

The Polarization of Justice: A Study of the Supreme Court Nomination Hearing

Questions from 1975 to 2006

Joseph Wilensky

22 April 2008

Advisors:

Professor Barakso

barakso@american.edu

Professor Schaffner

schaffne@american.edu

This paper is dedicated to:

Professors Schaffner and Barakso. Thank you both for putting up with the ulcers  
my paper's progress has surely caused.

With the increasing polarization of Congress, one would assume to see this polarization process mirrored in congressional activities, including a Supreme Court nomination hearing. My paper looks at the types of questions asked of four Supreme Court nominees since 1975 to see if an increases emphasis of ideological over qualification questions exists. I observed a partisan divide in that each party general asked different questions during the 2006 Alito hearing, bucking a trend shown in the previous three hearings, but Ideological questions have not been seen to increase over time. Like party line voting displayed a desire to be reelected, party line questioning is an extension of this desire by incumbent senators.

The Supreme Court of the United States is the Court of Last Resort. There is no higher court in the nation, and when a case is decided, that case law will inform the rest of the nation's court systems. The Court wields great power, and the nine justices who sit the Supreme Court bench are among the most powerful people in the nation, on par with the President, and the leaders of the Congress. Unlike these other figures, however, the Justices are not elected. They do not have term limits like the President, nor do they even have terms like both the President and Congress. Justices sit for life. Not only is it important to know who the Justices are, but it is also vital to know how they get there.

An individual is appointed to the Supreme Court through the nomination of the President and the advice and consent of the Senate. In Federalist Paper #76, Alexander Hamilton lays out the rationale for this advise and consent policy. The President, being one person and thus free of the influence and politicking of a large body of delegates, nominates who he feels is a suitable candidate. The Senate then, in due course, can confirm or reject this nominee with no guarantee that if they reject the nominee the next will be any more to their liking than the one currently before them. The President in turn will not squander his influence and prestige by recommending inferior candidates to the Senate. Both expectations check the politics of the actors, and bring about the nomination of the most suitable candidates with little political influence (Hamilton, 1788).

That is how Hamilton imagined the process would work, but like many dreams, this one died early. Politics injected itself very early into the process, with John Rutledge being its first victim in 1795, after opponents of Rutledge's nomination spread rumors of insanity (Marcotte, 2001). Actually receiving a hearing is a grave concern, and another

roadblock for politics to work its way into judicial selection (Goldman, 2003). What happens during the hearing is another.

The Congress has become increasingly polarized and as time has elapsed, following the realignment of the South in the 1960's. The South became more conservative, ushering an era of Republican domination in Southern politics. Moderates in both parties became a rarity rather than a norm, and as new members, more ideological members joined the Congress, incumbents also increased their own ideologies to match.

Further fueling this ideological tide was an increasing polarization of the electorate. As the electorate became more partisan, they tended to associate with the political party that mirrored their evolving outlook and issue stance. Both the parties and members of Congress also changed, following suit to entice votes, to help ensure reelection. This trend became somewhat cyclical and reinforcing.

With the increased polarization of Congress, one would expect this polarization to manifest itself in all that Congress does, including the Supreme Court Justice nomination proceedings. Many have said this is already the case, with failed nominee Robert Bork saying that his nomination was killed by ideology. If ideology is becoming an increasingly large factor in the nomination process, are questions of qualifications for the position being pushed aside for questions of ideology? And if so, who is leading the charge? Are members of the Judiciary Committee becoming more polarized, or is it a case where moderates are becoming more polarized while the radicals on both sides are staying constant?

*Question*

If an increase in ideologically based questions have increase, at the expense of qualification questions, who is asking them? Have the more ideologically extreme members of the Judiciary Committee ramped up their questions? Have the moderates increased the ideology while the more extreme members stayed basically the same? Or have they both increased the ideology as time has progressed?

### *Justification*

Why should you care about this question? The Court itself strives for an appearance of being above politics, about being a check on the passions of the political branch. Our governmental system, establishing three branches with checks and balances among them, has the moderating force of the Court as a braking mechanism. If the brake is itself ideological, then depending on the issue, or the passions of the times, the weak may be trod underfoot. The conservative influence of the Court is there as a safeguard for us all.

Congress is meant to be purely political, and is organized in such a way that its political nature is given full effect. Its political nature is counted upon to make any decision a slow one, but liable to be grips in the throws of a national passion. The Executive is supposed to make the quick decisions that Congress cannot. The Executive is tasked with enforcing the will of the Congress and the people, and protecting the republic.

The Court, as the other two branches' counterweight was intended to have a selection system relatively cronyism and divisive political choices (Hamilton 1788), but politics has been a part of the selection process since its inception. Refusal to bring

candidates to vote or strident opposition to candidates for any federal judgeships occurs frequently, though not as frequently as might be assumed.

This paper explores one specific avenue through which political ideology can be expressed in the nomination process. There are other points in the nomination process, other roadblocks that can be erected, but the nomination hearings are one of the most visible. Beyond easily observable voting, how do Senators express their personal and party ideologies in the nomination process? Can political machinations be observed through an examination of the questions senators ask?

This paper suggests that one way to view partisan trends is through ideological and qualification questions asked of Supreme Court nominees during their judiciary committee hearings. The relative change in questions as observed from 1975 to 2006, following the realignment of the South and during the polarization of the Supreme Court nomination proceedings as observed by Segal, Rhode and Shepsle (Segal, 1992; Rhode and Shepsle, 2007).

If no change is observed, or an unusual change is observed, then perhaps ideological and qualification comparisons are not a valid method for charting polarized trends.

To begin studying these questions, in this paper, I will first look at research discussing the polarization of Congress, and members of Congress, and some explanations for this shift. I will then move onto research examining the polarization of the electorate. From there, I will move to a survey of research on representation and some of the consequences of perceived poor representation. The ideology of senators and the effects ideology has on their voting behaviors comes next, with a look at how

ideology of the Court can be observed and influenced following. The increasing focus on the ideology of Supreme Court nominees is then examined, concluding with a look at theories of framing and the use of the nomination process as opportunities for the construction and dissemination of frames by senators.

Following this review of relevant previous works, my data is presented, discussed, and I draw a conclusion from the data. Problems and limitations of the study are noted and further avenues of investigation are offered.

### *Literature Review*

The polarization of Congress in the past half-century has been pronounced. Congress itself showed a rise in polarization following the Southern realignment, as shown through the number of party votes that took place in both Houses, rising steadily since the 1960's and showing a pronounced increase during the Reagan Presidency (Bond and Fleischer, 2000). This trend did lag behind a bit and old members retired or were defeated and new ones brought in that more closely hewed to this polarized framework.

This “new breed” of representatives showed their own polarization behaviors, behaving in polarized ways much more than incumbents, but it is incumbents that make up the majority of the Congress (Roberts and Smith, 2003). The continuing members themselves increased their party-line stances as the new members added their own polarizing influence.

Paired with the increase in polarization in the Congress is an increase in the polarization of constituents. According to Brewer, as the parties themselves became more ideological and polarized, the view they presented to the American public created a sorting procedure that placed differing constituent bases in differing party camps



(Brewer, 2005). As the parties, and representatives, targeted their message to their bases, the bases became even more polarized, even more dissimilar. This can lead to a reinforcing trend that will make representatives more ideological, and may only be checked by becoming too far to one side to attract swing voters and independents in order to win re-election.

As parties have become more ideological, so too have constituents. With this sorting, a representative who is trying to do as his district, his state, wishes will be faced with a progressively polarized message. If representatives follow the wishes of those who will vote for them, their re-election constituents, then their message will also reflect this polarization.

Representational work has shown that representatives are responsive to the will of their constituents at home (Page, 1984). Regardless of the original reason a representative went to Washington, though the reason each went does play a factor in whether they see themselves as a trustee, a delegate, or a combination of the two, the need to be re-elected to Congress is strong.

As Fenno noted, right when a Freshman Representative's term is almost up is when they begin to actually have the influence and expertise to affect policy that they originally wanted all along (Fenno, 1978). Now the representative needs to be re-elected in order to affect any change.

To continue this power, the representative needs to be re-elected, and this becomes one of their goals, being able to stick around for the next term. Keeping constituents happy is one good way to if not ensure, then to advance re-election aims. Each representative has a base of supporters that they want to keep happy (Fenno, 1978),

and voting how constituents want them to vote is one way to, if not keep them happy, then stave off some anger.

In her paper on representation, Mansbridge writes how constituents are unhappy with their representatives when they don't vote the way the constituents wish them too (Mansbridge, 2003). Representatives also take into account their current constituents but also their future constituents, their potential constituent base.

Representatives are faced with not only a polarized Congress, but a polarized electorate base that they try to appease. This lends itself to polarized politics, but what of the Representative's own view on issues?

Constituent pressure is not the only thing that influences a representative's decision. Their personal ideology plays a significant role in how they view an issue. Levitt writes that up to half of a representative's decision is influenced by their personal ideology (Levitt, 1996). The other half of their decision is influenced by constituents and party concerns.

This reliance on personal ideology seeps into their decision, and judicial politics is no exception. Research indicates that Senator's personal ideology, when combined with interest group and constituent pressure, can be a very accurate determinate of their roll-call votes in Supreme Court nominee confirmations (Epstein, 2006). How Senators' feel about each candidate combined with what their constituents want creates very polarized electoral politics.

Research has also been shown that the ideology of individual candidates has played an increasing roll in their individual nomination process, starting in the years of the Warren court, but also showing a marked up swing with the failed Bork nomination.

(Segal, 1992; Rhode and Shepsle, 2007) How each individual candidate is expected to alter the Court is taken into careful consideration.

Senators must explain recent court decisions to their constituents, especially if the Court hands down a divisive opinion. This explanation, while not part of a current constituent group that must be answered for, is part of the possible constituent group that Mansbridge speaks of (Mansbridge, 2003). A Senator's vote for or against a possible swing vote will be trotted out during a re-election campaign, and angry constituents may express their view through the ballot box (Page, 1984; Mansbridge, 2003).

Concerns over the alterations new members of the bench are not idle ones. While each Justice may have a formed ideological viewpoint, it is a majority that decides cases, and swing vote individuals can hold great power. It is difficult getting a clear picture of the internal politics of the Supreme Court, as Justices usually do not give outside speeches on decisions. Pictures must be formed from more circuitous means.

One means is to look at the clerks each Justice chooses to assist them for a term. Clerks for the bench hold enormous responsibility, including reviewing cases referred to the court for *certiorari* (court review), researching current cases, and writing opinions.

The theory presented by Distlear and Baum state that when Justices are concerned that the ideological considerations of their respective opinion might be misconstrued by clerks, the Justices will select clerks whose ideology closely matches their own (Distlear and Baum, 2001). This ideology is determined by recommendations from other federal bench judges whom the Justices respect. When the court is polarized, Justice will predominately choose clerks referred to them by ideologically similar judges, a result found to happen with increasing probability in the 1990s.

Also, in studies of federal court judges on the circuit court level, ideology was found to have a large impact on the voting behavior of the judges. Schkade and Sunstein observed that when sitting to hear a case, the greater the number of liberal justices sitting the bench, the more liberal a conservative who also heard the case would vote (Schkade and Sunstein, 2003). The same held true for liberals. The more conservatives who sat, the more conservative the liberal justice would vote. Adding even one justice to upset a present ideological mix would possibly affect the tone of all the decisions coming out of the Court, even if the addition of this single justice did not change the end result of vote counts.

Supreme court nomination votes, when taken with representational theory, suggests Senators vote based on their own ideology, but do not want to vote against their constituents. The constituents themselves are increasingly polarized, as is the Congress and the Court itself. How then can a Senator manage to vote how they feel and how their party wants them to without angering their re-election constituency?

The nomination hearings provide one such venue where how the general public sees a candidate can be shaped and controlled. The nomination process turn then from an opportunity where Senators can come to a decision on how to vote on a candidate, to an channel through which a constituent group's view point can be molded. Senators primarily know how they will vote; the trick is aligning their constituents with their selected stance. Questions are asked in order to push the electorate in a specific direction according to the responses of the nominees.

This selection of how elites can shape what the public sees in a nominee is framing. Work in framing is interested in how differing ways of presenting the same

information to the public can change the public's perception of a topic, and their feelings on a topic. Druckman found that issues could be presented in a specific way that would control the themes that people would think about an issue (Druckman, 2001). Examples of this theme-control include people picking a health option that would save 200 lives and rejecting an option that said it would save 1/3 of 600 with 2/3 of 600 lives lost. The same information is presented in such a way that the public is predisposition to support one plan over the other.

Adjusting the frame can control how the issue is viewed, the language is used to describe the issue, as can be seen in the frame of "tax-relief" by the Republicans. This frame creates the debate into one of "tax-relief" being the act of a hero removing the tax-burden, and fixes the idea of taxes as a negative and that cutting taxes is a good thing to do (Lakoff, 2004). This frame makes acting or voting against the tax-relief bill seen as a bad act, tying the hands of those opposed to the measure.

Also of considerable power is the ability to insert a topic into the public debate, and being able to control how the topic is first presented. Paine notes this strategy employed by Lincoln to force Douglas to talk about slavery when discussing their difference. This presentation made Douglas unable to not discuss an issue he would have rather ignored, and forced the issue onto terms, one of slavery vs. anti-slavery that Douglas did not want.

The framing tools used in the Senate Confirmation Hearing are the questions asked of the specific candidates. Each political side has ideological issues and contentions that they wish to be framed in a specific way.

These ideological questions would be expected to increase in their frequency as the Congress has become more polarized and ideological. If an increase in ideologically based questions have increase, at the expense of qualification questions, who is asking them? Have the more ideologically extreme members of the Judiciary Committee ramped up their questions? Have the moderates increased the ideology while the more extreme members stayed basically the same? Or have they both increased the ideology as time has progressed?

### *Methodology*

In order to attempt to see a change in the questions asked, the questions asked must be looked at over a span of time.

The four justices that will be used in this study are: Justice Alito, confirmed in 2006; Justice Ginsburg, confirmed in 1993; Justice Kennedy, confirmed in 1988; and Justice Stevens, confirmed in 1975.

Justice Alito was chosen because he was the most recent justice appointed to the bench. Due to the recent nature of his hearing, if there is a shift, it may be seen most dramatically in his hearing. Justice Ginsburg was chosen because she roughly fit the timeline and in the interest of having some gender diversity the study seemed to be a little biased if a female justice who had the potential to be included was not.

Justice Kennedy was chosen because he roughly fit the timeline, and because the Scalia nomination was overshadowed by the nomination of Rehnquist to Chief Justice. Each candidate chosen should have a hearing with as few distractions as possible so to keep the questions asked in the hearing more on task. Justice Stevens was chosen because he fit most perfectly the decade division sought after for all the justices.

The hearings themselves were be coded for the type of questions asked, and who is asking the questions. Each senator will have their respective totals compared, keeping in mind each Senator's ideological score from interest groups as reported in CQ, using their ADA score as was recorded for each year.

Each question was given a label of "Qualification", "Ideological", "Both", and "Neither" depending on the type of question asked. A Qualification question was one asking after a nominees schooling, number of years and type of experience as a member of the bar, or other related questions.

An ideological question was one where a nominee was asked for their personal preference or view on a contentious issue. Ideological questions were also seen when a Senator was implying impropriety such as racism or sexism in a question or series of questions, implying dishonesty, or asking questions to try and damage a candidate. An example of this would be asking repeated questions on a single recluse, or failure to recluse. An initial question or series of question on the issue is a valid qualification questions, as recluses are indeed an important part of unbiased justice. Repeated hammering home of the question in multiple question series become ideological however, when the questions are an attack.

"Both" questions are ones where ideology and qualifications are inherent in the same question, and "neither" questions are when none of these elements are present.

The totals for each nominee were tallied, summed, and averaged. Each nominee was given an average for questions asked of Democratic senators, Republican senators, and an average that reflected the combined figures of the two groups. The percentages were rounded to the nearest percent, which is why some totals for each nominee may

equal a little more than 100%. The resultant figures were graphed, and then compared for differences.

### *Results*

When all the questions were coded and collected, an initial look at the numbers did not seem to show a large difference. As mentioned earlier, the questions asked of the nominees were separated into categories based on what was asked of the nominees. The categories devised were Qualifications, Ideological, Both (questions that had both ideological and qualification connotations), and Neither (questions that were neither ideological or qualification based).

Examples of these types of questions observed in the hearings include:

Qualifications: “Explain *Chittister* and *Hibbs*”. This was a question asked of Justice Alito by Senator Biden. Senator Biden was looking for an explanation of a Court case that Justice Alito cited when making later decisions as a Circuit Court judge.

Ideological: “Have women obtained equality in America?”. This was a question asked of Justice Stevens by Senator Kennedy. Senator Kennedy was asking for a personal opinion on a question that could come before the court.

Both: “Can speech be considered conduct?”. This is a question asked of Justice Ginsberg by Senator Cohen. This question asked for both a personal opinion on a substantive rule of law, but was also laden with ideological consequences because it was asked in a series of questions aimed at ascertaining the Justice’s view on acceptable regulations of protestors.

Neither: “You enjoy reading Supreme Court history?”. This was a question asked of Justice Kennedy by Senator Simpson. While questions of reading habits might be seen



as an ideological or qualifications based questions, if say the question had asked if the Communist Manifesto or Law Review publications were a staple of the Justices reading habits, a question asking if one has an interest history falls into the “neither” category. The breakdown of questions asked of each senator is displayed in Figs. 1 – 4, from Justice Alito to Justice Stevens in reverse chronological order.

[Fig 1,2,3,4]

The hypothesis laid out two possible results: a partisanship that would be observable through the data on the hearings questions, and if such an increase was observed that it was most likely to be seen in an increase across the board of ideologically based questions. This was not the situation that presented itself when the hearing data was analyzed.

If the hearings were truly a soapbox upon which Senators can shore up their base, the expected results would be qualifications questions rising as qualification questions declined. As seen in Fig. 5, this expected trend is not what was observed.

[Fig. 5]

The expected trend holds basically true for the first three hearings, with ideological questions reaching a peak with the Justice Kennedy Hearing (in 1987) and the Justice Ginsburg hearing still showing higher percentages than the Justice Stevens Hearing (1993 and 1975, respectively). This percentage drops when looking at the Justice Alito hearing (2006) however. The Alito hearing shows a decline in ideologically based questions asked of the nominee.

With a decline in ideological questions observed, one might expect to see a rise in qualification questions asked of Justice Alito. This trend was seen in Fig. 6.

[Fig. 6]

These results fail to support my hypothesis Congress may in itself be more partisan but these graphs seem to suggest that Supreme Court nomination hearings are themselves isolated from this rancorous process. But this is only supported with a quick look at the numbers of ideological and qualification questions asked by members of both parties. When the numbers are further broken down, a different picture emerges.

When the percentages of questions asked by each individual party are compared, a divergence is noticed.

[Fig. 7]

The overall trend of the Fig. 7 matches that shown in Fig. 5. Ideological questions hit a peak with Justice Kennedy's hearing (1987) and sharply fall off for Justice Alito's hearing (2006), as seen earlier. What is interesting is the difference in percentages of ideological questions asked by the two parties in the Alito hearing in 2006.

The three earlier hearings display ideological questions asked by each party being roughly similar, the Alito hearing places the two parties as widely different. The Democrats are a full 25 percentage points above the Republicans in the frequency of ideological questions asked.

The same holds true for the qualification questions.

[Fig 8]

The Democrats and the Republicans hold even closer together in qualifications questions than they did ideological questions in 1987 and 1993. But come the hearing for Justice Alito, the large split observed in ideological questions reemerges. The Democrats

and Republicans are almost 20% percentage points separate in 2006, far more than is observed in the previous three hearings.

Based on this data, a partisan divide is observable in the questions asked of nominees. The expected trend of increasing ideological questions and decreasing qualification questions was not observed, but if the two parties asked distinctly different amounts of these two types of questions, a partisan divide exists.

To try and understand why a divide like this exists, it would be illustrative to see who among the individual members of the committees display a matching difference in the questions they asked of the nominees. In order to see if this shift was fueled new members of the committee or if the old guard was a driving factor, I looked at the differences in percentages asked of qualification and ideological questions asked by the eight Senators (five Democrat and three Republican members); Biden (D), Feinstein (D), Kennedy (D), Kohl (D), Leahy (D), Grassley (R), Hatch (R), and Specter (R). If a shift was observed in their numbers, then the Congress on the whole could be seen as moving. If their numbers remained mainly stable, then this would suggest a push by the new members of the committee towards a more partisan stance.

[Fig. 9]

Among the Democrats, three of the five senators (Biden, Feinstein, and Leahy) actually decreased the number of ideological questions they asked, against the general trend of their party seen in Fig. 7. Party affiliation for the Democrats appears to actually decrease from these results. The Republican Senators all match the general Republican trend seen in Fig. 7 though only Hatch reduces the number of ideological questions he asks to roughly the same drop of 35% by Republicans seen in Fig. 7.

The qualification questions displayed in Fig. 6 show a different trend.

[Fig. 10]

The observed trend per party as seen in Fig. 8 was Democrats and Republicans increasing their qualification questions. In Fig. 10 all of the Democrats increased their qualification questions, and at roughly the same amount as seen in Fig. 8. The Republicans, being only three, increased less, greater, and roughly equal to the general Republican trend seen in Fig. 8. The data collected suggests that while the Republican members who were on the committee for Ginsburg's hearing hewed to a party line and questioned with the new members, the older Democratic senators did not. This places the increase in ideological questions coming from the Democrats in the Alito hearings squarely at the feet of new members, different than the pattern of the Republicans.

### *Discussion*

What do these figures say? When looking at each individual Justice and the questions asked of them, the two parties tend to stick together as far as ratios and numbers go. Both parties stick together, with the only real divergence being in Alito's hearing. Even there, the divergence is not astronomical, and both parties generally shifted in the same direction. The only reason Alito's numbers appear to be special is because they are at odds with the figures observed with the other hearings. Both parties are asking the same types of questions, and are reflecting the ideologies of their respective parties and what they personally feel.

What is largely different in the four hearings, however, is the overall tone of questioning from both sides of the aisle. As the hearings progressed, two hearings stand out, the Kennedy and the Alito hearing. In both, the tone of the proceedings was

rancorous, though each began cordially. Especially indicative of this was the Alito hearing.

The hearing began with pleasant enough questions, but the mood turned accusatory during lines of questionings, and especially in the second round, after senators had a chance to hear what their colleagues had said. This can be particularly seen in the exchanges between Sen. Hatch (R) and Sen. Kennedy (D).

Senator Kennedy was attacking Justice Alito for perceived lies during a failure to recuse from a case and Alito's associations with a Princeton student's group that advocated racist and sexist messages. Senator Hatch was equally fierce in protecting the nominee from these attacks, asking questions of Alito that attempted to clear suspicion and disarm Senator Kennedy's lines of questioning.

While the senators did not address each other directly, they worked through the questions they asked the nominee, and other senators did the same later in the hearing, though I cannot be sure if they were influenced by the two contentious senators or if they were planning on taking the same tact independently of Kennedy's and Hatch's actions.

Conclusion:

Partisanship is seen expressed through the questions asked of Supreme Court nominees during their hearings. This partisanship does not follow a simple model of ideological questions equals partisanship, but rather reflects a more nuanced view of a senator's behavior.

This study suggests a relationship between party and questions, but there are other avenues of investigation open. This study did not take into account each senator's reelection aims or if they had an upcoming reelection battle. Polls of the general

electorate were not including to see if constituents cite a senator's particular behavior during a Court nomination as a factor influencing their vote. Further study is also warranted to see if the sharp change of question spread observed during the Alito hearing affects incumbent elections in the upcoming 2008 election cycle.

Also not taken into consideration is if Senators faced party repercussions for not holding to a party line; whether desired committee assignments are not granted or other punitive measure are taken against uncooperative senators.

This study also operates under the assumptions that constituents care how their representative acts during Supreme Court nomination proceedings and that senators have a predetermined agenda going into a hearing. While each individual senator has predetermined questions, and that national committees endorse or oppose nominees, there may be not united strategy that senators are strongly encouraged to follow by their parties' leadership. This, however, is doubtful given the general party line trends of questioning exhibited by the incumbent senators in the Ginsburg and Alito hearings displayed in Figs. 9 and 10, respectively.

There are many avenues of research available to future political scientists, as this study hardly represents an exhaustive review of this subject are. Future findings and developments are encouraged and eagerly awaited.

## Appendix

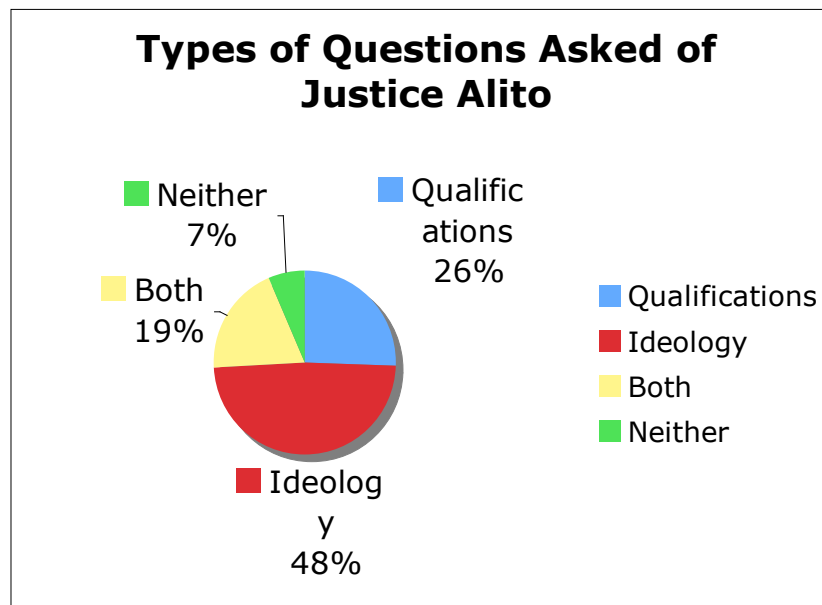


Fig. 1

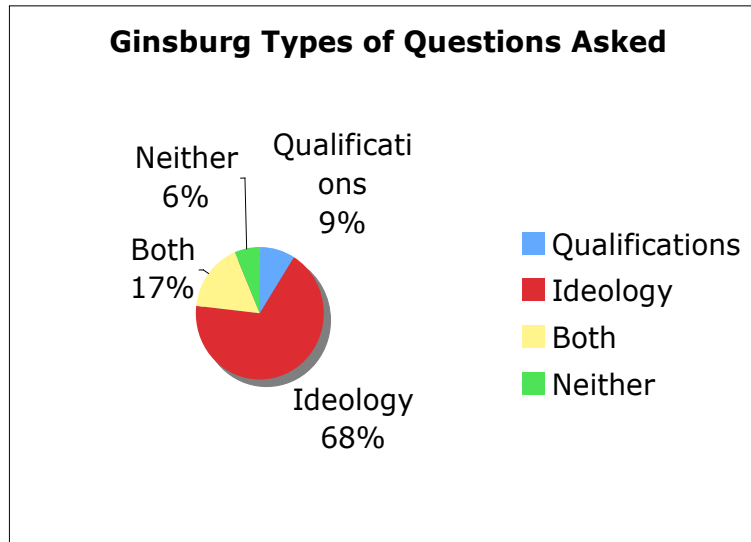


Fig. 2



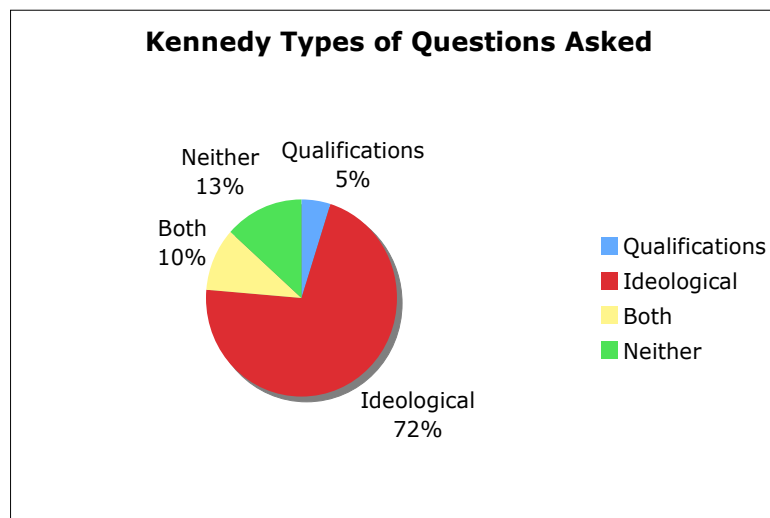


Fig. 3

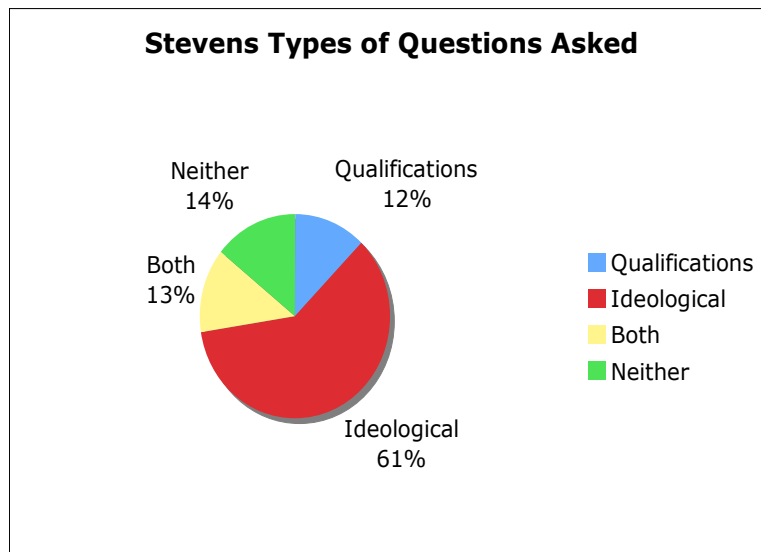


Fig. 4

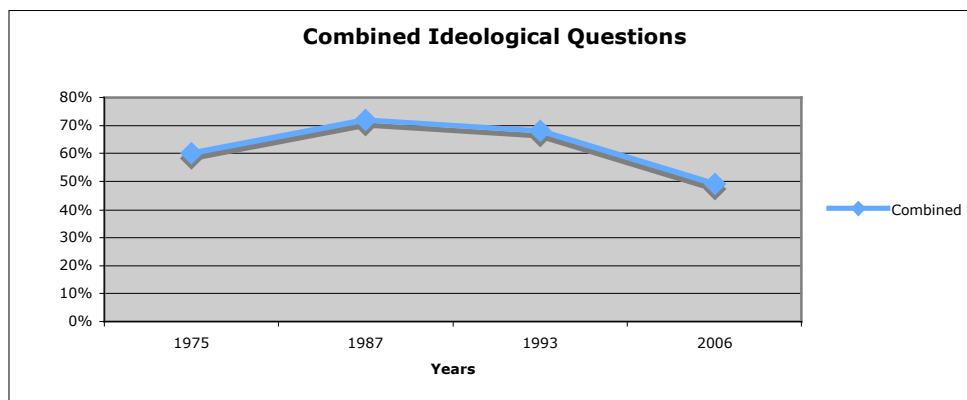


Fig. 5

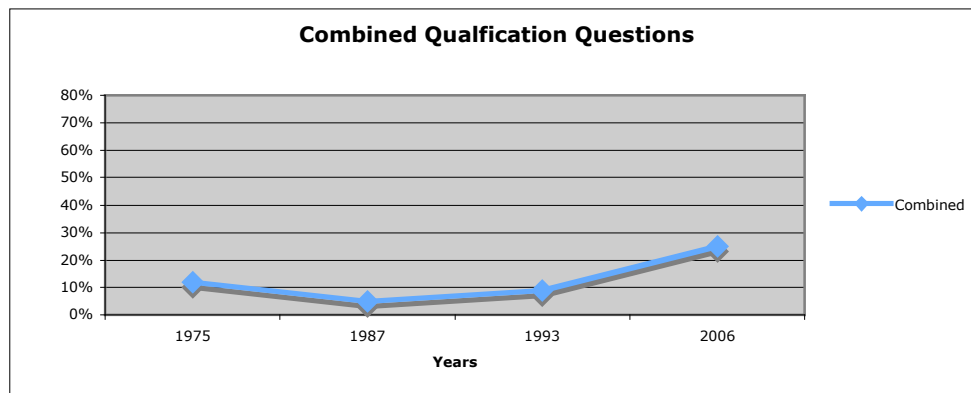


Fig. 6

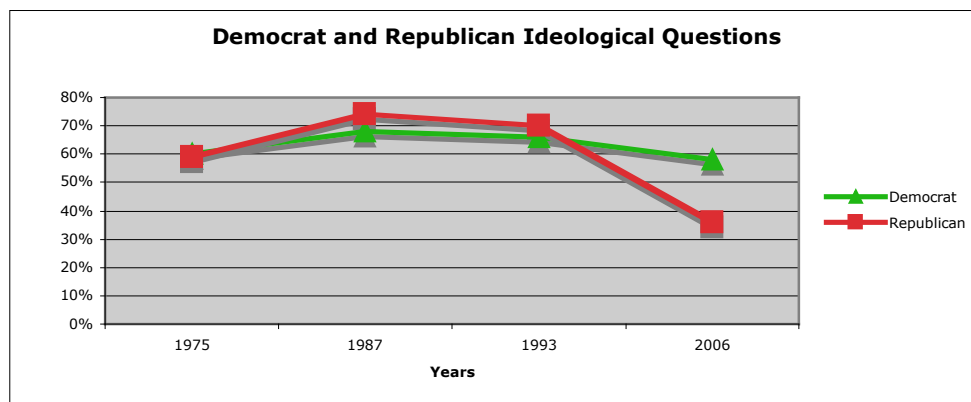


Fig. 7

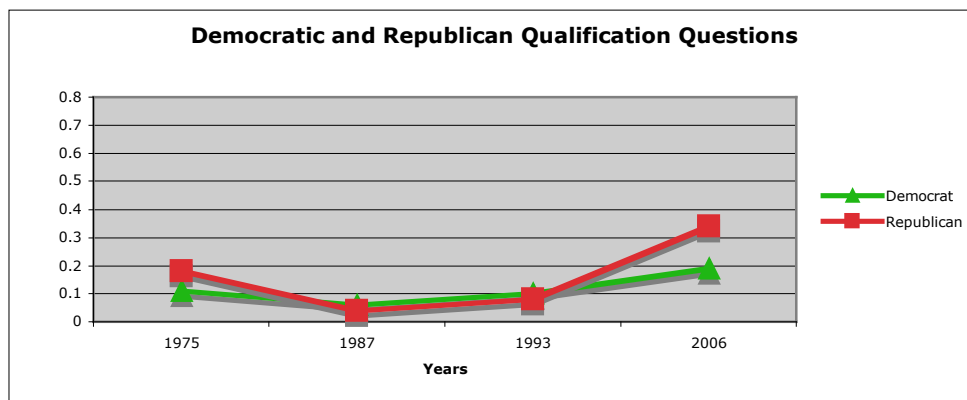


Fig. 8

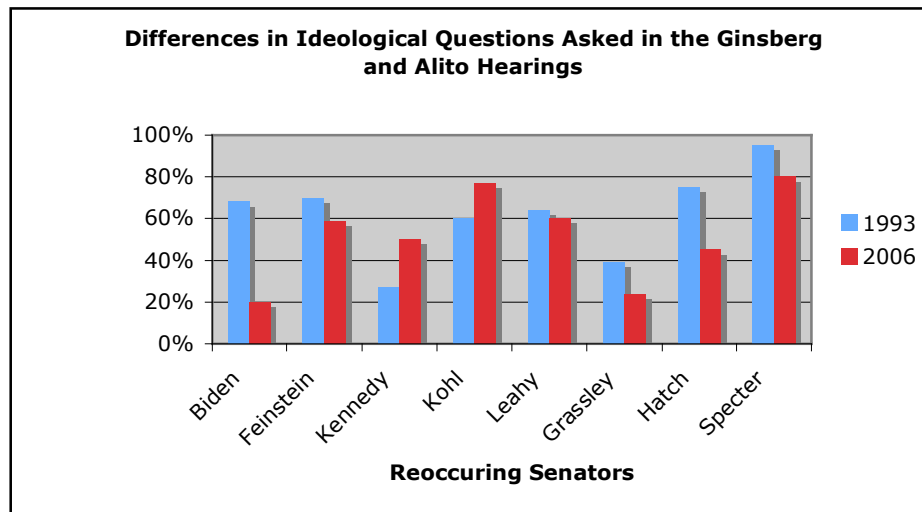


Fig. 9

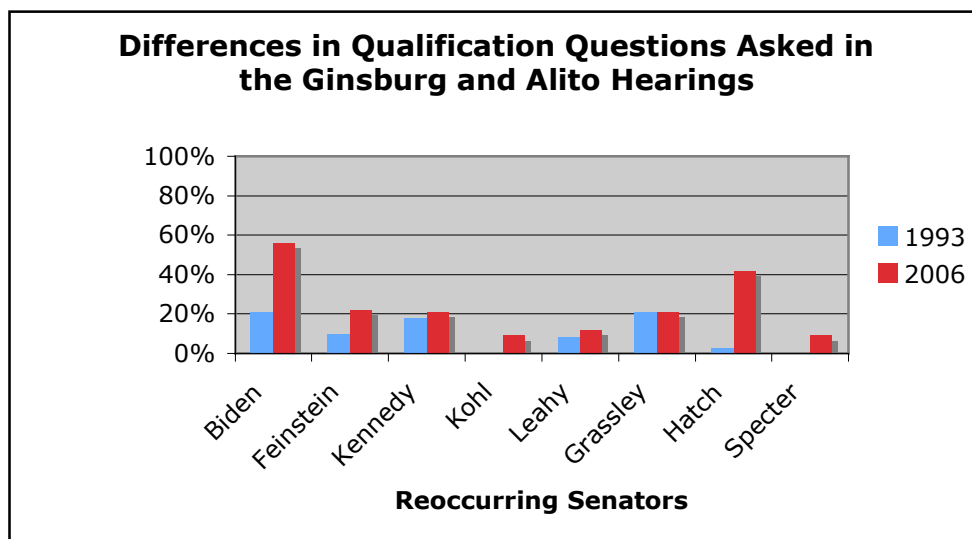


Fig. 10



### Work Cited

- Bewer, Mark D. "The Rise of Partisanship and the Expansion of Partisan Conflict within the American Electorate". Political Research Quarterly. Vol. 58, No 2 (2005): 219-229.
- Bond, Jon R. and Richard Fleisher. "Congress and the President in a Polarized Era". Polarized Politics: Congress and the President in a Partisan Era. Ed. Jon R. Bond and Richard Fleisher. CQ Press. 2000. 1-8.
- Ditslear, Corey and Lawrence Baum. "Selection of Law Clerks and Polarization in the U.S. Supreme Court". The Journal of Politics. Vol 63, No 3 (2001): 869-885.
- Druckman, James. "The Implications of Framing Effects for Citizen Competence." Political Behavior. Vol 23, No 3. (2001): 225-256.
- Epstein, Lee et all. "The Changing Dynamics of Senate Voting on Supreme Court Nominees". The Journal of Politics. Vol. 68, No. 2 (2006): 296-307
- Fenno, Richard F. Homestyle: House Members in their Districts. Scott Foresman and Co. 1978.
- Goldman, Sheldon. "Unpicking Pickering in 2002: Some thoughts on the Politics of Lower Federal Court Selection and Confirmation. Inside the Judicial Process. Diascro, Jennifer Segal and Gregg Ivers. Houghton Mifflin Company. 2006. Pp. 141.
- Hamilton, Alexander. *Federalist* No. 66. Inside the Judicial Process. Diascro, Jennifer Segal and Gregg Ivers. Houghton Mifflin Company. 2006. Pp. 125

- Hamilton, Alexander. *Federalist* No. 76. Inside the Judicial Process. Diascro, Jennifer Segal and Gregg Ivers. Houghton Mifflin Company. 2006. Pp. 125
- Lakoff, George. "Framing 101". Alternet. September 8, 2004. Online Available < <http://www.alternet.org/mediaculture/19811/>>.
- Levitt, Steven D. "How Do Senators Vote? Disentangling the Role of Voter Preferences, Party Affiliation, and Senator Ideology". The American Economic Review. June (1996): 425-441.
- Mansbridge, Jane. "Rethinking Representation". The American Political Science Review. Vol 97, No 4 (2003): 515-528.
- Marcotte, Matthew D. "Advice and Consent: A Historical Argument for Substantive Senatorial Involvement in Judicial Nominations". Inside the Judicial Process. Diascro, Jennifer Segal and Gregg Ivers. Houghton Mifflin Company. 2006. Pp. 128.
- Paige, Benjamin I. et. al. "Constituency, Party, and Representation in Congress". The Public Opinion Quarterly. Vol. 48 (1984): 741-756.
- Paine, Scott. "Persuasion, Manipulation, and Dimension". The Journal of Politics. 51 (1989): 36-49.
- Roberts, Jason M. and Steven S. Smith. "Procedural Contexts, Party Strategy, and Conditional Party Voting in the U.S. House of Representatives, 1971-2000". American Journal of Political Science. Vol 42, No 2 (2003): 305-317.
- Rohde, David W. and Kenneth A. Shepsle. "Advising and Consenting in the 60-Vote Senate: Strategic Appointments to the Supreme Court". Journal of Politics. Vol 69, No 3 (2007): 664-677.

Schkade, David A. and Cass R. Sunstein. "Judging by Where You Sit." Inside the Judicial Process. Diascro, Jennifer Segal and Gregg Ivers. Houghton Mifflin Company. 2006. Pp. 359.

Segal, Jeffery A, et all. "A Spatial Model of Role Call Voting: Senators, Constituents, Presidents, and Interest Groups in Supreme Court Confirmations". The American Journal of Political Science. Vol. 36, No 1 (1992): 96-122.