

Pertschuk, M., & Schaetzel, W.(1989). *The People Rising: The Campaign Against the Bork Nomination*. New York: Thunder's Mouth Press.

“...On July 1, 1987, few were predicting a Bork defeat; indeed, the first, and perhaps the most crucial test for those who would challenge the nomination was to convince their own political leaders, both inside and outside the Senate, that the fight was winnable”(p. 7).

“What was needed was a flexible, well-wrought coalition framework, capable of mobilizing substantial but unwieldy political resources. There had to be leadership capable of facilitating and steering the campaign, while providing the maximum feasible participation and consensus-building by coalition members.

“That coalition had to be capable of hammering out a common strategy, subordinating potentially divisive issue agendas, solving tactical problems and seizing tactical opportunities. It had to map out common ground but allow room for diversity and spontaneity” (p.40-41).

“...six days after Bork was named, four task forces were organized, each with four co-chairs: Lobbying, Research/Drafting, Media, and Grassroots” (p.49).

“Each group in the coalition was assigned membership on at least one task force, and each task force regularly reported to the Steering Committee” (p. 49).

“The Block Bork Coalition Research and Drafting Task Force became fully operational within three weeks of the nomination. Five of the ten organizations which volunteered in this research effort had worked together before. At first, the American Civil Liberties Union did not participate, since its board had not yet determined to break with ACLU tradition against involvement in Supreme Court nomination to oppose Judge Bork. The legal department of the ACLU national office, however, immediately began to compile its own ‘Complete Robert Bork.’

“The Alliance for Justice, and its Judicial Selection Project, headed by Nancy Broff and aided by five summer interns, started assembling their Bork library. But People for the American Way, superior in resources to most other public interest groups, assumed the role of epicenter for tracking Robert Bork’s massive record. Melanne Verveer recalls:

There was so much on Bork it gave paper trail a new definition. As a legal theoretician, he had written exhaustively. We, at People for, became the Bork archives and information center. We had all kinds of stuff pouring in and we knew it was just the tip of the iceberg. There were hundreds of speeches, articles, interviews, and opinions, and all of this had to be digested, analyzed, and organized into a meaningful case against the nomination.

“People for the American Way dispatched eight researchers to the Library of Congress, most of them summer interns and law students. They undertook painstaking manual searches to acquire a complete set of every major newspaper article in which Robert Bork’s name had appeared. This chronicle, in turn, furnished clues to the judge’s indefatigable podium-hopping and enabled the coalition to track down such treasures as his commencement speeches, his addresses to the Attorneys General Conference on Federalism, a Brookings Institution lecture, a seminar on antitrust policy, and transcripts of dozens of other unpublished speeches. Additional manual checks on indexes back to 1970 retrieved magazine articles authored by Bork and

documented his participation in debates and interviews. Online searches of computerized databases identified all Bork's judicial decisions and all his law journal articles. Ricki Seidman, PFAW's legal director, was at the center of the research effort, and relentlessly pursued every hint of a Bork pronouncement. 'The more information you have,' she said, 'the more likely you are to have the information that will matter. The earlier you have it, the more of a difference you can make with it.'

"And the information was not hoarded, as is sometimes the case in coalition politics, but generously shared. Althea Simmons of the NAACP recalls how she never did an on-line search once during the Bork campaign 'because people gave me stuff from the LEXIS [legal] database.'

"The intensity and meticulousness of this research venture strengthened the mutual respect and interdependence of the coalition and the Senate Judiciary Committee. 'Redundancy is not a weakness during battle,' observes Jeff Blattner, a key Judiciary Committee aid to Senator Kennedy. The complementary effort in the Bork research operation is illustrated by an anecdote recounted by Verveer:

One year prior to the nomination we sent a staffer to attend a meeting of the Federalist Society at which Judge Bork spoke. Later, while looking over her notes, I came across a reference indicating that Bork had stated in his speech that there was a need to overturn precedent if the case had been wrongly decided. I spoke to Ricki Seidman about this and she told the committee staff about the reference and suggested they obtain the speech. It was important to have the complete statement, but the notes we had in our file were our first clue that this speech even existed, and it was a very important clue.

"As a result of this lead, Chairman Biden's investigators requested and obtained a copy of the prepared remarks Bork made to the Federalist Society in 1987, making certain to get the

version that contained, in marginal notations in Bork's own hand, his disregard for precedent: 'no problem w/originalist judge overruling non-originalist decision.'

"It was this speech, perhaps above all others, that fed the fear that a Justice Bork would seek to overturn settled precedents, whose legitimacy he had challenged—even those stretching back over four decades" (p. 63-67).

"The scholarly output by Bork partisans was meager, by comparison. Judith Lichtman was grateful for 'vacuum the White House left for us... We were affirmative. We made the case... We were the headlines. August is slow; they're not here. Long after the hearings began, Carla Hills and her pro-Bork group began issuing reports. By that time it was too late.' Many columnists remarked how stacks of materials from opposition groups dwarfed those of Bork supporters. Neither conservative organizations nor the Reagan team maintained the quality or the steady flow of legal analyses to the Hill and the media" (p. 71-72).

"...the coalition and its lobbyists greatly helped their Senate leaders perform a series of important, and perhaps critical tasks:

- *'Freezing' the Senate*: making certain that there was no instant stampede of Senators rushing publicly to endorse Bork...
- *Countering the massive letter-writing and lobbying campaign* generated by Bork's supporters...
- *Stimulating and organizing*...thousands of citizen-scholars, lawyers, and law professors;
- *Serving as an intellectual resource*...

- *Working in close collaboration with the staffs* of the nine anti-Bork or uncommitted Senate Judiciary Committee members...
- *Providing accurate and current intelligence* on the concerns and leanings of each member of the Senate—both to their Senate leaders, and to the organized opposition at large” (p. 96).

“Another critical task was convincing the media that the fight against Bork was ‘winnable,’ hence, serious. Neas summarizes the case made to the inherently skeptical journalists:

I said, off the record, that it should not be dismissed out of hand; we could win. We started out with that base of thirty returning senators who had voted against Rehnquist (three retired or were defeated). Then you had the seventeen senators who had voted against Manion [an ideologically extreme and judicially inexperienced Indiana lawyer nominated by Reagan to the Seventh Circuit Court of Appeals]. Then, of course the freshman class [the eleven new Democrats elected in 1986], and then the moderate Republicans. The Senate not only had more Democrats and more *liberal* democrats, but the Democrats were in control of the Senate. That’s in contrast to [its makeup at the time of the confirmations of] Rehnquist and Scalia. (p. 105).

“Neas and Verveer were convinced that if the campaign succeeded in raising strong doubts about Bork’s impact on constitutional rights, but fell short of an opposing majority by a handful of votes, a number of senators who cared deeply about such rights would still feel compelled to filibuster.

“Just in case, they began laying the groundwork for such a contingency plan. Verveer asked several of the legal strategists ‘quietly to come up with the best lines we could’ to support the appropriateness of a filibuster. Fred Wertheimer of Common Cause had his staff prepare a study

on the use of filibusters in past nomination struggles. Independent of the coalition, Joseph Califano who had led the Johnson White House effort to secure the Fortas' confirmation, wrote an op-ed piece in the *Washington Post* in mid-August laying out a strong, historic case for the filibuster. He documented the Republicans' past enthusiastic embrace of the filibuster to bar Justice Fortas's confirmation as chief justice on political and ideological grounds, though the Senate Judiciary committee had voted 11-6 to recommend confirmation by the Senate. But for the time being, the goal was a firm majority vote against confirmation..." (p. 107).

"The committee *was* in charge; but the coalition lobbyists helped. And the hearings were stronger than they might have been because the committee staffers drew upon their established networks of coalition lobbyists and experts. The lobbyists helped by sharing suggestions and offering insights on potential witnesses. They helped to persuade those witnesses who opposed Bork but shrank back from public confrontation. They helped prepare and test the witnesses before their appearances. And they helped analyze the testimony as it evolved" (p. 114).

"Though that memorandum contained thirty pages of detailed documentation, including the Alliance for Justice's 'Fact Sheet on Robert Bork,' its 'general message' was summarized in two sentences:

- *Judge Bork is not a fair-minded person...[and]*
- *Judge Bork is a judicial activist whose record reveals a lack of sensitivity to civil rights and equal justice for women and minorities"* (p. 139-140).

“While the hearings were in progress, the focal point was the crescent of fourteen senators facing the witness seated at the table before them. At the other end of the hearing room, with the press tables and the cameras in between, was the audience, where the leaders of the coalition sat in clumps of two and three, or stood in clusters lining the walls of the packed room--reacting, sometimes feverishly, in whispers or scribbled notes.

“The grandiloquently named ‘War Room’ was actually the corner of a small office two floors down in the basement of the Russell Senate Office Building. More earthly members of the coalition referred to it as the ‘Boiler Room,’ and Neas, at his most circumspect, simply, as ‘Room 115.’ It was the office of Judiciary Committee Staff Counsel Bill Lewis, who had worked closely with Elaine Jones and others on several other controversial nominations and had served as a committee liaison with the coalition. Here, with a couple of desks, some empty bookcases, and a phone, legal experts from several coalition organizations set up a small, handy, branch ‘Library of Bork’: Every word Bork had written, every report and exegesis of the ‘Book of Bork,’ law review articles, constitutional law treatises, court opinions and case notes—everything that would be needed to detect any misstatement, any false shading of the record, any significant omission, any shift in position which hinted of a ‘confirmation conversion.’

“It was also a quiet place for the coalition’s constitutional law experts to convene and deliberate on the meaning and significance of the testimony—and on the appropriate response. It was organized by two veteran civil rights lawyers and advocates, Elaine Jones and Bill Taylor, who, between them, had fifty years experience in the practice of civil rights law. Its resident creative spark plug was Eric Schnapper, Jones’s colleague with the NAACP Legal Defense and Educational Fund.

“As the testimony shifted from issue to issue, the War Room would draw upon other legal specialists within the coalition. Bill Schultz of the Public Citizen Litigation Group, for example, knew every Bork vote and opinion as a Court of Appeals judge. Judy Lichtman of the Women’s Legal Defense Fund, as well as Marcia Greenberger of the National Women’s Law Center, knew his record on women’s place (or lack of place) in the Constitution. Janet Kohn of the AFL-CIO was often in residence. ‘Janet Kohn has been a key player in all the judgeship fights,’ says Aron. ‘When they called down to that room for information about a case, Janet immediately got to work, and if she couldn’t do it, she knew who to call upon.’

“Ricki Seidman of People for the American way, who could place her fingers on even the most remote Bork utterance, managed the operation of the War Room. ‘It was,’ says Schnapper, ‘a logistical convenience. In the ordinary hearing, I would sit at the back of the room with the files in my briefcase, and pass notes.’ It was also the lawyers’ sanctum. Other than coalition leaders Aron and Neas and others, who drew counsel from the experts, ‘the lobbyists,’ says David Cohen of the Advocacy Institute, ‘were not encouraged to loiter.’

“The War Room was patterned on a similar operation developed during the nomination hearings of Reynolds for the number three spot at the Justice Department: a back room ‘truth squad’ to monitor and challenge the nominee’s testimony.

“In the successful effort to deny Reynolds confirmation, the ‘truth squad’ served to alert the committee members and their staffs to testimony inconsistent with his civil rights record. But that was not so necessary in the Bork hearings. As Bill Taylor observes, ‘There was a limited amount that we could really do, because the members and staff themselves were so well prepared. Often we found that what we did had already been done or was duplicated by the staff.

But the War Room did provide a focal point of energy for concentrating very heavily on substance and, really, to respond to the media.’

“The War Room was useful to those senators on the committee who had limited staff capacity of their own. Several of the staff assistants acknowledge that this close tracking of the transcript proved helpful. Senator DeConcini’s counsel recalls, in particular, how useful it was when Greenberger relayed a series of questions responding, within minutes, to Bork’s testimony on the Equal Protection Clause.

“But the War Room was most useful in helping the coalition frame the import of Bork’s testimony for the media. It was ‘the center,’ says Neas, of the coalition’s media ‘substantive response tactic. We had to make sure we had our facts straight all the time: if we were trying to undermine Bork’s credibility, *our* credibility had to be unimpeachable” (p. 216-219).

“Bork is at the witness table. The Senators are questioning him. Neas and Verveer are standing together against the wall at the back of the room, listening, taking notes. Neas catches an inconsistency, or a subtle change of position, leans over and whispers to Verveer a half-formed retort. Verveer [or someone else] exits, heads for the War Room, confers with Schultz, Schnapper, Taylor.

“At the next break declared by Chairman Biden (frequently enough, at least, to allow witness Bork to satisfy his need for nicotine), the scene shifts to the corridors outside the hearing room. Neas and Aron and other coalition leaders stream out to huddle and caucus with Taylor and Jones and others working in the War Room. Depending upon the issue, one or more spokespersons are informally designated to comment to the press. ‘As soon as there was a break,’ says Verveer, ‘everybody was out and available to the press.’ As Neas recalls,

What was vital was Melanne, Nan, Althea, Joe, Estelle, myself and others in that [Senate Caucus] room, getting a sense of what was happening and being able to respond immediately. Almost as important was that when something would come up, we could go back to whoever else was in Room 115 and have a strategy meeting.

Whoever the spokesperson was, what counted was our ability instantaneously to get Elaine Jones or Eric Schnapper or Bill Taylor or Judy Lichtman or Marcia Greenberger to help us make a substantive analysis of a statement by Bork or any witness. If appropriate, we could point out inconsistencies with prior statements or how Bork was underscoring what we had been saying all along. Whatever our response, we could always speak with confidence, after conferring with the experts.

Really we had a mobile task force for fifteen or twenty hours a day. It was always evolving and there was always something happening that you could not have forecast at eight-thirty in the morning. The ability to react instantaneously was a large part of our success.

“The War Room also served to help restrain the too-hasty tongue. The impulse to commit rhetorical excess was easily triggered by Bork or Bork’s supporters on the committee.

‘Sometimes, one of us was ready,’ says Taylor, ‘to go up the spout.’ After quiet, but intense, moments of reflection and discussion in the War Room, much of that rhetoric was left unuttered. In that sense, says Taylor, the War Room served as a ‘safety valve.’

“Gradually, toward the end of the day—or more precisely, toward the moment when the deadline for inclusion in the network evening news approached—the coalition’s ‘Line of the Day’ would begin to emerge. And, each day, at about 4:00 P.M., there would be a twenty-minute break, just at the right moment for Neas or Aron and other coalition voices to catch the deadline, and have the last words and pictures in the corridor for the network cameras. ‘There were times when the statements of committee members dictated what we would be saying,’ recalls Neas,

‘but, regardless of how it came about, by the three or four o’clock TV deadline, or the six or six-thirty newspaper deadline, we had a ‘Line of the Day.’

“‘The key question,’ adds Taylor, ‘was, “What was the message that emerged at the end of the day?” And that was formulated on kind of an ad hoc basis—sometimes with a smaller group in the War Room, sometimes everybody was there, Senate staff as well. For us that was the key thing.’ (p. 219-221).