By Definition

ARK TUSHNET ON THE verb "to bork":

Borking happens when nominees give opponents some ammunition that they use in ways the nominee's supporters think unfair. Confined to attacks on qualifications and to asserting that the nominee's views are out of the mainstream, the opponents have to characterize reasonable views about what the Constitution means as outside the mainstream. Perhaps, though, Republicans are less concerned about borking than they say. Forcing their adversaries to bork nominees may, they may think, lead voters in the middle to think less well of liberals, enhancing the distaste for Washington politics that has helped conservatives gain political power. In any event, seeing one of their own being borked may itself energize the conservative base, even beyond what a conservative nomination would do.

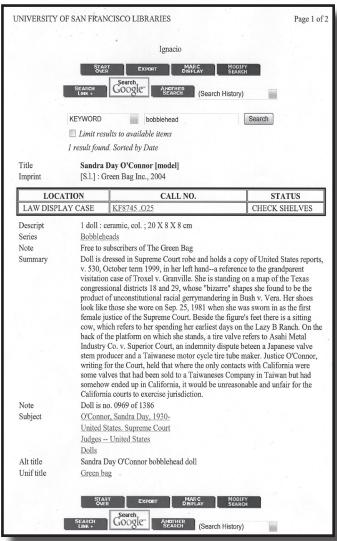
Borking has another advantage for Republicans. It can fail or it can succeed. If it fails, the Democrats are faced with a life-tenured judge likely to be embittered by the confirmation experience. If it succeeds, the replacement nominee is likely to be more moderate. But moderate Republican judges serve Republican partisan interests nearly as well as – maybe even better than – really conservative Republican judges. Borking can mobilize the Democrats' base during the nomination battle. Moderate Republican judges then demobilize the Democrats' base at election time – by denying the Democrats the opportunity to run against Republicans for nominating judges who undermine the Democratic base's commitment to abortion and privacy rights. Yet those very same moderate Republican judges help mobilize the Republican base at election time – by perpetuating the possibility of running against "activist" judges who enforce abortion and privacy rights. All in all, borking works better for Republicans than for the Democrats who have practiced it.

Ex Ante

The politics of judicial nominations in the post-Rehnquist years is likely to be quite unattractive if Republican presidents calculate that their party will benefit from strongly conservative nominations or if there is a Democratic president. Modern interest group politics makes borking an appealing political strategy, although it degrades our civic life.

Mark Tushnet, A COURT DIVIDED: THE REHNQUIST COURT AND THE FUTURE OF AMERICAN LAW 340-41 (Norton 2005).





OHN SCHAFER, reference librarian at the University of San Francisco, has added a Justice Sandra Day O'Connor bobblehead doll to his library's catalog. Now, "any patron searching our electronic catalog for Justice O'Connor, the *Green Bag* or even the word 'bobblehead' will find this record." No word about its availability for interlibrary loan.

