative or not mentioned. If mentions of both judicial temperament and integrity were positive, then the configural context was positive. If both were negative, then the configural context was negative and if neither were mentioned then there was no configural context. Cases in which there was both a positive and negative mention (n=3) were eliminated for this analysis.

The mean direction and level of decision commitment was calculated for the each level of competency (positive, negative or no mention) and the configural context. Table 21 shows the means of the direction and level of decision commitment for the person description question as a function of the configurations. The impact of the mention of competency on the direction and level of decision commitment was different depending on the level of the configural context variable. Mentioning the nominee's competence did not significantly lessen the commitment to opposing the nominee when the mention of the configural context variable was negative. That is, there was not a significant impact of the positive mention of criteria in the context of other negative mentions of criteria on the decision commitment, as might be expected if the valence of all of the criteria mentioned were simply added. The positive mention of
competency however did significantly add to the commitment of supporting the nominee when the mention of the other criteria was positive.

Table 21  Mean direction and level of decision commitment for configurations of decision criteria mentioned in the person description question for both scenarios combined

<table>
<thead>
<tr>
<th>Mention of Competency</th>
<th>configural context</th>
<th>none</th>
<th>positive</th>
<th>t</th>
</tr>
</thead>
<tbody>
<tr>
<td>negative</td>
<td>none</td>
<td>-4.3</td>
<td>-3.7</td>
<td>1.15</td>
</tr>
<tr>
<td></td>
<td>none</td>
<td>0</td>
<td>-1.5</td>
<td>-2.08</td>
</tr>
<tr>
<td></td>
<td>positive</td>
<td>.25</td>
<td>2.4</td>
<td>2.68</td>
</tr>
</tbody>
</table>

Components of the nominee representation. The TDC model also specifies that particular components should be present in the nominee representation (i.e., traits, attitudes, ability, goals, future actions of the nominee and consequences of the nomination). The responses to the person description question for respondents who were uncommitted to their party were coded in order to examine whether the nominee representation components specified by the TDC model were present.

Traits were defined as person adjectives, personality characteristics or general mannerisms (e.g., honest or ethical). Abilities were defined as attributes providing
the capacity to achieve some goal (e.g., intelligent or skilled communicator). Goals were defined as intentions or motivations (e.g., wants to overturn precedent or is driven by a high need for achievement). Attitudes were defined as positive or negative evaluations toward an attitude object (e.g., favors the executive branch or racist). Future actions were defined as behaviors the nominee would do in the future (e.g., will overturn precedent or will rule in favor of Roe vs. Wade). Consequences were defined as what will happen if nominee is confirmed and becomes Supreme Court justice (e.g., the women's movement would be set back or women will no longer be able to legally obtain abortions). Responses were given a score of "1" for each mention of a particular component.

One coder blind to the hypothesis and experimental conditions and an expert coder blind to experimental conditions independently recorded the mention of the model components. Intercoder correlations were .99 for traits, .97 for attitudes, .96 for ability, 1.00 for goals, 1.00 for future actions of the nominee and 1.00 for consequences of the nomination.

The mean number of respondents' mentions of each component are presented in Table 22. The most often mentioned element is traits and the least is consequences of the nominee's actions. Thus, while some elements specified by the TDC model such as traits were present in the nominee
evaluations, other aspects such as the simulation of the future actions of the nominee were virtually absent. However, this is consistent with Park's (1986) findings that traits are the most common component of people's descriptions of others. The relative scarcity of the other components hypothesized to be present in the person representation may be due in part to the minimal amount of information participants received about the nominee. However, respondents did clearly go beyond specific information provided in inferring traits and attitudes about the nominee.

Table 22  Mean number of TDC model components mentioned in the person description

<table>
<thead>
<tr>
<th>component</th>
<th>mean</th>
<th>std.</th>
</tr>
</thead>
<tbody>
<tr>
<td>traits</td>
<td>1.89</td>
<td>1.31</td>
</tr>
<tr>
<td>attitudes</td>
<td>0.53</td>
<td>0.77</td>
</tr>
<tr>
<td>experience</td>
<td>0.44</td>
<td>0.81</td>
</tr>
<tr>
<td>ability</td>
<td>0.18</td>
<td>0.41</td>
</tr>
<tr>
<td>goals</td>
<td>0.04</td>
<td>0.21</td>
</tr>
<tr>
<td>future actions</td>
<td>0.03</td>
<td>0.18</td>
</tr>
<tr>
<td>consequences</td>
<td>0.01</td>
<td>0.11</td>
</tr>
</tbody>
</table>

Inferences about the nominee drawn from the ambiguous event. Recall that each of the nominee scenarios contained an event described in such a way that at least two interpretations were possible. In one version, the nominee
had argued against affirmative action hiring practices. One possible interpretation of this action is that the nominee is racist. In the other version, the nominee ruled on a case consistent with views of an environmental group from which s/he had received campaign funds. One possible interpretation is that the nominee is biased in his/her rulings and can be influenced. Analyses were done of whether these negative interpretations appeared in a respondent’s description of the nominee.

The responses for the participants who were uncommitted to their party to the person description question were coded for the presence of negative implications of the scenario that had been included in the nominee packet. For the affirmative action protest, responses were scored as "1" if there was a mention of the nominee being racist. For the environmental ruling, responses were scored as one if there was mention of the nominee being susceptible to a conflict of interest, partial, influenced by others or that s/he may take bribes. One coder blind to the hypothesis and experimental conditions recorded the mention of the negative implications. A second expert coder blind to experimental conditions coded a random selection of 25% of the responses. Coder agreement was 100%.

Effect of negative inference on the level and direction of decision commitment. If one has drawn negative inferences about the nominee, this inference is expected to
affect the direction and level of decision commitment. A regression was performed using the presence of negative implications to predict the direction and level of decision commitment. For the affirmative action protest, the mention of negative implications was associated with opposition to the nominee (B=-3.36, p.<.0038) and it was marginally associated with opposition in the environmental ruling scenario (B=-3.06, p.<.0572). The mention of negative inferences drawn from the event in the description of the nominee indicates that participants were attending to the scenarios and were actively drawing on the material to form their impressions of the nominee.

Sources of the tendency to infer negative implications from the event. One possible source of negative interpretations is a party mismatch. If the nominee is a mismatch, the respondent would be more willing to interpret ambiguous information negatively.

A regression analysis was performed to examine whether party mismatch was a significant predictor of the mention of the negative implications for each of the scenarios. Negative implications were not significantly predicted in either version by this variable (affirmative action protest B=-.05, p.< .6979; environmental protest, B=-.10, p. < .5387). Thus for whatever reason the negative implications were formed, they were not due to party identification for these uncommitted respondents.
Discussion

The experimental simulation provides support for the basic processes specified by the TDC model. The results suggest that respondents committed and uncommitted to their party used different decision processes. The committed respondents appeared to process their decisions on the basis of party identification and not on the basis of template matching. The evaluations that the respondents who were committed to their party made of the nominee showed less evidence of template use in that these individuals mentioned relatively fewer criteria in the person description than did uncommitted individuals. When criteria were present, the results suggest this was a direct result of party identification rather than an impression formed in the process of decision-making. For the respondents committed to their party the mention of criteria thus appears to be in the service of justifying their prior decisions. Because the decision default of the decision is the confirmation of the nominee, justifying a decision becomes especially necessary when a decision maker is opposing the nomination. Indeed, for the respondents who are committed to their party, only the mention of negative criteria predicted the level of decision commitment and direction of the decision. In contrast, for the respondents who were uncommitted to their party, both positive and negative mentions were significantly related. This is what is expected if one is
making a decision by template matching. These results further suggest that different decision processes were occurring for the two populations.

Other data further support the hypothesis that the respondents uncommitted to their party engage in template matching. The criteria were mentioned in the person description more so than they were for the committed and party identification was found not to be related to the mention of these criteria or the level and direction of their decision commitment. Also, examinations of the content of the person descriptions suggested that respondents were engaged in constructing a person representation in that they made inferences about the nominee from the transcript evidence. Specifically, negative implications of the scenario events were found in the description of the nominee and these were found to predict the level and direction of the decision.

Some support was found in the simulation for the predicted structure and content of the nominee representation. The configural structure of the person evaluation is supported at least partially by the finding that the impact of competency on the direction of the decision and level of the decision commitment was found to vary as a result of the valence of the other two decision criteria. However, there was not found to be an overall interaction of the number of positive and negative mentions
of the criteria on the level of decision commitment and
direction of the decision. Thus, from these results it
appears that support for the configural structure is limited
to the particular content of the criteria and not just the
quantity of positive and negative criteria mentioned.
Decisions are rarely made in a social vacuum. Even an individual who makes a decision with explicitly stated criteria is subject to the social process of accountability. Criteria must be used in the articulation of a decision to others and can affect how the decision is made because of the anticipation of having to justify one's decisions to others. One implication is that two decision makers in the same context can arrive at the same decision but by very different processes.

Both decision makers who were committed to a decision and those who were uncommitted articulated the A.B.A. criteria in the Senate Judiciary nomination hearings and in the experimental simulation. Thus, the explicit expectation that one use the decision criteria in decision making affected the justification that was verbalized.

The hypothesis that accountability to decision criteria impacts the decision processes of uncommitted decision makers was also supported. Uncommitted decision makers appeared to base their decisions on person evaluations of the nominee in contrast to basing their decisions primarily
on political considerations as committed decision makers appeared to do. Senators uncommitted to a decision in the nomination hearings mentioned the A.B.A. criteria when describing the nominee in their closing speeches and mentioned that they did not base their decision on political considerations. Uncommitted respondents in the simulation mentioned more of the criteria in the nominee descriptions than did committed respondents. Furthermore, when the committed respondents did mention criteria in the person evaluation, it was directly predicted by the ideological match between them and the nominee. This finding suggests that political considerations impacted their decision making. Another indication that uncommitted decision makers based their decisions on person evaluations was the presence of the hypothesized person representation components in the nominee descriptions. In the Bork and Thomas hearings, some evidence of the simulation of future actions of the nominee and the future consequences was apparent in Senators' statements. In the simulation, respondents' nominee descriptions included other person representation components (i.e., traits, ability and attitudes). The mention of the components of goals, future actions and consequences, however, were generally absent in their protocols.
Validation of the Model

Although different patterns of verbal output were found for committed and uncommitted decision makers, the present investigation did not bring evidence to bear on whether the uncommitted decision makers actually used the template during information processing. Senators in the nomination hearings may have simply been posturing in an effort to conceal their political motives or possibly to impress particular constituents of their fairness and evenhandedness. Experimental participants were presented with the A.B.A. decision criteria and instructed that in actual hearing Senators use these criteria. It is unclear whether the respondents were merely following instructions to mention the criteria and/or actually using the criteria in their decision making. Experimental investigations of the intervening processes are needed to address this question. One possible approach is to have decision makers think out loud during the decision process. A comparison of the thought protocols of decision makers who are explicitly instructed to use decision criteria and those who are not may also reveal whether accountability to criteria affects the way in which the decisions are made. This procedure might also provide data regarding which template is actually used in the decision making. That is, although the decision makers articulated the A.B.A. criteria, perhaps a different template is used in their own decision process. For
example, one might determine whether the nominee sufficiently matches particular political criteria.

Participants' protocols in the simulation did not contain evidence of simulations of future actions or consequences as the Senators' speeches in the nomination hearings did. One explanation for this discrepancy is that participants in the experiment found that there was not sufficient information from which to predict future behavior. Another plausible explanation for this discrepancy is that the simulation did not sufficiently engage the respondent's motives to predict the actions of the nominee. The high level of importance associated with evaluating an actual nominee for a lifetime appointment to the Supreme Court may enhance the need to assess predictability. This reasoning suggests that an experimental investigation of the effects of importance on the likelihood of simulating future actions might be informative.

Mixed evidence for the configural nature of the nominee evaluation was found. In the simulation, there was not a statistical interaction between the positive and negative mentions of criteria on the level and direction of the decision. However, when particular combinations of the criteria were examined, evidence for the configuration was found. The configural effects might occur only in certain combinations of criteria and those being ones that match a
respondent's schemas or prototypes. For example, Senator Heflin construed Thomas as having questionable integrity and competence in a politically charged context. A schema of a candidate who was selected for a position because of political reasons may have been evoked. As a result, he concluded that Thomas's judicial temperament was also questionable. Similarly, Senator DeConcini's interpretation of Thomas' judicial temperament may have been a result of applying a prototype of a highly competent person with extreme integrity. Such an individual is inferred not to be deceptive and thus there was little question doubt the veracity of his statements in the hearing concerning his judicial temperament. An experimental design which systematically varied the configural contexts of one of the decision criteria would allow further exploration of the configural structure of the nominee evaluations.

Questions about the nature of the template matching default were raised in the present research. One question that remains unanswered is whether rejection of the default of confirmation occurs as a result of a sufficient mismatch to positive criteria or a sufficient match to negative criteria. Content analysis of think out loud protocols of the decision process might be used to detect whether negative phrasing is used versus positive phrasing. However, the respondents in the simulation overwhelming rejected the nominee, it is possible they were not in the
same rejection mind set as Senators. Other questions exist regarding what constitutes a sufficient match (or mismatch). Are there variables that affect the sufficiency threshold (e.g., intense and mixed public reaction or public dissatisfaction with a previous Supreme Court justice appointment)?

The present investigations focused on the template matching process of the decision making and did not address the public defensibility step postulated by the TDC model. A whole line a research could be undertaken to examine this politically rich aspect of the model.

**Implications**

**Understanding Social Influence in Decision Making**

One implication of the TDC model perspective is that some decision makers and others intent on influencing the decision making can strategically use the decision constraints created by explicit accountability. The present investigations have demonstrated that a decision maker who wishes to appear above-board will phrase his or her justification in terms of the criteria, even if the decision was made on some other basis. This perspective suggests one social influence strategy - challenging a decision maker’s adherence to the criteria in decision making. For example, Senators argued with one another in the Bork nomination hearing over the inappropriateness of considering ideology as a component of judicial temperament.
The TDC model provides a basis from which to understand other influence strategies as well. Knowledge of how a default works in a situation allows one the opportunity to manipulate the presentation of information in order to maximize the possibility of a particular decision. Some Senators claim that Clarence Thomas’ vagueness in the nomination hearings was a blatant use of this strategy.

Awareness of the configural structure of the nominee evaluation similarly allows committed Senators (and perhaps lobbyists) the opportunity to manipulate the presentation of information that might be used by uncommitted Senators in their evaluation of a nominee. For example, rather than committed Senators arguing their case criterion by criterion, they might present arguments emphasizing the configuration of the criteria. The framing or packing of the information could influence how the information about the nominee is processed by the uncommitted decision makers. Smith (1984) notes the importance of interpretation for getting an advocated solution adopted in Congressional decision making.

"Presentations can influence the representations for two reasons. First, they structure how one searches for information about consequences and second, they can cause members to reconsider information they may have overlooked in prior searches" (Smith, 1984, p. 47)

Applicability to other Domains
The TDC model was developed to apply to a domain in which the criteria are explicitly stated, but it might be extended to situations in which criteria are implicitly understood. Such an understanding might be developed through extended social interactions or the sharing of similar values or culture.

The general template matching model describes both jury decision making and Senate Judiciary Committee decision making. Future research might focus on the application of the template matching model to other decision domains such as hiring decisions made by a committee. The present analyses suggest that the specific decision domain dictates the structure of the construal (story narrative versus person evaluation) and the content of the criteria (verdict categories versus decision criteria). This approach to model building illustrates the utility of examining situation specific aspects of decision making contexts.
APPENDIX A

EXPERIMENTAL MATERIALS
The (ABA) Committee investigation of prospective nominees to the Supreme Court is limited to their professional qualifications. There are three components of professional qualification - professional competence, judicial temperament and integrity.

Professional competence encompasses such qualities as intellectual capacity, judgment, writing and analytical ability, industry, knowledge of the law and professional experience.

In investigating judicial temperament, the Committee looks to the prospective nominee's compassion, decisiveness, open mindedness, sensitivity, courtesy, patience, freedom from bias and commitment to equal justice among other factors.

The prospective nominee's integrity, character and general reputation in the legal community are investigated, as are the nominee's industry and diligence. Community and professional contributions are considered relevant. Finally, the prospective age and health are considered.

The committee does not investigate the prospective nominee's political or ideological philosophy except to the extent that extreme views on such matters might bear upon judicial temperament or integrity.
Please answer the following questions about yourself. Your answers will remain strictly confidential.

1. How do you describe yourself?
   ___ democrat ___ independent ___ republican

1a. If you checked democrat or republican, how strongly do you identify with this party?
   1  2  3  4  5  6  7

   very slightly somewhat moderately fairly very much completely
   slightly identify with party

1b. If you checked independent, which do you lean more towards?
   ___ democrats ___ republicans

2. Overall, are you liberal, moderate or conservative?
   ___ liberal ___ moderate ___ conservative

2a. To what extent?
   1  2  3  4  5  6  7

   very slightly somewhat moderately fairly very much completely
   slightly
How frequently do you discuss politics/political issues?

0 1 2 3 4 5 6
never rarely not very somewhat moderately fairly very
frequently frequently frequently frequently frequently

How likely are you to read a newspaper or magazine article about politics/political issues?

0 1 2 3 4 5 6
not very slightly somewhat moderately fairly very
likely likely likely

Have you ever participated in a political campaign?

no yes

What activities were you involved with in the campaign? (be brief)

Are you a registered voter?

no yes

Check the elections you generally vote in:

campaign elections
off year elections (ie. senatorial election when there is no
presidential election)
special elections for the state or city (ie. referendum or bond
issues)

Have you ever ran for or held any campus leadership positions?

no yes

If yes, for what type of position(s)?

Have you ever participated in a campus campaign (in which you were not a candidate)?

no yes

If yes, for what type of position(s)?

What activities you were involved with in the campaign?
Briefly describe what makes a good Supreme Court Justice.

To what extent do you believe the government should regulate the economy?
0 1 2 3 4 5 6
not at all somewhat moderately fairly very much completely regulate

To what degree do you favor the use of quotas in businesses and agencies?
0 1 2 3 4 5 6
not at all slightly somewhat moderately fairly very much completely favor

To what degree do you believe that welfare is necessary in our country?
0 1 2 3 4 5 6
not at all slightly somewhat moderately fairly very much completely believe

To what degree do you believe that an individual's freedom of expression should always be allowed?
0 1 2 3 4 5 6
not at all slightly somewhat moderately fairly very much completely believe
We are interested in how people make decisions about the quality of nominees for supreme court justice. Today you will take the perspective of a senator who is on a committee deciding whether a nominee is qualified to be one of the nine supreme court justices.

We are interested in how YOU will evaluate the nominee. That is, although you will be taking the role of a senator, we are not interested in how you think a senator SHOULD respond, instead we are interested in how YOU would respond if such a person were actually nominated for the Supreme Court of the United States. Make use of the general knowledge you have about our political system.

First, you will receive some general background information. Later, you will receive information about the nominee.

Please READ all materials CAREFULLY and proceed in the order specified by the instructions. If you have questions at any time, ask the experimenter.
BACKGROUND INFORMATION ABOUT NOMINATION HEARINGS

When a vacancy occurs on the Supreme Court, the president nominates a Supreme Court Justice. This nominee must be approved by the full senate in order to be confirmed. The nominee is first investigated by the Senate Judiciary Committee consisting of 14 senators who pass on their recommendation to the full senate.

It is customary to assume that the president selects a nominee who is qualified. Therefore, the nominee is customarily opposed only if the nominee is definitely unqualified. Note however, that a justice is appointed for a life term.

You will be taking the perspective of one of the 14 senators on the Senate Judiciary Committee.

You will be presented with transcripts from a Judiciary Committee hearing during which a nominee is questioned. In this hearing, the president of the United States is a fictitious president and the nominee is also not an actual current or past person. Information about the political climate at the time of this nomination will be provided to you.
You, as a senator, evaluate the nominee in any way you see fit to determine how that person will perform as a Supreme Court justice.

However, senators are aware of the following guidelines used by the American Bar Association in evaluating Supreme Court nominees. You are not bound to these guidelines in making your evaluation.

The American Bar association has been consulted by every president since 1952. Moreover, the US senate through the Senate Judiciary Committee has requested the opinion of ABA since 1948.

AMERICAN BAR ASSOCIATION GUIDELINES FOR EVALUATING SUPREME COURT JUSTICE NOMINEES

The (ABA) Committee investigation of prospective nominees to the Supreme Court is limited to their professional qualifications. There are three components of professional qualification - professional competence, judicial temperament and integrity.

Professional competence encompasses such qualities as intellectual capacity, judgment, writing and analytical ability, industry, knowledge of the law and professional experience.

In investigating judicial temperament, the Committee looks to the prospective nominee's compassion, decisiveness, open mindedness, sensitivity, courtesy, patience, freedom from bias and commitment to equal justice among other factors.

The prospective nominee's integrity, character and general reputation in the legal community are investigated, as are the nominee's industry and diligence. Community and professional contributions are considered relevant. Finally, the prospective age and health are considered.

The committee does not investigate the prospective nominee's political or ideological philosophy except to the extent that extreme views on such matters might bear upon judicial temperament or integrity.
INSTRUCTIONS

You are now ready to begin your evaluation of a Supreme Court justice nominee. Remember, you are taking the perspective of one of the senators on the Senate Judiciary Committee who must evaluate the nominee and pass on a recommendation to the full senate.

Again, we are interested in how YOU would respond if such a person were actually nominated for the Supreme Court of the United States. Make use of your general knowledge, including information about our political system. However, you will receive background information which you should use. In this hearing, the president of the United States is a fictitious president and the nominee is also not an actual current or past person. Information about the political climate at the time of this nomination will be provided to you.

You will first receive some background information about the particular nomination, then you will receive information about the nominee.

After reading the information, you will be asked to vote either "support confirmation" or "oppose confirmation".

TO BEGIN: Place this sheet face down on your desk and DO NOT refer to it again during the study. Pull out the booklet from the large envelop (attached to this sheet) and read the information.
Senators have access to different sorts of information before the nomination hearings actually begin. For example, they may follow news coverage of the nomination as the nomination unfolds.

You know or have learned from the news the following information:

* Justice Hermann, has retired from the Supreme Court due to increasingly failing health.
* Justice Hermann was a swing vote in a evenly divided court.
* President Resnick has nominated Judge Jones to replace Justice Hermann.
* President Resnick is a conservative republican.
* President Resnick is in his last term in office and is considered by some to be a lameduck president.
* Public approval ratings of the president are at 56%.
* The senate is controlled by the democrats by 53 to 47.
* There has been a substantial amount of public reaction to the nomination.
INFORMATION ABOUT THE NOMINEE

The following information is from various sections of the transcript of the nomination hearing. This is information that you hear as a senator in the hearing.

Senator Ostrom: Judge Jones would you briefly summarize what appears to be your very respectable and successful academic and legal background?

Judge Jones: Well, after graduating from the University of Chicago Law school with honors, I worked as a lawyer in Philadelphia for several years. I later accepted a teaching position at Yale Law School. I have also served as president of the Massachusetts Bar Association for one term. Let's see, I was a judge at the state level for many years and then was confirmed in 1986 to US court of appeals for the D.C. circuit.

Senator Ostrom: Can you explain your general views about individual rights versus the rights of society?

Judge Jones: The government must protect the individual and has an obligation to allow each individual a chance to prosper. Sometimes because of an oppressive social environment, this is only possible by establishment of a welfare and instituting protection such as civil rights action programs. Regulation of the economy is also sometimes necessary to prevent the unfair influence of big business or monopolies.

Senator Ostrom: That is all the questioning I have at this time.

Chair: The chair recognizes Senator Bonham.

Senator Bonham: It appears that on numerous occasions you have been in the minority opinion, that is, most others have disagreed with you. This might suggest one of several conclusions about judgment style. Would you care to comment on your judicial style?

Judge Jones: I am not sure to which cases you are referring. However, I would characterize my judgment as meeting and surpassing the standards of the job. To suggest that integrity demands that one not always agree with the majority. I feel that some judges are unduly pressured by the views of others.

Senator Bonham: Would you say your dissensions show any pattern? That is, do your disagreements have to do with a particular philosophy you advocate or a particular area of law such as about racial policies or business enterprise?

Senator Jones: I approach each case based on it's merits. To suggest that I let my own views unduly influence my judgments is wrong and unacceptable. For example, I have voted 84% of the time with Judge Smith who is, as you know, well respected for his views.
Senator Bonham: It was merely an inquiry. I'm sure others were interested in this as well. Unfortunately, I see my time is up. Thank you.

Chair: Senator Long.

Senator Long: There has been some question about a case you ruled on as a judge which resulted in you receiving a reprimand for not disqualifying yourself from the case due to a conflict of interest. Can you tell us about this incident?

Judge Jones: You are referring to the case of Knowles Atomic Energy Incorporated. The company was seeking to overturn a ruling which denied them a permit to build a plant in my state. They were charging that they were unfairly targeted and discriminated against because of the nature of their plant and were denied a permit due to contrived technicalities. Some people were upset because I had received substantial campaign donations from two environmental groups in my state who were opposed to the plant and they felt I failed to disclose this information. However, the state did not have campaign donation disclosure rules pertaining to this at that time. Moreover, the case was simply ruling on the technicalities and not on whether the would actually be granted the permit if the case were overruled.

Senator Long: Judge Hastie has testified that the quality of your argumentation against the company was uncharacteristically weak in this particular case.

Judge Jones: Well, I think that testimony has to be considered in the light of the fact that Hastie would have been granted the case if I would have stepped aside. He undoubtedly wanted the plant to be built in the state for reasons of his own.

Senator Long: Isn't it true that you had also signed a neighborhood petition for moving the plant site, in case it was to be built, to a different city than the one in which you live?

Judge Jones: Well, yes but simply because someone is a judge does not mean that he has to give up his opinion as a citizen and homeowner.

Chair: Senator your time is up.

WHEN YOU ARE FINISHED READING THIS, PLACE THIS BOOKLET BACK INTO THE LARGE ENVELOP.

REMOVE THE RESPONSE BOOKLET FROM SMALLER ENVELOP THAT IS INSIDE THE LARGE ENVELOP. NOTIFY THE EXPERIMENTER WHEN YOU HAVE FINISHED WRITING YOUR RESPONSES.
Senators have access to different sorts of information before the nomination hearings actually begin. For example, they may follow news coverage of the nomination as the nomination unfolds.

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Judge Jones: I am not sure to which cases you are referring. However, I would characterize my judgment as meeting and surpassing the standards of the job. I see nothing wrong with occasional dissention. In fact, I would argue that integrity demands that one not always agree with the majority. I feel that some judges are unduly pressured by the views of others.

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Chair: Senator Long.

Senator Long: There has been some question about an event that occurred when you were in the Morrey & Joffers law firm. Can you tell us about the incident in which you protested against the firm's hiring practices?

Judge Jones: I had been with the Morrey & Joffers firm for several years when they began a search for a law clerk. I knew an extremely qualified man who was looking to change jobs at that time. The firm though had a strict quota system to which the adhered and thus were looking to hire a black worker. They refused to hire my acquaintance. I petitioned the senior partners to consider him and wrote an argument about the unfair advantage the quota gives to minorities and urged them to hire my acquaintance.

Senator Long: One of your partners has testified that you said during a meeting that "all of the blacks in the applicant pool were unqualified". How do you respond to this?

Judge Jones: Despite how this might sound to some, in my judgment, that definitely appeared to be the case.

Senator Long: One particular black applicant had graduated with high honors from George Washington University and later was hired by a competing law firm in the area. How can you say that he was not qualified?

Judge Jones: There were quite a few who applied, so I forget the exact details of each of the applicants. But there must have been something a little off about the applicant, like the person had a questionable work history or something.

Senator Long: Isn't it true that the firm did in the end hire your friend based on your urging and he was fired only a year later for mismanagement of a client's case?

Judge Jones: Well, yes he did leave the firm after a year. One can not always anticipate such events.

Chair: Senator your time is up.

WHEN YOU ARE FINISHED READING THIS, PLACE THIS BOOKLET BACK INTO THE LARGE ENVELOP.

REMOVE THE RESPONSE BOOKLET FROM SMALLER ENVELOP THAT IS INSIDE THE LARGE ENVELOP. NOTIFY THE EXPERIMENTER WHEN YOU HAVE FINISHED WRITING YOUR RESPONSES.
Indicate your judgment by checking ONE of the following:

<table>
<thead>
<tr>
<th>OPPOSE</th>
<th>SUPPORT</th>
</tr>
</thead>
<tbody>
<tr>
<td>confirmation</td>
<td>confirmation</td>
</tr>
</tbody>
</table>

How committed are you to this decision?

0 1 2 3 4 5 6
not slightly somewhat moderately fairly very much completely committed
How likely is it that new information about the nominee would change your decision?

0 1 2 3 4 5 6
not at all slightly somewhat moderately fairly very much completely likely

Please answer the following questions as COMPLETELY and HONESTLY as possible.
It is more important to write WHAT you think than HOW you write it, so do not be overly concerned with such things as punctuation and spelling.
Completely finish each page before moving on to the next question. DO NOT TURN BACK to previous questions.
Briefly EXPLAIN HOW you made your decision to support or oppose Judge Jones' confirmation:

In your own words, DESCRIBE the nominee, Judge Jones:
What criteria did you use in making your decision about whether to support or oppose Judge Jones? (please be specific)

If this nominee were confirmed, what consequences would this have?
Was the nominee liberal or conservative?

_____ liberal  _____ conservative

To what extent?

0 1 2 3 4 5 6
not slightly somewhat moderately fairly very much completely
at all
In the transcripts, mention was made of Judge Jones arguing against a quota at a law firm. What does this event say about the nominee?

To what extent did you consider this event when making your judgment?

0  1  2  3  4  5  6
not slightly somewhat moderately fairly very much completely
at all
Senator Long asked questions about this event. Why did the senator ask these questions?

Overall, how similar are your political views and the nominee's views?

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How important is it to you personally that a liberal (rather than a conservative) judge be confirmed to be on the Supreme Court?

0 1 2 3 4 5 6
not at all slightly somewhat moderately fairly very much extremely
important

How much do you personally care if a liberal (rather than a conservative) judge is confirmed to be on the Supreme Court?

0 1 2 3 4 5 6
not at all slightly somewhat moderately fairly very much extremely
care
What kinds of additional information would allow you to make a better judgement about the nominees?
In the transcripts, mention was made of charges that Judge Jones had heard a case despite a conflict of interest. What does this event say about the nominee?

To what extent did you consider this event when making your judgment?

0 1 2 3 4 5 6
not at all slightly somewhat moderately fairly very much completely
How important is it to you personally that a conservative (rather than a liberal) judge be confirmed to be on the Supreme Court?

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How much do you personally care if a conservative (rather than a liberal) judge is confirmed to be on the Supreme Court?

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LIST OF REFERENCES


ENDNOTE

1. In the simulation stimulus materials, any explicit mention of sex was avoided. However, most respondents assumed that the nominee was male as evidenced by the pronouns used in the open ended responses.