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THE STATE OF THE PRESIDENTIAL APPOINTMENT PROCESS

HEARINGS

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

APRIL 4 AND 5, 2001

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THE STATE OF THE PRESIDENTIAL APPOINTMENT PROCESS

WEDNESDAY, APRIL 4, 2001

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2:06 p.m., in room SD–342, Dirksen Senate Office Building, Hon. Fred Thompson, Chairman of the Committee, presiding.

Present: Senators Thompson, Akaka, Voinovich, Carper, and Cochran.

OPENING STATEMENT OF CHAIRMAN THOMPSON

Chairman THOMPSON. Let's come to order, please. I think we better go ahead and get started. I know Mr. O'Keefe has to be elsewhere. In fact, we might take your statement and ask questions and excuse you, if that is what you need.

Mr. O'KEEFE. Thank you, sir.

Chairman THOMPSON. I welcome everyone to this hearing of the Committee on Governmental Affairs. Today's hearing is the first of two the Committee will conduct on the state of the Presidential appointment process. We will hear this afternoon from our panel of respected witnesses on the process Presidential appointees currently undergo, problems that have developed, and whether they are a barrier to public service.

Tomorrow morning our witnesses will be the Hon. Amy Comstock, Director of the Office of Government Ethics; former Senator Nancy Kassebaum Baker; and former Director of the Office of Management and Budget, Franklin Raines. At that time both the Office of Government Ethics and the Presidential Appointee Initiative will release their recommendations for reform of the system. Senator Kassebaum Baker and Mr. Raines will be testifying on behalf of the Presidential Appointee Initiative. Ms. Comstock will be presenting to the Committee her report examining the current financial disclosure requirements and recommendations on streamlining the process.

When our system of government was designed more than 200 years ago, the Founding Fathers realized that the work of the people would need to be supplemented by the service of non-elected public servants. Yet they grappled with the question of accountability. Since these high-ranking officers would not be elected, what would prevent them from abusing their significant powers? Thus, our Founding Fathers included in the Constitution a requirement that certain high-ranking government officials receive the advice

and consent of the Senate in order to assume their influential positions.

The theory behind this process is that even though the appointees themselves are not elected, the public can hold the President and the Congress responsible for the appointee's actions while he or she serves the public interest. It is incumbent on the President and the Congress to ensure that appointees meet exacting standards.

For certain high-ranking positions, the candidate is selected, undergoes background investigations, is nominated, and finally undergoes confirmation by the Senate. On the surface, this process appears to be simple and straightforward. I presume the Founding Fathers intended that the appointment of these influential public servants be done quickly. Yet this system has evolved into a bureaucratic maze which requires potential nominees to bear significant burdens. All too often the process becomes mired in politics. Further, nominees face burdensome, duplicative, perhaps unnecessary paperwork, and confusing ethics laws which may have lost sight of their initial purpose.

In fact, the entire appointment process has become so complex that some of the best qualified people are reportedly turning down the opportunity for public service. Citing privacy concerns, severe post-employment restrictions, and the sometimes low public image of government officials, potential appointees are reluctant to enter the fray.

The key to a successful administration is the ability to get its people in place in a timely manner. Democracy is thwarted when the President's ability to carry out this task is hampered by a reluctance to serve and unnecessary delays. From most accounts, the ability of the President to appoint good people to key positions in government on a timely basis is in doubt.

The Committee on Governmental Affairs is actively evaluating the current state of the Presidential appointment process and will closely examine all proposals for reform. The ability of a President-elect to attract the best to public service and then put them to work is obviously of critical importance. As early as 1937, a blue-ribbon panel was commissioned to study this process. Since 1985, nearly a dozen other major studies by highly regarded individuals have examined the way we staff a Presidential administration.

It is worth noting that many of the problems first identified in President Roosevelt's 1937 Brownlow Committee report continue to exist today. Clearly, there is a strong consensus that reform is needed, and each successive study has reached agreement that changes in the process are achievable.

We have an excellent group of witnesses today, and I look forward to hearing their ideas on reforming the appointment process.

Chairman THOMPSON. Senator Akaka.

OPENING STATEMENT OF SENATOR AKAKA

Senator AKAKA. Thank you very much, Mr. Chairman. I am pleased to be with you here today and welcome the witnesses.

The Constitution provides that the President shall nominate and, by and with the advice and consent of the Senate, appoint high government officials. I support this Committee's continuing efforts

to examine the Presidential appointment process. As a cosponsor of the Presidential Transition Act of 2000, I look forward to receiving recommendations from the Office of Government Ethics for streamlining the public disclosure requirements along with our witnesses' suggestions.

The nomination of an appointee by a President triggers a series of events before the nominee is confirmed by the Senate. These events, as well as certain financial and ethical restrictions placed on appointees, are the subject of these hearings.

Last week, I participated in a joint Senate-House hearing on the government's human capital crisis and its impact on national security. At that time we examined the recruitment and retention problems facing the Federal civil service. It is appropriate that we also look at the barriers facing the recruitment and retention of cabinet secretaries and their deputies.

We know the average number of months it takes a nominee to be confirmed is increasing. For the Kennedy Administration, it was 2.3 months. For President Reagan, it almost doubled to 4.3 months. President Clinton's appointees took 8.53 months on average to navigate the confirmation waters.

What is causing this trend and what can the Senate do to streamline the process while fulfilling its constitutional duty is the question. Is it politics or is it process, or is it both?

The Senate requires a reasonable time to examine a nominee, but I think we all agree that close to a year is not reasonable. It is not fair to our Chief Executive, and it is not fair to the nominees.

We must determine the proper balance between the Senate's constitutional duty, the President's prerogative, and the privacy rights of nominees. There is disagreement over whether our current ethics rules are too restrictive and unduly penalize nominees. Some say that citizens are turning away from government service because the disclosure requirements are too great. Others believe that strict rules of conduct are necessary to prevent abuse of public office for private gain and to ensure that individuals who serve the public trust avoid conflicts between their personal and public interests.

Mr. Chairman, I ask that my full statement be placed in the record of the hearing.

Chairman THOMPSON. All Members' full statements will be made part of the record.

Senator Voinovich.

OPENING STATEMENT OF SENATOR VOINOVICH

Senator VOINOVICH. Mr. Chairman, I want to thank you for holding this hearing on what I consider to be a critical issue for our Federal Government. Since I came to the Senate in 1999, I have focused a great deal of my attention on changing the culture of our Federal workforce. As I have noted many times over the last 2 years, the Federal Government is experiencing a human capital crisis. One important aspect of that crisis is the Presidential appointment process.

Over the past 16 years, no fewer than 10 commissions and task forces have examined this process. Just last week, witnesses from the Hart-Rudman Commission testified before the Subcommittee on Oversight of Government Management, which Senator Akaka

referred to and which I chaired, and talked about bringing America's most talented people to public service. They said it is broken.

The Commission's final report observes, "The ordeal to which outside nominees are subjected is so great, above and beyond whatever financial or career sacrifice is involved, as to make it prohibitive for many individuals of talent and experience to accept public service."

Every other report on this issue since 1985 concurs with that dismal conclusion. Not only has the length of the process of confirming Presidential appointments quadrupled over the past 40 years, but it has become poisoned by an atmosphere of distrust and cynicism. Those drawbacks, along with the proliferation of ethics rules, excessive post-employment restrictions, and the dramatic increase of Presidential appointed positions, all have coalesced to prevent the President from having his team in place to promote his agenda before Congress and the American people.

In short, it silences each new administration's voice in the dialogue that informs public policy, and it absolutely inhibits the Federal Government's ability to engage in sound, and good management practices.

Many of the problems in the appointment process were exacerbated this year by the 5-week delay in the Presidential transition. I know that this administration is very proud of the fact that they have moved ahead. But I know from my own experience, once the election is over—I have been through many transitions—you begin the transition. In this particular case, the President-elect was securing the Presidency in Florida. So a lot of time was lost, and I don't think anybody will ever be able to measure how much that has impacted on this current administration.

Mr. O'Keefe, I would ask you, as you testify, if there is anything that we can do immediately to help the Bush Administration with the rest of these appointments, something that we can do quickly that would help move this process along and make up for that lost time. In addition to that, we have to make sure that we are not here 4 years from now, Mr. Chairman, discussing this same problem. The new administration comes in, and they are too busy dealing with their problems, and then it gets lost.

Mr. Chairman, I will summarize my statement to say we have enough information to move this process along. You have done a great deal of work. I think we should start writing the bill now and get it passed by this Congress so we are not sitting here 4 years from now talking about the same subject.

Chairman THOMPSON. All right. Thank you very much.

We will hear from two distinguished panels today. At this time I would like to recognize our first panel. The first witness is the Hon. Sean O'Keefe, Deputy Director of the Office of Management and Budget. He will be followed by Robert Nash, former Director of Presidential Personnel for President Clinton. Both men are very familiar with the process which appointees must negotiate. Mr. O'Keefe recently went through the process before this Committee. They are joined by Paul Light of The Brookings Institution, who will describe his recent survey of past political appointees as well as his survey of prospective political appointees for their views on the appointment process and public service.

Thank you for being with us, gentlemen. Mr. O'Keefe, would you like to proceed with your opening statement?

TESTIMONY OF THE HON. SEAN O'KEEFE,[1] DEPUTY DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET

Mr. O'KEEFE. Thank you, Mr. Chairman. I appreciate your willingness as well to accommodate what is a rather busy schedule with the budget resolution currently being debated now. I want to thank you, Senator Voinovich, and Senator Akaka for the invitation to participate at this very important hearing, and by your opening statements, I am already heartened that you are committed to dealing with the very difficult problems, and I think that will make this an easier process.

The Committee, I believe, is to be commended for their thoughtful inquiry into the Presidential appointment process. Your collective attention to the challenges provides cause for not only optimism that your search of remedies to current problems will yield much needed solutions, but the successful outcome of your inquiry and subsequent action—and, again, by Senator Voinovich's intoning—certainly suggests that this will be nothing less than a significant contribution to the quality of public governance for the future.

During the course of my professional life, I have been privileged to serve the public in a variety of capacities, initially as a career Federal servant, on the professional staff of the U.S. Senate, and on three separate occasions now as a Presidential appointee following Senate confirmation. It has been an honor, and I have been most fortunate in all the circumstances.

But for each of the three Presidential appointments I have been honored to receive, I was treated to the most expeditious consideration of almost any appointee below the level of Cabinet officer. Indeed, this Committee's prompt treatment, just a matter of weeks ago, of the President's nomination of me to be the Deputy Director at OMB accounted for a very small fraction of the no more than 6 weeks of accelerated consideration from the date of the President's preliminary decision and offer to Senate confirmation and conclusion. My previous appointments were, similarly, mercifully brief in the consideration phase. So, as such, I am not here to complain by way of testimony before this Committee. I have been treated to an extremely expeditious process all the way through, and I am a very limited and very small cohort of fortunate few in that regard. Rather, my objective is to offer observations on how this process has become more difficult in the span of my public service experience which, in my judgment, has deprived the public of talent that would otherwise be called to public services.

In short, all of the parts leading to confirmation, as you will certainly hear today as well, have become more extensive, more onerous, and more complicated by a factor of at least two since I was privileged to be appointed nearly a decade ago the second time. And while there is a fair degree of repetition in terms of the information required at each level of the process, it is more the depth of information and disclosure required which is at least intimidating, and at worst, deters candidates who might otherwise be

[1] The prepared statement of Mr. O'Keefe appears in the Appendix on page 73.

disposed to considering service. For example, the background investigation process, I have come to learn, takes longer if the candidate has been previously investigated, and there is considerable reluctance to share information between the investigative units. That caught me as counterintuitive, but it turns out to be exactly the case. These kinds of impediments are thoroughly explored by The Brookings Institution's Presidential Appointee Initiative, so I won't dwell on them here and risk repetition of testimony the Committee has heard or will hear. But on these related matters of dealing with the process and all the elements of it, I associate myself with the observations expressed by Senator Kassebaum Baker and by former OMB Director Raines.

Mr. Chairman, I would simply conclude with an observation of what I believe to be the consequences of this ever more difficult process. Fewer and fewer citizens of my comparatively modest financial means and geographic diversity are likely to respond to the call to public service. In the quest to remove conflicts of interest, the process, in my judgment over the course of the last 10 years, has reached near perfection in leading to the inevitable conclusion that candidates must eliminate significant if not all financial interests. To eliminate conflicts of interest, the easiest way is to eliminate all interests, and that seems to be the manner in which this is moving.

While this is equally onerous for any potential nominee, it has a particularly shuddering effect on those of us who can least afford to divest interests, particularly at directed times, like during a market slump, for example. The consequence translates to a diminished standard of living which is acutely felt by families. Public service at these levels could tend to default to those of more substantial means who can withstand the consequences of this kind of policy. Now, this is not my condition, to be sure. I don't suffer from an excess in that regard. Rather, my presence here is testimonial to the extraordinary support, sacrifice, and tolerance—and I mean deep tolerance—on the part of my wife and children, despite the cost.

In tandem with the financial impact is the near absence of support for any relocation to the Capital City if you weren't living here. My family is still in upstate New York now and will remain there throughout the course of this year as they finish school, and hopefully will join me here this summer. In the interim, there is no provision for any kind of transition at all. We, nonetheless, have elected to weather that range of challenges by virtue of our commitment to the important public service task. Many others would not choose to withstand these challenges and would find cause to withdraw from further consideration. Unfortunately, the effects of these two factors could yield a more dominant tendency toward those who can either withstand the financial penalty and/or who live in the Washington, DC, metropolitan area. The increasingly more complicated, intrusive, and lengthy confirmation process further compounds this result. In either or both of these events, this hardly augurs in favor of attracting Americans from all backgrounds, walks of life, and diversity in its widest definition to answer the call to public service.

Again, Mr. Chairman, it is a privilege to be here, and I thank the Committee for the opportunity to testify and for your consideration of these points.

Chairman THOMPSON. Thank you very much. We will go ahead and ask you some questions and let you leave, if that is all right with everyone.

Mr. O'KEEFE. Thank you, sir.

Chairman THOMPSON. Thank you, Mr. O'Keefe, for being here. I think that you probably have the freshest insight of anyone here, having just gone through the process. How would you categorize the problem from your vantage point? We read about various categories. We read about the complex, repetitive, burdensome nature of the paperwork. We read about the intrusion or the disclosure aspects of the paperwork, more or less another category. We know about the delays that are growing longer and longer.

To what extent did you experience those categories of problems as you worked your way through the process?

Mr. O'KEEFE. Well, again, Mr. Chairman, I am a very fortunate circumstance by virtue of the fact that I moved through this very quickly. I think the first time I went through the confirmation process, it worked all of about 3½ weeks just by virtue of the fact that I think I had a balance sheet that was non-existent and so, therefore, had no conflicts because I had no interests, and as a result, it made it extremely easy to work me through a process. This time it was just an inch more difficult, but not much. So, as a result, I think I am uncharacteristic of——

Chairman THOMPSON. Due to the great work of this Committee, I believe you said.

Mr. O'KEEFE. Indeed, sir.

Chairman THOMPSON. Was that my interpretation?

Mr. O'KEEFE. That is right. Outstanding. But I think as a consequence I am a little uncharacteristic in that regard than most nominees you would see.

Nonetheless, in looking at the elements of that, what I found amazing was that the length of time it takes for, again, background investigations has expanded dramatically. The Federal Bureau of Investigation was very pleased with the fact that they put me on an expeditious consideration of about 28 days, to which I asked whether or not that would be benefited at all by the fact that I had full field investigations at least three times before my previous experiences. There was an update of the security clearances that I had had just by virtue of other involvement in other things in private life. It was updated as recently as a month before the nomination papers arrived, and yet it was explained to me as how all of that actually added to the amount of time it would take for investigations because they would have to go through the full field and then reconcile it to all previous other observations and that no current background checks that had been done by any other security agency would be accepted because it may not be up to the same standard that the FBI would conduct.

So, as a consequence, those kinds of things add time to the equation, and for reasons that I am sure all kinds of law enforcement officers and investigative experts will explain as to why that is necessary. It baffles me, but it, nonetheless, must have some cause to

it. But it extends the amount of time and consideration to go through that.

The amount of time it takes now to go through the Office of Government Ethics review—and, again, it is made much more simple when you don't have a whole lot to review, but it, nonetheless, takes a considerable period of back-and-forthing as you go through it.

Even each of the committees, respectively, once the nomination papers are submitted, have a different format, different set of requirements that all have to be reconfigured of the information that is contained in all the other material, to be re-presented, and each committee has a different approach and different way of doing that.

So the combination of all those appears to have added, again, at least, in my judgment, a factor of at least two to the degree of difficulty dive that it takes to move through this process independent of any issues that may arise. It is more just process oriented than anything else.

Chairman THOMPSON. Did you get through with your FBI background within the 28 days?

Mr. O'KEEFE. Yes, sir.

Chairman THOMPSON. And, of course, your situation was expedited because of the nature of the job that you had, the No. 2 man at OMB at a time when the President walked in the first day and he had a budget he had to come up with, practically. And everybody across the board cooperated and pushed as much as we could to get that done.

Mr. O'KEEFE. Very much so.

Chairman THOMPSON. But you are clearly the exception rather than the rule, except—well, even including, I guess, the FBI background. But they still had to go through all those paces, and if it had been a normal situation, it would have certainly taken longer than a month to do all that.

Mr. O'KEEFE. Yes, sir.

Chairman THOMPSON. But in the category of the financial disclosure part of it, you have a White House personal data questionnaire. Then you have the financial disclosure statement with the Office of Government Ethics. Then you have the form that begins the FBI background investigation. Then you have different financial disclosure forms with this Committee. Any others? Did you have any national security applications or statements that you had to make in addition to that?

Mr. O'KEEFE. Yes, sir. I filled the Form 86, the standard procedure across the board, the President's counsel's questionnaire that moves through a series of personal information, the Committee's personal questionnaire, just a range of them.

Chairman THOMPSON. How much did you find that to be duplicative?

Mr. O'KEEFE. Extensively. The Form 86, the Committee questionnaire, and the President's general counsel request for information probably covers about 75 percent of the same material. So it is simply a matter of reformatting it.

Chairman THOMPSON. It didn't cross your mind somewhere along the line, well, it looks like those guys could have gotten together and come up with something similar?

Mr. O'KEEFE. It is a very interesting observation, Mr. Chairman, which I would not disagree with.

Chairman THOMPSON. What about the extent of disclosure? I got the impression from your brief reference to it in your statement that you feel like—well, I am sure you understand that disclosure for conflicts of interest purposes are necessary.

Mr. O'KEEFE. Yes.

Chairman THOMPSON. I got the impression that you felt like they were more intrusive than necessary in order to serve the purpose of the form. Is that correct?

Mr. O'KEEFE. Yes, sir. What I noticed that changed—and, again, this is anecdotal. I am advised that OGE and the President's counsel are in the process of trying to work through a streamlining proposal and so forth. So that is going to be great news. I am sure when Amy Comstock appears here there may be some opportunities to explore this further. So my anecdotal observation would be that what I recall filling out as an appointee in a previous incarnation and then thereafter, for a year or two after you leave public service, you continue to fill this out, to now is a degree of indenture that is much greater, the level of detail you have got to go through.

There is now an interest, for example, on mutual funds for which you have absolutely no controlling influence over how those fund managers will make investments, that there be a full disclosure of all the things that the fund managers may be involved in, which again may be of interest——

Chairman THOMPSON. What about the evaluations? Do you have to come up with evaluations for those things?

Mr. O'KEEFE. Yes, sir. There is a fair amount of paper that is now required for, again, demonstrating—you have to prove that you have no controlling influence over something like a mutual fund, which is on its face almost self-evident, but it, nonetheless, requires now a lot of extensive material on that.

I don't ever recall the requirements to describe college funds, for example, for your children. I have got three of them, so now as a consequent, the OGE and everybody else is fully aware of how little we have prepared for their potential future college education opportunities, despite our best efforts to do to the contrary.

So all that is something that is a much more extensive degree of information that I can ever recall being asked to deal with in the past. Beyond that, individual stocks and so forth, there is no question. I fully understand the reason why those disclosures are necessary and why the divestiture rules are the way they are.

Chairman THOMPSON. Some of the surveys have turned up many comments that people over the years have been somewhat critical of their White House situation, that they were not kept informed, that they were not apprised of what they were in for, they were not assisted along the way. I don't assume you are here to be terribly critical of the White House, but can you think of anything that institutionally could be improved? Some have suggested a permanent office of Presidential personnel staffing up over there. Of course, as you indicated, you got through a lot quicker than most people. But did you come away with any thoughts from that standpoint?

Mr. O'KEEFE. That is an important caveat. I certainly knew what I was getting into, and that caused lots of friends and relatives to question my judgment a lot of times.

Chairman THOMPSON. You had been there before.

Mr. O'KEEFE. Exactly. So it was a case where it was pretty evident.

Nonetheless, I think part of the aberration that we are dealing with right now—and I think Senator Voinovich put his finger on it—is the truncation of the transition period that we have just been through made this that much more difficult, and with all the moving parts that are required in the process, the opportunity for something to fall between the chairs is very, very high, particularly in this confusion of everyone getting settled and so forth.

Even here, as quickly as this moved through, there were cases where literally moving paper from Desk A to Desk B and moving the right material along took a lot of diligence and a lot of attention to it, which required my presence here in town throughout most of that process almost continuously.

Chairman THOMPSON. What is your staffing situation at OMB now? What are you lacking? Or how good or bad is it at the present time?

Mr. O'KEEFE. I am one of two appointees that has been confirmed thus far, and that is it. And we are hopeful that the Committee will consider two nominees we have moved up here recently.

Chairman THOMPSON. What difficulty does that present?

Mr. O'KEEFE. It means Mitch Daniels and myself are spreading a much wider portfolio towards just the two of us to work through the issues that are involved therein that we would dearly love to make sure are in the hands of the individuals who hopefully will be nominated and confirmed in the other four capacities that the Office of Management and Budget has. So we are carrying an awful lot of it right now.

Chairman THOMPSON. Thank you very much.

Mr. O'KEEFE. Thank you, sir.

Chairman THOMPSON. Senator Akaka.

Senator AKAKA. Thank you very much.

Mr. O'Keefe, you said that the absence of support for relocation reimbursement has a financial impact and that moving to Washington may prove a challenge for any appointee. What recommendations do you have in this regard?

Mr. O'KEEFE. Well, there are a variety of corporate models that have been adopted. Some are extremely beneficial, and I certainly wouldn't go as far as that. But I think to cover just the modest kinds of expectations of what most people would have may take—this is something that Members of this Committee and your colleagues throughout the Senate as well as members of the other bodys can relate to very well. The issue I am dealing with now—and I have a deep appreciation for what each of you go through now—of maintaining two residences is quite a challenge. It, therefore, poses some serious financial issues that I have to sort through.

There isn't any means to deal with that. No corporation, no private interest would tolerate that. And there aren't many folks who

would be terribly interested in being part of corporations that didn't do that.

So while I don't know exactly what the right formula is, I know this one really stinks. This approach is one that I believe Members here can relate to very well.

Senator AKAKA. So you are recommending that we look into this reimbursement?

Mr. O'KEEFE. It would make life a little easier for those who are out of town. Again, for folks in Washington, DC, it makes no difference. So as a result, it becomes almost a default option that if you have two candidates and one is in D.C. and the other one isn't, sometimes it comes down to the choice on the basis of the fact that if you have someone who is resident here, that almost becomes a matter of convenience. So you are selecting based on geography default here.

Senator AKAKA. The Chairman touched on this, and I understand your concerns about divesting one's interests during a market turndown. What do you feel the government should do in this area that would still allow the public to feel confident that there would be no conflicts of interest on the part of political appointees?

Mr. O'KEEFE. Well, I think there are two approaches that, again, in my past incarnations I found to be fairly useful, the previous two Presidential appointments that I held that didn't seem to pose any real serious challenge, and that was for any financial interest that you may have in an individual company or stock or portfolio or whatever else for which there might be a chance that in your appointed capacity you might have some involvement—or I went to the extent that if there was anything that any of my family, as in parents, brothers, sisters, my wife, anybody—had any interests that may have been related to that I recused myself from those particular matters that pertained to that.

In most jobs, most appointed positions throughout the Federal Government, that is more than adequate to deal with those kinds of questions. Certainly that has been the topic of a lot of debate as it pertains to some Cabinet officers, and I think that is a difficult challenge there because the span of control is so wide in those capacities. But for most appointees, recusal from matters that deal with those particular issues sometimes is more than enough.

Blind trusts have been adopted or used in the past. I don't have enough that would make it interesting to put into a blind trust. I probably couldn't find a trustee who would be interested in managing the paltry assets required there. So, therefore, it doesn't work in situations like mine. But it would for so many other people, I think, be something that could be a little more useful or used more frequently. And that is not the most encouraged method. You have to inquire about it to ask if that is even feasible.

As a general opening proposition, the Office of Government Ethics view is that divestiture is the first and foremost appropriate way to deal with the question. That is the default option every time.

Senator AKAKA. Mr. Chairman, in the interest of time, I will have just one more specific question.

You suggested some changes such as conforming documents. What aspects are important to retain or keep with refinement?

Mr. O'KEEFE. Again, I think the Chairman's observation of the duplication between the general counsel review, the Form 86, the national security questionnaire, and to the varying committees of jurisdiction material, again, my guess just off the top of my head is somewhere on the order of two-thirds to 75 percent of that information is fairly standard. And as a consequence, everybody is going to want it, everybody is going to want to see it; and as a result, trying to conform that in some way would make that a little more useful.

To then thereafter have supplements that are unique to individual jurisdictions may be something that could be a little easier to deal with. I don't know. But, again, exactly what jurisdictions would view one area to be more important than another, I wouldn't presume to speak for at this point.

Chairman THOMPSON. Thank you.

Senator Carper.

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. Thanks very much. I just want to say I have heard a lot of witnesses over the years in the House and now here in the Senate, and I find your testimony especially refreshing.

Mr. O'KEEFE. Well, thank you, Senator. I appreciate it very much.

Senator CARPER. I hope your financial fortunes improve. [Laughter.]

Mr. O'KEEFE. Not in the near term, I don't see that as likely.

Chairman THOMPSON. But not too soon, no.

Mr. O'KEEFE. That is right.

Senator CARPER. If these interest rates come down, maybe you want to think about refinancing one of those two mortgages or something.

Mr. O'KEEFE. There is one really delightful part about the Presidential appointment order that I have always found just at least focusing. It says, "You shall serve at the pleasure of the President for the time being." That could be any time now you could be moving along. So as a consequence, it focuses your attention in that regard. But in that interim period, there is no improvement in financial standing, that is for sure.

Senator CARPER. I missed your testimony, and I have got some people waiting out here in the conference room to go back and to meet with, and let me just—I presume you are leaving here?

Mr. O'KEEFE. That is right.

Senator CARPER. I glanced through this document here about the Presidential appointment process and noted apparently any number of times in the last two decades when we looked at the process and tried to figure out how to fix it. And you are probably familiar with a number of these studies. But in terms of the common threads here represented in these variety of studies in the past and what you sort of bring to the table by virtue of your own experience, just give me a couple of nuggets, just a couple of gems of things that we ought to do this, these are no-brainers; whether it is Democrats, Republicans, Legislative Branch, Executive Branch, we just ought to do these things this year.

Mr. O'KEEFE. I would put that into three areas, two of which we have explored a little bit here of conforming some of the information. Just that process alone would speed this along a lot. And just for example, one of the issues we are working in the administration right now is trying to get to the root cause of why the various investigative organizations seem to have some propriety over the degree of their own investigative prowess between and among them. They don't even share the information that extensively, best I can tell. So that is an opportunity maybe to work through that question and see how much more there can be on that side of it to conform the information among the investigative units and among the jurisdictions or areas that may want the information to be revealed. That could help first and foremost.

The second one, I think, is on the financial disclosure side of it, to come up with a more standardized approach with this and think in terms of what the consequences may be. There are a number of very active proposals. There, again, I believe that the Office of Government Ethics and the general counsel's office for the President will be offering some view in terms of how to sort that tomorrow in testimony here. So I wouldn't want to—I don't know enough about the details of that to suggest what the mechanics of that would be, but it is an area to look at because it is the first constructive idea I have heard in a while of trying to standardize that.

Then the third one is look at the consequence of the ethics rules. There are so many different—again, over the course of public service time, I could probably trace ever ratcheting of the ethics rules to an incident, to a set of circumstances that led to changes, to legislative alterations, to rules that have modified that to make it that much more difficult. And as a consequence of that, it has become, for all kinds of good reasons, all that I agree with—I could not quibble at all with the standard of ethics both the President expects of me and of us who are appointees in his administration as well as the standard of ethics that the general public should expect of us. I think there was also a requirement for a standard that is higher than what you see in any other private life kind of condition.

Nonetheless, it is to the point where in many jobs—I fortunately am not in one of these circumstances—where there are post-employment restrictions that are so extensive so as to preclude the opportunity for anyone with any experience at it to then assume a Presidential appointment or public service opportunities and then to have any chance of working in that kind of field or experiential level again thereafter. Some of them are lifetime restrictions, which I was more familiar with in my previous job as Secretary of the Navy. I was stunned.

Senator CARPER. What was your previous job?

Mr. O'KEEFE. I was Secretary of the Navy in the Bush Administration, at the end of the Bush Administration the last time. And as a result, most of the acquisition executives who were associated with the Defense Department had lifetime restrictions on any involvement with any industry that related to any of the things they had contractual interests with. As a consequence, it basically was an invitation to flip burgers after you leave, and that becomes a rather onerous prospect when you're looking at trying to recruit

people to want to take on that challenge, or it means you have always defaulted in favor of inviting people who have reached the very end of their professional term, that they would like to give something back at the end of that. So, therefore, you are looking at folks with incredible experience but who are probably not going to be serving for very long because they don't want to put up with it for that long a period of time.

Each of these options, though, on the ethics side of the equation narrows the field of the kinds of people that can be considered or thought about that you may want to otherwise recruit into public service who would not otherwise take it because of the nature of those restrictions in aggregate.

Senator CARPER. All right. Again, I didn't know you had been Secretary of the Navy. I have been out of touch here for a while. I have been a governor for a while. But as governor, I was nominated by President Clinton and confirmed by the Senate to serve on the Amtrak Board. I love trains. I love passenger rail, and it is just something I am crazy about, as I am crazy about the Navy. But I want to tell you, the process that you had to go through was just—as much as I love trains and passenger rail and Amtrak—it was almost enough that I said the heck with this, it was just too much.

Mr. Chairman, my friend from Hawaii, we have got somebody who is interested in changing this—not getting into some necessary safeguards, but changing this process, it needs to be. Thanks very much.

Mr. O'KEEFE. Thank you, Senator.

Chairman THOMPSON. We appreciate it very much.

Mr. O'Keefe, thank you very much.

Mr. O'KEEFE. Mr. Chairman, thank you very much. I appreciate it.

Chairman THOMPSON. Mr. Daniels is back minding the store by himself. You better get on back.

Mr. O'KEEFE. Yes, sir. [Laughter.]

Chairman THOMPSON. Thank you very much.

Gentlemen, thank you for being so patient with us. Mr. Nash, would you care to give your statement?

TESTIMONY OF HON. ROBERT J. NASH,[1] FORMER DIRECTOR, WHITE HOUSE OFFICE OF PRESIDENTIAL PERSONNEL

Mr. NASH. Yes, sir. Chairman Thompson and Members of the Committee, thank you very much for providing me an opportunity to make a few comments and recommendations. I know that future nominees and probably some of the current ones will appreciate the efforts you are taking.

As former Director of Presidential Personnel and as an Under Secretary of Agriculture—confirmed there—I have a unique perspective. I first want to say that it was an honor and a pleasure to serve the President and my country. Very few people in the country get an opportunity to do it, and I loved it. And I would go through it again, all the background check, the nomination, all of that. I would do it because of the pleasure of serving my country.

[1] The prepared statement of Mr. Nash appears in the Appendix on page 75.

Given the volumes of information published on this subject, I won't go into a lot of information because a lot of the groups—the Heritage Foundation, the Council for Excellence in Government, Brookings, and others—have basically been working in a collaborative basis to make a series of recommendations which I attribute myself to. But I would like to make just a couple of comments about the process.

It does take too long. In the last 20 years or so, it has averaged between 6 to 8 months, depending upon the administration you are dealing with. The process also reduces the number of qualified applicants who are willing to go through the process. We never had a problem with applicants to fill jobs, but we had a problem with having what I would call a larger number or maybe an adequate number to pick from.

When the President assumed office on the 20th of January, the old President is gone, and hundreds of Senate-confirmed appointees leave. They make hundreds of decisions a day, and those decisions don't stop on that day. And while some period of time—3 or 4 months—is acceptable, 6 to 8 months is not acceptable in terms of having people in place to make decisions.

Recommendations that I would make at this point include haveing a goal of shortening the average appointment process to no more than 4 months.

Eliminate the full field investigation for most Senate-confirmed positions that do not deal with defense, national security, or Justice issues. You might just limit the background to a name check, a tax check, and limited financial disclosure.

Reduce the financial disclosure by 50 percent, and in some cases use the Form 450 instead of the Form 278, which is more intrusive and more specific. And Mr. O'Keefe mentioned trying to detail mutual funds, which is almost impossible to do.

I also think we should consider reducing the number of part-time board and commission members who are confirmed by the Senate. That will give the counsel's office, OGE, the Senate, and others more time to deal with full-time Senate-confirmed positions. Examples could include the National Endowment for the Humanities and agencies that don't have security, national defense, those kinds of responsibilities.

And I would also do what I could to limit the number of holds on nominees that don't relate to the nominee.

I will stop right there, and thank you very much for this opportunity, and I would be happy to answer any questions you might have.

Chairman THOMPSON. Thank you very much.

Mr. Light.

TESTIMONY OF PAUL C. LIGHT,[1] VICE PRESIDENT AND DIRECTOR OF GOVERNMENTAL STUDIES, THE BROOKINGS INSTITUTION

Mr. LIGHT. It is a pleasure to be back before the Committee on this important task. I should start by just basically stating that I am not speaking here for myself or our project, the Presidential Ap-

[1] The prepared statement of Mr. Light appears in the Appendix on page 77.

pointments Initiative, but for the people we interviewed, the 435 past Presidential appointees from the Reagan, Bush, and Clinton Administrations and the 580 potential appointees that we talked to: The corporate CEOs from the Fortune 500, the presidents of the top-rated universities in this country, the executive directors of America's largest and most influential non-profit agencies. Even think tank scholars were part of this study on the notion that perhaps every once in a while you ought to put one in office.

I am here today to just talk to you a little bit about what they told us about this process, and I should start also by noting that the research that we did was conducted in collaboration with Virginia Thomas at the Heritage Foundation. She was a joy to work with on this project, and I wish she were sitting next to me today.

There is good news and bad news in these surveys of past and potential appointees. The good news is that there is an extraordinary desire to serve in this country, just extraordinary. I was surprised by the results because we live in this town here where there is so much poison and so much argument, and we don't sometimes notice just how powerful the allure of public service still is outside the Beltway, and perhaps inside the Beltway as well.

Past appointees would recommend a Presidential appointment to their friends and families. Bob Nash's story, Sean O'Keefe's story—it is familiar. They enjoyed service. They would do it again and again.

Unfortunately, one of the problems in the process is that, in fact, we are drawing from a smaller and smaller pool of people who have been through the process before, and they seem to be the ones who will tolerate the process more now than the kinds of potential appointees we interviewed.

Presidential service is seen as an honor to one's country, an opportunity for impact well beyond the impact one can have in the private sector. It is also seen as an opportunity to make contacts, to develop leadership skills. It is all a net positive.

Americans want to serve. That is the good news. And for those of us who care about public service, it is wonderful news.

The bad news before this Committee is also clear. Simply stated, the appointments process itself, has become the most significant barrier to saying yes when the President calls. To paraphrase Bill Clinton's 1992 campaign slogan, "It's the process, Stupid." It is a terrible process. It is a process that disincents talented Americans from saying yes, that makes it as difficult as possible and causes individuals to question their own judgment for ever having accepted the President's call to service.

The simple evidence from our surveys is easy to chronicle. Potential appointees actually are now much more likely than actual appointees to describe the current process as confusing, embarrassing, and unfair. Fifty-nine percent of potential appointees said the word "confusing" described the process very or somewhat well. Fifty-one percent said it was embarrassing. Only 43 percent of potential appointees, the people we want to say yes, calls this a fair process.

And past appointees give us plenty of evidence of real problems. They tell us there is a lack of information on how the process works. Many complain that they did not get enough information or

any information at all about what was to happen to them, which is why we authored with the Council for Excellence in Government "A Survivor's Guide for Presidential Nominees." And who would have thought at the time we titled this volume that a survivor's guide was appropriate. But if there was ever a time you needed a survivor's guide to get into office, now is it.

Delays are significant and troubling. Fifty-six percent of appointees nominated and confirmed from 1984 to 1999 said the nomination took more than 5 months compared to just 16 percent of nominees who were interviewed from 1964 to 1984. The general impression is that every stage of the process is slowed down. Every possible breakdown has occurred. And there is blame for both ends of Pennsylvania Avenue in all of this.

Our appointees, both past and potential, said that both the Senate and the White House make this process more difficult than it needs to be, that there are ways to simplify and improve. Luckily, these nominees have ideas for fixing the process: Simplify, simplify, simplify.

There is a key point buried in here about the important role that employers play in encouraging their employees to serve. The potential nominees here or the potential appointees said that too often their employers did not encourage them to take a position.

Let me conclude here by summarizing the good and the bad. The good news is that the honor, the desire to serve is still present and active in this country. The bad news is that the appointment process itself is a barrier. But, luckily, the process can be fixed. We can do very simple things to make this better.

Let me conclude by noting that Thomas Jefferson once said that there was nothing about which he was so anxious as President as Presidential appointments. He said, "The merit as well as reputation of an administration depends as much on that"—the appointees—"as on its measures." If these are indeed posts of honor, as Benjamin Franklin once called them, and if we want talented people to serve, all we need to do is build a simple, faster process. To change metaphors and analogies completely to baseball during this opening week, if you build it, they will come. Simplify, accelerate, clarify. It will make a big difference. And rarely at the beginning of a legislative process do we see such profound and compelling evidence that legislation will help.

That is my statement, and I would like to submit the rest of my statement for the record.

Chairman THOMPSON. It will be made part of the record.

Thank you very much.

Mr. Nash, some have made the recommendation that there be a permanent office of Presidential personnel. Is that a good idea?

Mr. NASH. A permanent office of Presidential personnel?

Chairman THOMPSON. Statutory.

Mr. NASH. Statutory. Yes, sir, I think it should be seriously considered to have a statutory office of Presidential personnel. It is critical to have the capacity to find capable and competent people to run the President's programs and policies. And I think that should be considered.

Chairman THOMPSON. What size was the operation when you were there?

Mr. NASH. The size was 27 people total, all political appointees. None of those were career. And it has averaged, I believe, over the last 20-some years between no more than about 35 and no fewer than about 23, I believe.

Chairman THOMPSON. Do you think that is adequate, that range, to do the job?

Mr. NASH. I would say that it is—if you can improve some of the things we have been talking about, I would say that that is fairly adequate. Around 30 individuals would probably be adequate; if some of the recommendations that your Committee is discussing can be implemented, I would say so, sir.

Chairman THOMPSON. We are beginning to talk about whether or not the White House could use some of our forms or we can use some of the White House's forms. Your PDS, I guess you call it there.

Mr. NASH. Yes, sir.

Chairman THOMPSON. Have you ever had any conversations with anyone on the Hill about that? To the extent that you have thought it through in terms of what might be possible, how that might work, who might follow whose lead on that, what is practical, do you have any thoughts about that?

Mr. NASH. I have some thoughts. No, sir, I don't remember having any specific conversations. I do think that the Personal Data Statement—and we had made some efforts at it—could be reduced by about 50 percent by taking some of the questions on the Personal Data Statement that are also on the financial disclosure forms and that are also on the SF–86 and just taking them out and reducing the Personal Data Statement questions by that much.

As it relates to combining the forms, I think that there could be some effort, yes, sir, to do that. It is obviously a lot harder to do than to say, but I think there is some potential there for combining those forms.

Chairman THOMPSON. I think there is a lot of discussion going on right now about that. I think due to the work of some of the people in this room, people are beginning to take a look really for the first time as to what might be done there.

You mentioned the financial disclosure requirement. There are, as I recall, 43 questions on the PDS, something like that, or there used to be.

Mr. NASH. Yes, the Personal Data Statement I believe has—I can't remember the exact number, but it has financial questions on it also, and those could be totally eliminated. Plus, if the financial questions on the Senate questionnaire are the same, maybe those could be eliminated, and the Committee as well as the White House Office of Presidential Personnel, as well as the Office of Government Ethics gets some part of the same form as opposed to the duplication and overlap that I think we have now to the degree of about 50 percent.

Chairman THOMPSON. Thank you very much.

Mr. Light, can you tell from your survey how many people we are losing to government service because of this process?

Mr. LIGHT. I don't think we can tell. We have a fairly high percentage of respondents, potential appointees, who were saying that they are favorable toward service. They don't really get down to the

nub of what is on the forms and the detail of the process. They just think from a distance that the process is unfair.

Chairman THOMPSON. These are basically people who have not gone through the process.

Mr. LIGHT. They haven't gone through the process. We were quite clear——

Chairman THOMPSON. The perception is actually even worse than reality, which is bad enough.

Mr. LIGHT. The perception is worse than reality, and I will tell you what, there is a serious problem here on the Potomac in terms of relocation. And that is why that chart there shows that the number of people who are being appointed from inside the Beltway has more than doubled since the 1930's, 1940's, and 1950's.[1]

This is a process that increasingly favors people who are here and who are already part of the process, and that is clearly not what the Fathers intended. They wanted amateurs of a type to come into government who had no permanent interest in government and who would move here for a time and then go back home.

Chairman THOMPSON. It seems like we wanted what you said, but then we also wanted expertise and some continuity, the part about the civil service movement. And now we have wound up with the worst of both worlds. We have a professional governing class without necessarily the expertise or the experience.

Mr. LIGHT. Well, it leads you to sort of pull your hair out. You think about the perfect nominee today from the kind of testimony you get from the Deputy Director of OMB. The perfect nominee is almost ignorant about the job he or she is about to take, has no interest, has no history, and that will prevent them from being tainted.

I mean, we have erected a process that is abusive to a point and also discouraging to people who really want to serve. If you have an expertise in genetic engineering and you want to serve as the President's Science and Technology Adviser, you want to serve in a senior post, the issue for you is, do you know too much? It is just a nonsensical process, and the process could only be explained really today, the way it is calcified, if you are intending to discourage talent Americans from serving.

Chairman THOMPSON. What is the source of their perception, people who have gone through the process or news media or comments that politicians make about bureaucrats?

Mr. LIGHT. It is really a combination of the experiences of their friends who have gone through the process and what they see in the media.

But, as the Bush Administration process unfolded this last January and we had the withdrawal of a very senior candidate, my argument was that those kinds of incidents no longer make any difference. The attitude towards actually coming here, the attitude towards the process is so negative that it really can't fall much further. It just can't.

And what you see when you talk about what the President of the United States needs to do when he picks up the phone to make a call is that he should emphasize, first of all, the honor of service,

[1] Chart referred to appears in the Appendix on page 168.

second, the impact that one can make through service, and, third, the President should be telling candidates he is going to work with you and this Committee and this Senate to improve this process and make it fair. That would make a big difference in converting these favorably disposed potential appointees into actual nominees.

Chairman THOMPSON. Do you think their concern is primarily the process of getting into place or the quality of life once they are in place?

Mr. LIGHT. These people, these potential nominees, are very hard-working individuals already. They believe that coming to Washington for a Presidential appointment would give them the greatest impact and the greatest achievement of their career. They are not concerned about the level of hard work once they arrive. They are concerned about the length of time it takes to get here and the potential for personal and family embarrassment from going through this process and, finally, the disruption to their family of moving here to the Potomac. But these are very, very high-end, high-quality people who know what it is to work hard and they want to help their country.

Chairman THOMPSON. Well, clearly, improvement in this process is going to have to come from several sources. All the recommendations kind of fall into three categories, and that is the Senate, the White House, and the Office of Government Ethics. And there are some other things in there, too.

But a very broad question. You have been in this area for a long time and know a lot about it. When you think about the coordinating that the committees here would have to do, about the things that the committees here might be asked to give up in terms of setting deadlines on themselves or restricting holds and so forth, you are asking the White House, a new President to come in and give up some positions that his predecessor had and narrow that group of people that he has friendship with and some control over. Office of Government Ethics, is just waiting for the next scandal so they can get criticized for just having liberalized the rules a little bit.

I don't mean to depress you here.

Mr. LIGHT. Yes, I was wondering when you were going to say something—— [Laughter.]

Chairman THOMPSON. What are your overall observations? Clearly, we are going to have to do something. One of the most remarkable things about government that I have found in my brief time is how often we have to be told about something before it sinks in and we do anything about it. We just finished, Joe Lieberman and I, the Government Information and Security Act we got passed a couple of years ago and trying to improve our computer security and so forth. If we look back, we had, I think, 15 GAO reports talking about what a disaster our system was. I didn't know that. I don't know if anybody knew that. We had them stacked up there somewhere. I had no idea that we had all these reports talking about these same things, making essentially the same recommendations. So it is not a matter of intelligence or lack of intelligence. It is a matter of will.

What do you think is practical, doable? What are the dynamics of getting something done here?

Mr. LIGHT. I think that the Majority and Minority Leader and the Chair and Ranking of this Committee have to sit down with the President's senior counsel and develop a deal. It has gotten to the point now where I think we have passed a tipping point, where I think we have serious questions about the leadership of these agencies of government. You saw it in the Los Alamos situation where it was not a lack of leaders and it was not a lack of layers that caused that problem, and you saw it at IRS with taxpayer abuse.

I think we have reached a tipping point where you just need to sit down and say, look, we either have to expand the pipeline—you can only put 20 to 30 people through this pipeline every week, and if you have got 450 or 500 to do, you do the math. We have either got to expand the pipeline, make it faster, or we have got to reduce the number. We have got to come to agreement. But it really involves a sit-down between the senior leadership of the two institutions most involved and an agreement over what each one is going to give up.

You may want to create as part of the Senate clerk's office some sort of a new mechanism for moving nominations through faster. You know how this place works. You know how the committees are designed. There are lots of things you can do to improve the process. But it has got to involve a sit-down between the two branches to say, look, it doesn't serve either branch well to have basically a neck-less government, which is what we have got here. We have got Cabinet secretaries in all the departments. We have got a couple of deputy secretaries. And then we have nobody. It is not a head-less government. It is a neck-less government. And that doesn't serve accountability. That doesn't serve computer security. That doesn't serve performance measurement.

You have got to sit down, I think, with the other institution and work out——

Chairman THOMPSON. You get it done, and then the average service is like 2 years, and you start all over again.

Mr. LIGHT. That is right. And, I am just thinking, because my colleague Cal Mackenzie here behind me has been working this for 30 years, I feel like I am a piker. I have only been doing it for 15. We issued a report in 1984, a real table-pounder: We have got to fix the system, the delays are up to 4 months, it is a travesty, we can't get people into office, too many appointees. There were 350 of them. Anybody in this room would give their eyeteeth for that system right now. Can't we just roll back to 1984, I think, is the hope.

Chairman THOMPSON. Thank you.

Senator Akaka.

Senator AKAKA. Thank you, Mr. Chairman.

Mr. Nash, you have served well in your position with President Clinton.

Mr. NASH. Thank you, sir.

Senator AKAKA. And I am sure you have gone through the process of trying to improve whatever you were doing. In your capacity as Director of Presidential Personnel, what steps did you take to shorten the appointment and confirmation process? And a side question to that is: Were you frustrated in your efforts to do so?

Mr. NASH. Thank you, sir. The answer to the first question is I will give you a couple of examples. For individuals who have not gone through this process, it is very confusing and complicated. So what we attempted to do, even as we were considering applicants for Senate-confirmed positions, is I sent out what I would call a plain-language description of the kinds of things that you would need to try to compile: Where you lived, all of your relatives' addresses and birth dates, where you have traveled, the kind of financial information—this is something I prepared, not the actual forms, because you don't really send the forms out to an individual unless they have been selected. So one of the things I did was to give them an idea before they actually were selected, and in some cases, they said, "I don't want to go through this."

One individual said to me, "I have been the chief operating officer for a major corporation, over more people and more money than this office you are asking me to serve in, and they didn't even ask me for this much information."

Now, my response to that was, "Sir, this is different." We are talking about a position of public trust and spending taxpayers' money as opposed to a private corporation, which is not to say the information should not be reduced. So that is one example.

Another example that we did is we tried to work closer with, in this case, Senator Lott's office and his staff on trying to work through the confirmation process, and we had some success there, and also had some difficulties sometimes. But that was the second thing. It was very useful to do that.

The third thing is we attempted to start working on the vacancy before the vacancy occurred. For an example, if you have a member of the Securities and Exchange Commission or the Federal Trade Commission and you know that that individual's term is going to be up in 12 months, you don't wait until the 12th month to start working on it. We start trying to decide are you going to try to keep this person or get somebody else.

Those are some examples of some things that we tried.

Senator AKAKA. Many nominees complain about the FBI's security clearance process. I know some of today's witnesses believe that FBI full field background investigations should be reserved strictly for national security positions.

These investigations are required for all Senate-confirmed positions as a result of an Executive order issued by President Eisenhower.

My question has two parts. Do you know if any administration since Eisenhower's has reviewed the need for these extensive investigations to determine if they are necessary for all positions? And would you support customizing background investigations to the nature of the position such as a part-time adviser or commissioner versus the Director of the CIA?

Mr. NASH. Yes, sir, Senator, I would absolutely support that. I do not think it makes sense for an Assistant Secretary for Public Affairs at the Department of Housing and Urban Development to go through the same kind of full field investigation involving several agents traveling to different cities, knocking on neighbors' doors and former coworkers' doors, as it would for—not even as extensive—not the head of the CIA, even maybe the Assistant Sec-

retary of Defense for Technology, you would. But I would absolutely support that.

To answer your first question, I am not aware of anyone who has made a specific recommendation or suggestion or effort to change it. I have agreed with the Council for Excellence in Government and Brookings and Heritage and others on the need to reduce the number of individuals subjected to full field investigations. I think name checks, tax checks, and a Lexis-Nexis might be sufficient for the majority of those that don't involve national security, defense, or probably certain positions at Justice.

Mr. LIGHT. May I respond just ever so briefly? We did reduce the lookback requirement in the FBI national security form so that now on most questions you are only required to identify your residences, your employment, the places and purposes of your foreign travel for the past 15 years, and that was an advancement.

I don't know what the agency does, what the FBI does, and whether FBI agents feel this is an honor to go out and do the field investigation for the Assistant Secretary for Public Affairs at HUD. I don't think it is a career enhancer, and I think to put two and two together with Senator Voinovich's concerns about retention, it may well be that reducing the background checks might improve retention of FBI agents. I can't imagine that it is considered good duty at the end of the day.

Senator AKAKA. Mr. Light, in reference to Chairman Thompson's question, I understand that an appointee serves about 2 years, and I am following up on the Chairman's question. Is this length of time changing? Are there reasons why a little over 2 years is average for length of service?

Mr. LIGHT. I think that the vacancy rate problem is a serious issue for this Committee. It has been, and that is why this Committee and Congress revised the Vacancies Act in the last Congress.

There is really no explanation for the high velocity. We know that about 2 years from now the vacancy rate in the Bush Administration will probably approach 25 to 30 percent, and there is just a velocity there with people coming and going as they are cashing out the pay levels now in Federal service for significant positions. The chief information officers in the departments, which I think are arguably some of the most important jobs in government right now, are paid at the $125,400-a-year rate, and it is only so long that you are going to stay with that.

I mean, the burden of service, the inconvenience of service, is certainly expected, but it may be a mixture of pay, it may be a mixture of just the 70- to 80-hour weeks. We don't know. We don't conduct exit interviews with Presidential appointees, and actually, we don't conduct exit interviews with Federal civil servants when they leave.

But, we have got a vacancy rate running at 25 to 30 percent while the White House is saying that you can't get rid of any political appointees because every last one is essential to the functioning of government. But then, again, we have got a vacancy rate of 25 to 30 percent.

Senator AKAKA. The length of the confirmation process has been a concern. I have heard a number of recent nominees complain

about the appointments process. I notice that in your survey you found that it took appointees from the past administration 2 months longer to enter office than appointees in the two previous administrations.

Do you know why the period was longer? And do you expect additional time to be added to the process for current administration appointees?

Mr. LIGHT. Well, every administration since Kennedy—and this is data collected by Professor Mackenzie behind me, and you can talk to him a little bit about it. Every administration has seen an increase, and that is in part connected to the rising number of political appointees that you are pushing through this concrete pipe that can only handle to 20 to 30 nominees a week.

You know, we have a more and more intense scrutiny of nominees as they are moving through the process, more of a fear of making a mistake at both ends of the avenue. We want to subject appointees to the toughest scrutiny possible, and something has got to give. We have got to decide just how far and how deep we want to look as we are looking at our nominees.

But I think part of it is just the fact that every time we have had a scandal, we have added new questions and new concerns to the investigations without getting rid of any. I challenge somebody in this room to tell me why you need to give the date and place of birth of your mother- and father-in-law and why that information is somehow a national security concern. But it is on the questionnaire.

You have to provide information dating back to questions written during the McCarthy era for national security reviews that is just not relevant. But we never get rid of anything. Does that sound like a familiar refrain? I mean, we add and we add and we add and we add, and we never take away. And I think that just shows itself in the increased delays.

Senator AKAKA. Mr. Chairman, my final question is to Mr. Light. Most of the news articles dealing with the appointment process tend to focus on high-profile positions which makes us forget the less visible confirmable slots. I was interested to learn if your survey found that nominees at the assistant secretary level had more difficulty in the nomination process than nominations at higher levels. And if so, why is that?

Mr. LIGHT. Well, part of it is that we have got so many of them. We have got 220 assistant secretaries to push through the process, more or less, over the next few months, and in all candor, they just don't draw the attention of the White House and the OGE and the FBI. You draw those investigations to do at the FBI, it is not—I mean, you want to be the FBI agent assigned to do Donald Rumsfeld's field investigation. You don't want to be the agent assigned to do the deputy assistant secretary's review for him in his Department. It is just a function of the fact that the lower down you go in the pecking order, the less attention the positions get. And by the time you are getting down to the Executive Level III, IV, and V, this concrete pipe is filled with nominees in front, and people are getting clogged up, and OGE is turning over information and going through files. It is a clogging, bureaucratic sediment problem as well. They just get lost in the process.

Chairman THOMPSON. Thank you very much.

Senator Carper.

Senator CARPER. Thanks, Mr. Chairman.

I just want to say especially to Bob Nash welcome. It is nice to see the guy you talked to on the phone all those years when you were working for the President. I would say for everybody here, I used to tell him that he had the worst job in government. But it is great to see you. What are you doing now?

Mr. NASH. I am going to the Midwest in about a month to work for a bank.

Senator CARPER. All right. Well, good luck.

Mr. NASH. Thank you.

Senator CARPER. Have you gone through their interview process and background checks? [Laughter.]

Mr. NASH. They did not require a background check. They did require financial disclosure, though.

Senator CARPER. All right. I have perused your testimony, and you said in your testimony—I am not going to be redundant—a number of recommendations, and you give us some good recommendations. And I appreciate them very much.

Mr. NASH. Thank you.

Senator CARPER. I am a baseball fan, and baseball games—you talk here about how the process has stretched out and give actually some pretty good data on how much longer the process takes for confirmations and appointments. In baseball, baseball games have gotten too long as well.

I was at a spring training game, and there was a guy actually there running a stopwatch on how long different things were taking during the course of the game in an effort to try to take the fat out and keep fan interest there. And I am not going to suggest we take that kind of approach here, but we clearly need interest at this level and at the Executive Branch to take some of the time out. And I think your recommendations are right on, and I am grateful for them.

Mr. NASH. Thank you.

Senator CARPER. And good luck in the banking business.

Mr. NASH. Thank you.

Chairman THOMPSON. Thank you very much.

Gentlemen, thank you very much. I appreciate your help in this and look forward to working with you very much. Maybe we can get something done and overcome all those hurdles we identified.

We have a vote on. I am going to run and do that and be right back. We have an excellent panel coming up. I am really sorry we are having to ask you to wait, but we will adjourn and be back hopefully in just a few minutes. So we are recessed.

[Recess.]

Chairman THOMPSON. Let's come to order, please.

I would like to ask our second panel to come forward. This panel is comprised of noted scholars and commentators who have studied this process, reflected on its purposes, and identified its many problems. Our witnesses are Scott Harshbarger of Common Cause; Calvin Mackenzie of Colby College; Pat McGinnis of the Council for Excellence in Government; and Norman Ornstein of the American

Enterprise institute. We are very pleased to have you with us today.

Mr. Mackenzie, would you make any opening statement you care to, please?

TESTIMONY OF G. CALVIN MACKENZIE[1], DISTINGUISHED PRESIDENTIAL PROFESSOR OF AMERICAN GOVERNMENT, COLBY COLLEGE

Mr. MACKENZIE. Thank you, Mr. Chairman, and thank you very much for inviting me to testify here today.

For almost 30 years, I have been a student of the Presidential appointments process. In that time, I have had frequent conversations with almost everyone who served as a principal adviser to Presidents on personnel back to the Truman Administration. I have spent many days up here on the Hill attending confirmation hearings and debates on the floor. I have talked with many Senators and staff members here about this. I have served on or directed virtually all of the previous studies that have been referred to today, including one chaired by two distinguished former Senators, Mac Mathias and John Culver.

What has carried me through all of these years is a very simple notion, and that is that in a democracy the purpose of an election is to form a government. Those who win elections should be able to govern.

But in a democracy as large and complex as ours, no one leader can govern alone. Presidents need the help of hundreds of people possessed of courage and stamina and creativity. It is fundamental and essential that victory in a Presidential election should be swiftly followed by the recruitment and emplacement of the talented leaders who will help a President to do the work the American people elected him or her to do.

That is to say, simply, there ought to be a Presidential appointments process that works—swiftly, effectively, and rationally. Nothing could be more basic to good government.

But we do not have a Presidential appointment process that works. In fact, we have in Washington today a Presidential appointment process that is a less efficient and less effective mechanism for staffing the senior levels of government than its counterparts in any other industrialized democracy. In this wonderful age of new democracies blooming all around us, many have chosen to copy elements of our Constitution and the processes that serve them. But one process that no other country anywhere in the world has chosen to copy is the one we use to staff the senior levels of our government, and for good reason. Even those untutored in democracy, Mr. Chairman, know a lemon when they see one.

How did we get into this mess? The answer isn't simple, but there is one explanation we can reject out of hand. No one planned this appointment process. No one designed it. No one approved it. I can tell you that in the several decades of conversations I have had with Presidents, their personnel advisers, Senators, their committee staffs, and appointees themselves, I have never heard a sin-

[1] The prepared statement of Mr. Mackenzie appears in the Appendix on page 92.

gle person praise the appointments process. I have heard many, however, who would like to bury it.

Can you imagine in your wildest fantasies any group of rational people designing a process like the one we have now for staffing the senior levels of our government? No rational body would design such a process, and none did. The Presidential appointment process was one of the great inventions of American political genius. We Americans early on rejected the notion that government was an enterprise best left to a governing class, turning instead to what was a radical and new idea: That government should be the responsibility of the finest of our citizens, people drawn from real lives in the real world of affairs.

And for much of our history it was that, as men and women like Josephus Daniels and Henry Stimson and Herbert Hoover and Frances Perkins and John Foster Dulles set aside their private pursuits, often at great financial sacrifice, to lend their estimable talents to the service of their country.

In those times, transitions were swift and smooth. The White House called, the candidate accepted the job, he or she was at work in Washington a few weeks later. Investigations, questionnaires, hostile confirmations, the bludgeoning of reputations all were largely unknown. Public service was an honor, and to most of those who undertook it, it felt that way.

But those are past times, and increasingly—and distressingly—these days we find that our appointments process is hostile and alien to the very Americans we would like to welcome to public service. So instead of a steady flow of leaders in and out of the private sector and from all over the country, we have instead a process that relies heavily on the Washington community and on people already in government or lobbying the government as its major source of personnel.

We have come perilously close now to relying on the very governing class that our Founders and most previous generations of Americans rejected.

Have we done this because, after careful and thoughtful consideration, we decided to junk our old system and debunk our old notions and replace them with a new approach to staffing the highest levels of government? Of course not. Change occurred unintentionally because we let our appointments process fall into a desperate state of disrepair so that now it often undermines the very purposes it was designed to serve. It doesn't welcome talented leaders to public service; it repels them. It doesn't smooth the transition from the private to the public sector; it turns it into a torture chamber. It doesn't speed the start-up of new administrations; it slows the process almost to a standstill.

All of us who have allowed this to happen should be ashamed. We deserve better, we need better, and we once had better. Then we let it slip away.

But hope is not lost, Mr. Chairman. The appointment process is not irreparably broken, not by a long shot. And what it will take to restore this uniquely American idea to high gloss is clear and, I believe, highly possible.

Tomorrow, the leaders of the Presidential Appointee Initiative will testify here and will present some proposals for fixing the ap-

pointment process. These are not very complex, and most of them are not very new.

What is needed now is common sense, some commitment to undertake this task, and, most importantly, some leadership.

I hope these hearings will be the incubator for these reforms and that this Committee will be their shepherd. That, Mr. Chairman, is noble and very important work.

Chairman THOMPSON. Thank you.

Mr. Harshbarger.

TESTIMONY OF SCOTT HARSHBARGER,[1] PRESIDENT AND CHIEF EXECUTIVE OFFICER, COMMON CAUSE

Mr. HARSHBARGER. Thank you, Senators, and Mr. Chairman. First of all, to segue from the close of the preceding remarks, what we heard in terms of the characteristics necessary for reform occurred in this Senate just over the past 2 weeks, and I congratulate you and thank you for your leadership on campaign finance reform, McCain-Feingold. It was exactly that that made it happen, and we are grateful to you, and many people are as well.

Second, for me it is a great honor to be here for the first time in this role and with a panel of incredibly real experts and people who have studied this and whose proposals by and large I urge you to adopt. To some extent, I come here in two capacities, primarily being asked to talk about the history and importance of the financial disclosure laws for Presidential appointees as the Committee looks at this appointment process for the Executive Branch, and also because of the possibility that negative aspects of the appointment process are deterring good people from serving in Federal Government positions which is a real and legitimate public concern. The efforts of this Committee and others to explore reforms to the appointment process are worthwhile and commendable and essential.

As I said, I was asked to focus my comments on public financial disclosure, primarily because Common Cause has long been an advocate of these laws, dating back to the 1970's when we pushed to replace confidential disclosure rules with a public disclosure apparatus, and the late 1980's when Common Cause fought against weakening the Ethics in Government Act. And in my own State of Massachusetts, being the first general counsel to the Ethics Commission in the late 1970's when, in fact, the States also adopted similar kinds of rules and having been a district attorney and attorney general throughout, I have had an opportunity to look at this from several different perspectives as a public employee and elected official as well.

From that perspective, it is my view that public financial disclosure laws are essential safeguards against both corruption in government and the appearance of corruption. Public disclosure of personal financial interests reveals and can reveal potential conflicts of interest among government officials. It is essential to assure the public that individuals are not using their public office for personal gain or making public policy decisions on any basis other than the public interest. Any changes regarding current public disclosure

[1] The prepared statement of Mr. Harshbarger appears in the Appendix on page 98.

rights should be made with great caution and should not damage the ability of OGE or agency officials to meaningfully gauge real, potential, or perceived conflicts of interest that create the appearance of corruption.

In exploring the possibilities for reform and listening to what we heard in the first panel, listening to what we have heard here and what you will hear, I think it is very clear that there may be many problems with the appointment process, but very few of them are caused at all by the existence of public financial disclosure requirements and the statements of these interests. Numerous studies on this show that the worst problems do not come from that but, rather, come from the politicization of appointments, the media frenzies, a whole range of other issues. Many of these incidents, such as the "nanny scandals," are unrelated to financial disclosure forms. Therefore, financial disclosure should not become the scapegoat, nor is it the reason for these problems.

The biggest problems, in fact, have been identified: Increased polarization of the process, long delays in nomination due to senatorial holds, political games and bureaucratic inefficiencies, high-profile media frenzies surrounding scandals that are unrelated to financial disclosure, an excessive amount of Federal appointees subject to this process, and lackluster protection of sensitive FBI files, including issues that should be addressed in terms of professional performance by law enforcement agencies and investigators rather than attempting to deal with it through weakening background checks and the way in which they are conducted.

There are also complaints with the ways financial disclosure is administered that can be resolved without eliminating necessary disclosure questions. The process is often called confusing. There is extensive duplication we have all heard about. There is no need for that. Therefore, the problems in the appointment system can generally be said to be rooted in three P's: Politics, paperwork, and press coverage. And for the sake of the public interest, the problems can and should be addressed without gutting disclosure laws.

There are also several reform proposals that can be implemented without weakening these proposals. The process can be streamlined, and there is a whole range of software that can be used to help deal with this, having administrations begin planning early and take action to assist potential nominees. We can enhance and streamline and professionalize the FBI investigative process. We can clarify the laws and procedures. We can make fewer political appointments, and we can set the limit on senatorial holds and so on.

But, specifically, in terms of the process of disclosure, we think that some of the changes proposed are unnecessary and would, in fact, increase the likelihood of potential corruption and the appearance thereof, including, for example, while the original President Clinton's 5-year revolving-door restriction may have been a bit too long, 1 year is not enough in most of these positions, and taking away criminal penalties, in my own experience and view, as part of the range of potential penalties would decrease the incentive to be honest.

Now, I will discuss in a minute several things. I know there is limited time here, but the history of this, which we were asked to

talk about, is incorporated in my statement, and I will leave it for that purpose. The history, I think, demonstrates that the process, as exhibited by Professor Cox's comments, by former Senator Douglas and others, makes very clear that this process can be a very helpful experience for the nominees and for the appointees. It also does disclose major kinds of potential problems that would not otherwise be disclosed.

But for this purpose, I think the major issue that we want to stress is essentially that in order to streamline this process, it is vital that no reform prevents disclosure from being public, that infringes on the ability to determine conflicts of interest, that substantially reduces categories of value or weakens the penalties for false disclosure. Public disclosure is necessary because confidential disclosure is not truly disclosure at all. And, in fact, some of the disclosures for the lesser positions, not the public information officers at HUD but, for example, assistant secretaries, may be even more important because they are less focused upon than the secretarial positions by the media and others. So, to some extent, it becomes a very important prophylactic effect that is very important to the nominee and others.

The disclosure form needs to contain all the information necessary to identify potential conflicts. It does not need to be a net worth statement. It should never be that, but it does need to identify potential interests that may or may not exist.

Also, from my own experience, if categories of value are too broad, it actually harms honest officials because the press always assumes the highest number in any category, not the lowest number. And, frankly, in terms of the range of penalties, I think the issue is to some extent what the guidelines ought to be and who ought to be administering and enforcing these laws rather than limiting the range of potential penalties from those who innocently violate in good faith to those who intentionally set out to falsely disclose in order to gain or to game.

Now, my final point is simply that we think that the present process should not weaken public financial disclosure. Streamlining the process is a worthy endeavor. Gutting the process would prove disastrous. My own experience and the position of Common Cause is that the vast majority of public officials are decent, honest, honorable people who have and will have nothing to hide and will survive any kind of an examination in the performance of their duties and in the screening. But public financial disclosure, while not a panacea, is often in their best interest as well as the public interest as a whole. And I think and hope that you will continue to uphold the financial disclosure requirements while streamlining this process and making it far easier for good people to serve in these wonderful jobs.

Chairman THOMPSON. Thank you very much.

Ms. McGinnis.

TESTIMONY OF PATRICIA McGINNIS,[1] PRESIDENT AND CHIEF EXECUTIVE OFFICER, COUNCIL FOR EXCELLENCE IN GOVERNMENT

Ms. MCGINNIS. Thank you. Thank you, Mr. Chairman, for the opportunity to be here to talk about the state of the Presidential appointments process. From my vantage point, as the head of an organization whose mission is excellence in government, I have to say that the state of the appointments process is far from excellent. In fact, it is going in the wrong direction in terms of the time it takes for appointees to get through the process—you see the numbers—in terms of the toll it takes on many highly qualified people who sometimes unknowingly become pawns in a complicated and often obscure set of political games, and in terms of the dampening effect that it has on attracting excellent people around the country to government. You also see the numbers about how many more people are coming into these positions from Washington than from elsewhere in the country.

I know that you and your colleagues on the Committee are concerned about public trust in government, which is today about half of what it was in the 1960's. An appointments process that gets well-qualified people on the job in a reasonable period of time to manage the public business and does so in a professional and respectful manner I think will go a long way toward restoring confidence in government.

In the mid-1960's, it took just over 2 months to get a person confirmed, on average. That number has risen—you can see the chart—to about 8½ months during the Clinton Administration. I think that if we can return to the 2½-month time frame of the 1960's, maybe we can also approach the levels of confidence in government that we saw then. In 1964, 76 percent of the American people said they trusted the Federal Government to do the right thing all or most of the time. In 2000, that number was 30 percent. I think that is a matter of some concern.

You are bringing many organizations and individuals to these hearings to discuss their work and their findings and their recommendations over the years. This issue has been studied and studied, and if you pile up the reports, they would rise probably above Scott Harshbarger's glasses. So a lot of work has been done. We have been very pleased to partner with the Center for the Study of the Presidency, for example, in exploring barriers to public service. We have been delighted to work with the Transition to Governing Project, Norm Ornstein, and the Presidential Appointee Initiative at Brookings, and I want to particularly commend that initiative and Paul Light, Nancy Kassebaum, and Frank Raines for conducting this research and providing these insights that we hope will set the stage for reform.

The Council for Excellence in Government's work most recently includes putting together this survivor's guide for Presidential nominees. It looks a bit like a phone book, and that was not intentional. But this describes all the steps, all the people who are involved, and it also has an appendix, which is quite lengthy, which contains the forms.

[1] The prepared statement of Ms. McGinnis appears in the Appendix on page 115.

We did it to help people through the process. What I have heard in comments and feedback on this unfortunately is that many people have looked at these forms and been discouraged and less interested in the process.

The council has also looked at this appointments process in our "1997 Prune Book" extensively and made some recommendations. A group of our members, chaired by Elliot Richardson, also developed a set of ethical principles for public service which we published, which I would say, rather than some of the very detailed restrictions, is a more positive and powerful and important statement of public service as a public trust.

The striking characteristic that we have noticed in all the past studies of the appointment process is the bipartisan consensus across the board. There are some patterns here, and I think we can build on those. The one that we have focused on extensively is the work of the American Bar Association's Committee on Government Standards. I am sure you have looked at their recommendations, and we have built upon those in a letter that we prepared for Amy Comstock and the Office for Government Ethics, which was also signed by David Abshire from the Center for the Study of the Presidency, and Sally Katzen, who chaired that ABA committee, and Boyden Gray, who I believe coined the phrase "innocent until nominated." That work is both powerful in its recommendations, very practical, but I think if you look at the people who were involved in making those recommendations, you see conservatives, you see liberals, you see Republicans, you see Democrats. And I think that we should not say at this point that we can't improve on those requirements without eliminating them.

Before coming here today, I polled the 650 members of the Council for Excellence in Government who are leaders in the private sector who have served in government to get their views of the appointments process and their comments about their service in government. It very much fits with the picture that Paul Light gave you. What we see in their comments is a pattern of people who value public service as a chance to make a difference. They see it as one of the most rewarding experiences of their professional careers—one person gave it a 10 on a scale of 1 to 5, and 5 was the highest—but who in most cases found the appointments process to be, "too long, too extensive, too often inappropriate, and too intrusive."

Ironically, most would go through the process again for the opportunity to serve, but these are people who have served and they know the rewards of public service. The question is: Can we expect this response in the future from talented people around the country who have no government experience? And on the basis of PAI's research and the council's own surveys, I would say no. I see little interest, especially among talented young people, in government service or running for office. The demeaning of people in government obviously goes beyond the appointments process, but in this case, the problems are clear and we know what to do. What we need now is the leadership to do what is necessary to improve the process. We need a system that judges nominees on their qualifications for the jobs they are being asked to do.

The financial disclosure and ethics regulations need to be streamlined and refocused on promoting public service as a public trust, not creating a stranglehold of regulations and restrictions in what I think is a futile attempt to legislate ethical behavior.

The Senate and Executive Branch should work together to streamline, shorten, and in some cases combine their paperwork and investigative processes. You have heard about that from other witnesses here. The management of the vetting and clearing of nominations in the Executive Branch needs re-engineering to expedite the process and keep nominees informed every step of the way.

And, finally, the Senate and the Executive Branch should agree on principles that will govern the confirmation phase of the appointments process, and obviously an important principle should be the timely handling of nominations with a commitment to vote them up or down within a reasonable period, say 60 to 90 days as a target.

Thank you very much for your leadership to ensure that the insights and proposals you are hearing this week will turn into real reform.

Chairman THOMPSON. Thank you very much.

Mr. Ornstein.

TESTIMONY OF NORMAN J. ORNSTEIN,[1] RESIDENT SCHOLAR, AMERICAN ENTERPRISE INSTITUTE

Mr. ORNSTEIN. Thank you, Mr. Chairman. I, too, want to thank you for your leadership on this and the splendid campaign finance reform debate of the last week. It is an honor to be here testifying with this remarkable group of people.

I have been interested in issues of public service throughout my professional career, became more directly involved as I helped to create the National Commission on Public Service and then served on it with Chairman Paul Volcker and up through my current involvement as co-director of the Transition to Governing Project. It is interesting to go back through our recommendations, the recommendations that preceded it, the ones that have come since in all of these reports and see the remarkable consensus on what ought to be done here. The consensus there that is perhaps only matched by the lack of action through various administrations and various Congresses, and we can lay the blame all over the place.

One of the problems, frankly, is that I think we have had a bunch of Presidents who have not understood the importance for their own administrations and their own ultimate success in having their team in place at an early stage and used some of their political capital early to try and effectively move this process along and streamline the process. But it also extends almost everywhere else, including throughout the culture, and I want to spend at least a couple of minutes talking about some of the things that have not been addressed as directly today in the Senate, which I think is an important part of this, and some of it may not be directly in the jurisdiction of the Committee, but it is in the jurisdiction of individual Senators and it is quite important.

[1] The prepared statement of Mr. Ornstein appears in the Appendix on page 121.

We clearly have a terrible problem on our hands, a problem now that was reflected by the comments of Mr. O'Keefe. Imagine going through a budget with two people in position at OMB. But then imagine where we are throughout the rest of the administration where basically you have a Cabinet officer sitting there at the top with maybe one or two personal assistants and only a couple of instances with a deputy secretary and nobody else, a group of career civil servants waiting for policy direction but nobody who can give them that policy direction, and in many instances, only one person who can sign a whole slew of forms to make things happen or not make them happen. Paul Light called it a neck-less government. It is really a hollow government at this point. And it is not likely to change in any substantial way for a while.

We often use the benchmarks of the first 100 days, coming up in another month, the first 180 days, the first 6 months of an administration, to look for those concrete accomplishments. And what we are going to find, I am afraid, is that by the end of the first 100 days we will have very few additional people in the key departments able to actually move across an array of important policy areas begin to get things in place, and that will be almost as true after the first 180 days. So this is reaching a level where it is having a serious impact, not just on getting good people to come in and serve but the actual functioning of government and making policy.

Now, you are going to hear some recommendations that reflect the consensus in more detail tomorrow. We have heard about some of the problems. I would like to highlight a couple of things that haven't been addressed as much as well and maybe focus on one or two others that have.

This goes back to the pre-election period as well. We have had a culture that basically says that it would be presumptuous for Presidential candidates to do anything openly about planning to take over government and do something with it. Anything that is done to plan for a new administration is done surreptitiously, by and large, and often such removed from the candidates that when the eventual winner moves towards a transition, the people who know something about getting a team in place are isolated from the actual process of getting the administration moving.

I am not sure how much formally or structurally we can do here, but there are some things that can be done. Last year, you passed a very good piece of legislation amending the Transitions Act. It would be nice if some of the money that is used for transitions was specifically allocated and almost mandated for pre-election planning. And you should seriously think about perhaps a permanent office, one that at least could build in the most powerful computer systems so that you could move those resumes up online, move them through, and have an easier and streamlined way of getting those potential nominees into the mix a little bit earlier. Because, of course, one of the problems is that when an election is over, everybody is exhausted. The winner wants to bask in the glow. There is infighting going on over who is going to be a decisionmaker, and you can lose easily the first month or two. It is quite remarkable and commendable of Clay Johnson and the other people around President Bush that, having lost half their transition, they have still managed to move as swiftly as somebody coming in without

those kinds of problems, but, still, where we see 90 percent of the Senate-confirmable people not yet in place, and many of them not nominated or not even close.

There has been some talk of the FBI checks. That was an Executive order. Presumably an Executive order could change it. Presumably we could work through and maybe with the assistance of the Committee a sliding scale, maybe you don't need just simply full field investigations for every confirmable appointee or a very simple process for many and then the most complex for others. We may be able to develop categories of people where you could go from a simple computer scan right up through the full field investigation. But here I would also mention that one of the problems is that the Congress has insisted, the Senate has insisted more and more over the last 20 years that taking positions that were never thought to be Senate-confirmable ones and added them to the list.

Paul had mentioned this is a problem, and it is something that is not easily curable. But I would hope at some point we would look back and see that it does not serve the public interest to have a bunch of assistant secretaries or even deputy assistant secretaries having to go through a full Senate confirmation hearing and having them to be caught up in the web of all kinds of other requirements that come with that status. A lot of them like that status. It is certainly an additional aura that goes about the nominee. But it slows the process down.

The forms streamlining I think is doable, some of it by Executive action. We will see Amy Comstock, I hope, talk about some of that tomorrow, some perhaps as well by Executive order. Some may require legal changes. The fact that many of these forms have to be filled out on a typewriter is just another element of the water torture that we put people through, and that means that when you go to update, you have got to go back to the beginning.

We in our Transition to Governing Project have presided over the creation of a piece of software, which was done by a couple of very good political scientists—Martha Kumar, who is here in the room, Terry Sullivan—called Nomination Forms Online, which we hoped would be the equivalent of a Turbo Tax program for Presidential appointees. It is almost ready to go. It can't at this point be implemented because we don't have the Presidential data statement, the Personal Data Statement in the form that can make it usable. But it may require some changes that you could contemplate to at least enable nominees to go through an easier process, and that might even be easier than eliminating some of the forms, if you can have the data automatically travel to where it belongs.

There are criminal penalties for any kinds of misleading or inaccurate statements on these forms. Having filled them out myself, I know that when you go back and you have to write down every foreign trip you have taken, every world leader or foreign leader you have met, with no clear definition of who those are, every speech you have given, it is almost impossible for anybody who has been around a little bit not to make some inadvertent mistakes. And we ought to think through what kinds of penalties are appropriate in this area.

Finally, let me just talk for a minute or two about the Senate. When we look at these tables looking at the percentage of ap-

pointees from the D.C. metropolitan area—and the number is going up, the fact that we are turning more and more to Beltway insiders—certainly a part of that problem is the costs of relocation. But let's face it. The hold, as it has been practiced in the Senate, is a major contributing factor.

If you think about anybody going from a position in the corporate world to another across the country or going from academic life from one place to another, the complications of selling a house and buying a new house, of trying to time it so that your children finish a school year and then are in place in time to meet a new school year are tough enough. Then imagine if you have to go through this process of months before your appointment is announced, all the time before you can be formally nominated, and then you sit perhaps twisting in the wind for 3 months, 6 months, a year, or longer because of a hold that may have been instituted not because of anything you have done or are alleged to have done, but as you are being held hostage for some completely extraneous matter.

Now, this is not a matter of changing the Senate rules, as you know. This is not in the rules anywhere. It is a practice that has been around for a century that was designed as a measure of convenience for Senators when something of importance came up to give them an opportunity to prepare for it, to make sure that they could be there on the floor if there was something else that created a conflict for them for a very brief period of time. And it has now morphed into something very, very different.

We have made a slight change. In theory, these holds are now public. In practice, they often are not. In theory, they are only supposed to be for a fixed period of time. In practice, they often are not. We ought to really—Senators ought to look at themselves in the mirror and leaders ought to think about whether using a hold for anything other than a legitimate concern about an individual nominee is an appropriate use of a power.

I know that is out of the jurisdiction of the Committee, but it seems to me that the way in which the Senate has handled the confirmation process is at least as significant a problem here for many nominees and a chilling factor in terms of whether people are going to serve as they see what others have gone through, as many of the other areas that we can perhaps correct by Executive action, Executive order, or a change in the law.

Thank you very much.

Chairman THOMPSON. Thank you very much.

In listening, a couple of you made comments about campaign finance reform, and I drew the parallel with what we are dealing with here today in that there, too, regardless of what you feel about the legislation, you had a system that developed without anybody having developed it. It just arrived 1 day. We went from a system of anything over $1,000 contribution being illegal to unlimited, without Congress ever having passed a different law. And that is the system we have got here today. Nobody ever devised it. Nobody created it. Nobody would. Nobody would take credit for it. And yet we have it, but we see it has been very difficult to change it. Maybe by focusing the attention on it that we are going to, maybe that can help.

What I would like to do, we have an awful lot of expertise and years of experience here before us. I would like to take a lot more time than we have. But I guess what I would be interested in mostly is how you would rank the problem areas in terms of significance, and I guess specifically in terms of unreasonable delay.

I guess the paperwork would be one whole category. Within that, it would be the simplification issues, and another category, perhaps the financial disclosure issues. Then you would have the Senate, the FBI, the White House, etc. Pick your own categories.

But assuming that we might not be able to do everything, if we could only do one or two things, what do you think that should be? Mr. Mackenzie.

Mr. MACKENZIE. Well, I think they have all been discussed here, Senator, today. The simplification, of course, is part of the obvious answer to your question, that these forms have grown like topsy; nobody decided it made sense to have 233 questions that appointees have to answer. We need to deal with that. And I think there is some movement in that that is desirable.

I don't think enough has been said about the FBI full field investigation, although we have touched on it. You may have had in your Senate experience some occasion to look at FBI files on nominees. I have never looked at one, but I have talked to virtually everybody who has been in the White House counsel's office who had responsibility for those. I have never, ever had a person say to me that there was a useful piece of information in those files. And the amount of both government staff time that goes into creating them and the agony that appointees and others have to go through in enduring them simply is not justified by any valuable information that comes out of them.

So I think the kinds of suggestions, some of which you have heard today, some of which you will hear tomorrow, about how to rationalize the FBI full field investigation, which consumers a very substantial portion of the time in this process, are good ideas.

The third area, it seems to me, is what Norm Ornstein was suggesting. I think some effort in this body to not reduce its deliberation about appointments, not reduce the intelligence with which it makes confirmation decisions, but to discipline the time that it takes to do those things.

I think having talked to hundreds of appointees over the years, one of the great terrors for them in this process is uncertainty. If you are a partner in a law firm and you are blessed with a call from the President of the United States asking you to take a high-level job in the government, you quickly realize first you have got to go through your client list and decide which clients you have to shed right away because keeping them as clients is going to be a conflict of interest for the job you are going to hold. And then you have got to prepare to come to Washington and make this transition, but you don't know how long that is going to take. And we know these days it can take 6 months, 8 months, a year, or more. Do you take on new clients? Do your partners start looking at you saying, "You are not making any rain in this law firm. Why are we even keeping your office open around here anymore?" There are questions about whether you can stay on your health insurance, what happens to your retirement, and so on.

It seems to me a good deal of that uncertainty can be reduced by some time limits here.

Chairman THOMPSON. How can you do that? Perhaps you can have a range, say absent unusual circumstances, how do you foresee a member—let's say we even make some changes with regard to holds, with regard to the amount of time we normally take. How can you foresee an individual Senator thinking that something is more significant maybe than others on the panel might think and it requires more investigation and it requires special treatment or something? It seems like that happens all the time, and you certainly can't predict that.

How much certainty could you interject in the system realistically and still have everybody have their say, as they must in the process?

Mr. MACKENZIE. Well, I think it is important to wonder, maybe even to ask: What has happened here in the last 20 years? In 1981, the Senate spent an average of 30 days from the time a nomination came to the Senate to the time it confirmed that nominee. In 1993, the first year of the Clinton Administration, it was 41 days. In 1999, it was 87 days. So it is now three times longer for Senate action on a nominee than it was 20 years ago.

Is Senate deliberation three times better as a consequence of that? Is the quality of people being confirmed three times better? I suspect the answer to those questions is no, although we can't measure those things.

How do we go back to where we were? It does seem to me that the question of holds has become significant in some cases. And while I don't think anybody is going to recommend that the practice of a hold be eliminated—and if we did, we would be laughed at, of course, for that. But it does seem to me that the Senate could make some decisions collectively about putting a time limit overall on the length of time that a nominee could be under a hold, so that if a Senator did have a question about the particular nominee, he or she would have time to explore that question and resolve it and then move on with the nomination.

It does seem to me that there is some sort of target figure on the number of days post official nomination before there is a vote on confirmation that could be agreed to in practice with some kind of escape hatch if there clearly was a problem that came up perhaps late in the confirmation process that wasn't known at the beginning that required further exploration.

But I think establishing some guidelines, some targets, is a good idea. You know this body has asked an awful lot of agencies in this government to establish targets for things that it does. That doesn't seem to be an unreasonable request for it to ask itself about a process as important as this one.

Mr. HARSHBARGER. On that, I would just—the last point was particularly interesting to me as a former prosecutor and former attorney general. We have had many legislatures decide that arrest to trial ought to occur within 90 days and 60 days, and we have come up and said there are plenty of problems with these, how do you get around this. And, in fact, people have figured out how to do that with appropriate exceptions. So it does seem——

Chairman THOMPSON. Not to mention mandatory sentencing.

Mr. HARSHBARGER. Right. And I won't go into the whole line here about how you can, in fact, streamline something when, in fact, as a legislative framework you decide to approach it that way, still allowing discretion, however, which I think was a very important point here.

If you took all of the recommendations that people have made here, the expertise, there may be some disagreements, and we could discuss those issues. But the uniformity of agreement about how you could streamline and simplify is not partisan in any way. It is really how would the system best operate. I would argue even for the Senators it would help sort out a great deal.

Let me say the second point, and I speak to your background as well. This issue of background checks, I mean, there is no reason in the world that you shouldn't leave the delegation of this to appropriate officials who are experts at doing this, which is, you know, either the FBI or somebody—the categories that could be worked in here in terms of both time limits on background checks and other kinds of things are done in many other capacities in any other investigative capacity that we have, and the people who do it are held accountable for it.

Chairman THOMPSON. Should this be within the purview of the Executive Branch?

Mr. HARSHBARGER. Well, it certainly seems to me the Executive Branch could easily decide how to do this in a different way.

Let me tell you a third piece. The point of public disclosure years ago was to eliminate a lot of the need for that kind of investigation, that is, the theory being that if the people themselves had to disclose things publicly, somebody would review it, that sort of has its own antiseptic effect. Of course, it has problems. But one of the theories of a lot of the disclosure laws was you were letting the public disclosure serve the purpose that usually detailed background checks used to deal with. And then later on, you always have the subsequent review process if there had been major discrepancies. But I do think that there is a way within the framework through administrative efficiencies and other kinds of policy considerations, instead of mandating some of these things, to allow the discretions to exist within the people charged with doing the job.

Chairman THOMPSON. Do we want to give the President complete discretion in deciding which top-level appointments should have an extensive background check?

Mr. HARSHBARGER. I think you could draw those. In one category—obviously people here are much more focused on the Federal law. In the State laws generally, you have categories called major policymakers which are subject to certain things. It seems to me there are categories of officials that could be subject to broader kinds of reviews. You may decide security checks in certain highly sensitive situations ought to have it regardless. You may then decide, as I think everybody here has mentioned, different categories for different positions.

But I think even so, Senator, putting the pressure on in terms of time puts it on the investigators as well as the process itself, and I think that has a lot of merit.

Ms. MCGINNIS. Can I build on the issue of Senate holds and the time frame? I think that is exactly right, and there should be some exceptions, some escape hatch. But this is not just about holding nominations to get more information. Unfortunately, I think the larger problem is holding nominations for another reason related to the department or agency to which that person——

Chairman THOMPSON. Or to kill them altogether.

Ms. MCGINNIS. Right. And so this issue of the purpose of holds has to be part of the consideration in terms of establishing the principle that the focus will be on the qualification of the nominee to do the job. And then my second area would be in the Executive Branch, looking at the FBI investigations. We have talked about that, developing some categories, streamlining those, and there are a lot of things that can be done in the Executive Branch with no legislation in terms of setting time frames, keeping nominees informed, consolidating the paperwork, building on the Turbo Tax model, etc. And that should and I hope will be done.

And then the third category we are going to hear more about tomorrow when Amy Comstock comes after extensive study and gives some recommendations on financial disclosure, and I think that we should all look at those carefully and see if we can agree and move them forward.

Mr. ORNSTEIN. I would make a couple of specific suggestions, Mr. Chairman. While holds are not anywhere in the rules, I think it is time for a Senate rule that basically would put a specific time limit on a hold for a nomination and would have a discharge feature that after 60 days, which is a more than reasonable time, at maximum, that a nomination would automatically go on to the calendar and move towards the floor for a vote. There ought to be at least—you can't eliminate uncertainty, and you can't eliminate the possibility or the prospect of killing nominations. Sometimes it happens just in a committee by not acting on it. That is OK, too. But you can take away some of the torturous aspects of this.

I wrote a piece in "Foreign Affairs" on this issue which led with the story of Peter Burleigh, who had been nominated to be Ambassador to Indonesia, and he and another Foreign Service officer, whom I have known, just a superb public servant, sat twisting in the wind for more than a year. Meantime, the United States did not have representation in Indonesia at a time of enormous turmoil, this huge and important country, all because of a completely extraneous matter, a whistleblower who a Senator thought was being mistreated in the State Department. It had nothing to do with these two individuals or their qualifications or any kind of a problem with them. And, eventually, Mr. Burleigh just basically said enough of this, and he retired from the Foreign Service. Not a good outcome.

There are a lot of those stories, and it may be time to consider a rules change.

The second thing that I would do is this apropos of the notion of who should be responsible for making these kinds of decisions about FBI checks. It is probably time for the two Senate leaders to sit down with the President before that happens, for you, perhaps you and Senator Lieberman, to sit down with the chief of staff and work out some understandings on some of these things. You

could easily, I think, work on an understanding of which officials should be subject to full FBI background checks that really does involve a consensus in both branches, and then you can have action that would take place, and maybe even a compact that would include some assurances ultimately from the Senate to move to try and expedite some of these things in return for an administration streamlining its own processes and being open and forthcoming. That may be a good way to do some of these things.

Chairman THOMPSON. Senator Akaka.

Senator AKAKA. Thank you very much, Mr. Chairman. I want to be brief with the questions, and this is along the line of the questioning now.

As Ms. McGinnis noted, political appointees unknowingly become pawns in complicated and often obscure political games because of issues unrelated to the person's position. And you suggested that the Senate vote up or down on a nomination in a reasonable length of time. Others echo this view and some recommend that the Senate limit its tradition of placing holds on nominations.

We just went through a period of years where many nominations to the Federal bench were held up for political reasons by the Senate. I know the career of an attorney from Hawaii languished for nearly 2 years on hold for fear of accepting cases that could pose a conflict of interest once she was confirmed.

My question is for anyone on the panel. Would you extend limiting holds to all nominations, including Federal judgeships?

Mr. MACKENZIE. Can I take a crack at that? And I am sure others will as well, Senator.

The discussion we have had today, I think, has been mostly about executive appointments. Clearly, there is a difference when you are talking about appointments that are for life, as judicial appointments are.

And so the importance of Senate scrutiny and care and deliberation in those appointments, I think, is magnified in those circumstances. But I think the principle of fair treatment applies in both cases, that the human beings who are willing to submit themselves to this process to be public servants deserve to be treated fairly and openly and not to be used as pawns in someone else's game. I think if there is a legitimate question that has not yet been resolved about the fitness of a particular person to be a Presidential appointee to the bench or to the Executive Branch, this body is entitled to take the time it needs to resolve that question. But if that question is not pending and the issue is only how can we use this appointment to get some leverage for some other kind of deal we would like to make with the administration or with some other Senator, that is unfair treatment of the appointee and we shouldn't do that.

Mr. HARSHBARGER. My view would be, from both Common Cause and my former life, is your goal here, it strikes me, is having enough review but also accountability. And I think the present process frees the Executive, if you will, from accountability. Because if you really had a system of measuring this and you couldn't get your people appointed, you could say, well, it is not my fault that this isn't getting done. So a sense of accountability here I think helps a lot.

In the judicial process, I think you do have a third branch of government and a constitutional separation issue that is very important in that level of review. On the other hand, when you are dealing with jobs that everybody would say—I mean, there is an old saying from a former Attorney General teaching other Attorneys General: Remember, when you are trying to recruit people for the low salaries you are asking them to perform for the least amount of possible lucrative return, to remind young lawyers that the least interesting thing that you do in public life is more interesting than the most interesting thing that you do in private practice, is one of the ways that you are attracting people here. And this long delay process is the intangible that I think sours deeply that entire experience more than any other single factor that I can imagine.

Mr. ORNSTEIN. I would just say this, Senator. I can see having a different set of standards for judicial appointees for the same reason that Cal Mackenzie said. They are lifetime appointees. At the same time, I don't think that it was ever intended by the Framers that the confirmation process should give an individual Senator a veto over an Executive's nominee. This is something that should be done by a majority of the institution.

And so if you wanted to make that time period longer for a judicial nominee, 90 days before it was brought to the floor from holds, as opposed to 60, there would be some justification for it. I don't see any justification for having a process where somebody's nomination can effectively be killed by one or two or three people without having at least an opportunity for a vote. And when you leave people twisting in the wind for this length of time, over the long term it is going to have an enormously corrosive effect on people's willingness to serve. And that is true across the board.

One of the things we have seen, and what I hope will not happen here as well, is we have gone through—part of the reason we haven't done anything about this is we have been through these cycles where one side sees its own nominees shafted, and then lose an election, and the attitude is, all right, you stuck it to our people, now we are going to show you and we will stick it to you. And we have been through that cycle more than once. It is time to end it, and it is time for a broader consensus across parties, because ultimately it is going to benefit everybody.

Ms. MCGINNIS. I think the principle of an up or down vote, making a decision, applies in both cases, maybe with some different standards. And I just want to add that the way this game is played in some cases fuels the public cynicism about government and creates, I think, an aura that makes it difficult to do the public's business and has a tremendous dampening effect on particularly young people's interest in coming into government.

Senator AKAKA. Well, thank you very much. Thank you, Mr. Chairman.

Chairman THOMPSON. Thank you.

Let me ask you one additional question or category and ask you to talk about it for a minute. You may even have a little disagreement here on this.

Mr. Harshbarger was talking about financial disclosure, as we asked him to, and I think we are all in agreement that we need

disclosure. And as you said, private disclosure is no disclosure at all. I think the question is: Disclosure of what and how much?

I have read quite a few different views on that, some from your organization, Ms. McGinnis. It seems that we started off with the idea that we are going to identify conflicts of interest. Now the newspapers get a hold of it even, I think, I learned that we ask questions more directed toward a net-worth situation. And I am not sure it is anybody's business. Do we need to redraw the line somewhere? Do we need to focus in on what we are trying to get, what we have a right to get for the protection of the public, to the extent that is reasonable? Underlying all of this, of course, is the understanding that you can never totally guarantee that someone is not going to be a wrongdoer or supply false information. Disclosure is no panacea. But it is the best we can do, and we have to do it.

So what about the financial disclosure aspect of this? And we are going to get some recommendations on that tomorrow. But I was wondering about, even before that, and perhaps before you know what that is, some general principles you think that we might look at or areas that we might consider some changes in. Do we need the limits that we have now, the categories? Are the categories correct, and are the limits within the categories correct? How much flexibility are you willing to give us on that, Mr. Harshbarger?

Mr. HARSHBARGER. Well, I want to be sure that Common Cause maintains its tradition of being totally rigid. [Laughter.]

And as immovable as possible on any issue that we have taken a position on sometime in our past. But with new leadership, I think we——

Chairman THOMPSON. We will see. [Laughter.]

Mr. HARSHBARGER. I am still in that period that you used to be as an elected official. You can still blame it on the past.

No, I think we are very interested in looking at what really works. I mean, the principle I wanted to establish here and that I think our interest was in making it clear that this not become—and nobody has suggested that—that financial disclosure and those issues become sort of the scapegoat here, sort of the reason for a lot of the problems that people identified, and that it ought to be dealt with a little bit differently because I don't think it is a major part of the problem that you are identifying.

The second point is my own experience has been—and this is always a problem when you do this—that most of us in public life in this last 25 years are used to a process by which you identify your interests, not just the conflict, you are identifying financial, personal, and other interests——

Chairman THOMPSON. We are interested in getting new people who are not used to this process. That is part of our problem.

Mr. HARSHBARGER. But I think I would just make the point that I do think some of these—and I have talked to people who haven't been in government that actually for who this has helped identify some issues they wouldn't have thought about. They wouldn't understand why it was relevant until they had to do some examination.

Now, you don't need to put them through a torture chamber to get that to happen. You can have good technical assistance pro-

vided by a lot of groups. I think the survivor's guide and things like that are terrific to help people who are new to this to explain the positive aspects of something, not just that this is viewed as an unnecessary obstacle.

Looking at the categories, my only point about this, I have never thought and Common Cause has never taken the view that these should be net-worth statements. In fact, it is actually an unnecessary intrusion to make them that. The idea was, the concept was identify the interests, and then if there is a reason to pursue it further, that gives somebody who has an appropriate power to pursue it, usually confidentially, who wants to pursue that further.

My experience has been, though, Senator—and I ask you as you think about this, Mr. Chairman—that one of the problems we have now is if you say that the category and interest should just be identify that you have above values—in Massachusetts, above $1,000, above $5,000, in, for example, various kinds of stock or other assets. What people do is all they have to do is identify those.

The general report, if somebody wants to do it, that comes out is to show that you own—I had to go through this myself when we were involved in the tobacco litigation. I had Fidelity stock identified. One report came out and said a major holder, here he is suing the tobacco companies while he is a major holder of Philip Morris. Well, why? Because Fidelity had a huge—I mean, now, I thought that was unfair, was improper, that they were wrong, I mean, all those terrible things that they did in that context.

My point was that it was much easier for me—and I tended to take a practice of identifying exactly what the amounts were. And I found more people tended to want to go that route because it was always overinflated rather than underinflated.

And the other point is, of course, everybody—I think how you make a distinction in people's minds between somebody who owns a huge amount of a stock, relatively speaking, compared with a small identification, it is a very—in public, that is not always—the distinction is not always made.

My point here is I think we would be very glad to discuss flexibility here around the concept of principles we are trying to do, and our biggest concern was in the short term, at least, that as we look through this, we not overemphasize the problem that the financial interest and disclosures are causing, or from my view from a law enforcement perspective, or that the penalty provisions are the problem here. I mean, there is no prosecutor that I know of that has authority that doesn't make the kinds of distinctions, and when you look at this, the penalty provisions I think are appropriate to have a range as long as you assume some legitimacy, independence, and professionalism in the prosecutorial function.

So that is our concern rather than—and I would be very interested in discussing some of the other points.

Chairman THOMPSON. Well said.

Mr. Mackenzie.

Mr. MACKENZIE. I have a different view, Senator. I don't have a different view about public disclosure. I think that following Dr. Johnson's dictum, nothing is so conducive to good behavior as the knowledge you are being watched, public disclosure makes sense.

The principle I would offer is something like this: That we ought to have the minimum disclosure necessary to protect the public interest, that beyond that we get into a prurient interest, and that shouldn't be what we are about here.

I don't know why—and I have served on a number of these blue-ribbon commissions over the years that have made a recommendation that says simply we ought to establish a level above which you have a potential conflict of interest. And when you have a holding that is worth more than that level, then it ought to be identified as a holding that is worth more than that level.

The SF–278, the current personal financial disclosure form, is a monstrosity, an embarrassment to this government, in my view.

Chairman THOMPSON. You leave it up to the individual to decide what is——

Mr. MACKENZIE. No. There would be a de minimis established in law, and I don't know what wise people can decide whether it is $1,500 or $10,000 or $25,000. And if you have a holding that is worth more than that, you would disclose that.

On the SF–278 that we use today, we have multiple categories of value. One of the great frustrations to appointees in this process is that the value of their holdings changes every day and flips from one category to another. So it is a moving target they are trying to stay on top of, and we have got criminal penalties if they file this incorrectly. So it scares the bejusus out of them, and they go out and they spend a lot of money on an accountant and an attorney to help them do this so at least they have got some cover if the numbers come out wrong.

Nobody has ever, in my view, anybody who has ever worked with these form, found any particular value in having all those different categories. Amy Comstock will be here tomorrow, and I urge you to ask her about these. I think previous Directors of the Office of Government Ethics have told me that they wish they had fewer categories rather than more. These are, however, statutory. These are required by law. This is not the work of OGE. And they serve no particular purpose.

So I think that we can facilitate this process and reduce its invasiveness and still meet the public interest needs here of knowing what Presidential appointees that might be a potential conflict of interest.

Chairman THOMPSON. Ms. McGinnis.

Ms. MCGINNIS. I agree with Cal that we should be looking for a standard of what the public needs to know, and I think that Amy Comstock—I know that the Office of Government Ethics has spent a great deal of time and has a lot of experience over the years, and what they are going to come tomorrow with is a set of recommendations that are based on practical experience. So I look forward to seeing those.

The conflicts of interest should—the focus there should be on areas where there is an interest related to the position that the person is going to assume. And I think in terms of the criminal penalties, we need to look carefully to make sure that there is the common sense and flexibility so that people would not risk being penalized for unintentionally——

Chairman THOMPSON. I think Mr. Harshbarger is right. Nobody is going to get prosecuted for some of the things that we are talking about. He and I know that, but the applicant doesn't.

Ms. MCGINNIS. That is right.

Chairman THOMPSON. And that is what is important.

Ms. MCGINNIS. It is a very——

Chairman THOMPSON. It has what you would call a chilling effect.

Ms. MCGINNIS. I am showing Scott the form, and all the instructions——

Mr. HARSHBARGER. And I have had to fill out this kind of form. Those who have gone through it—I think a very interesting point about the whole survey was the people who have been through it understand and can go through it and see perhaps how that works. It is people who don't. And we had that years ago, and everybody has their apocryphal story that is true, which is the State senator in Massachusetts, a wonderful State senator, Republican William Saltenstahl, just before the—after the passage of the 1978 financial disclosure laws, resigned from State service, believing that he would have to disclose all of his family's trusts and other aspects to that. There was in the law very broad categories. It was to be left to interpretation and the enforcing agency. But we were also able to use it to prove that, as interpreted, they would never have had to disclose anything that jeopardized him.

But that story remained in existence for a long period of time, regardless of the application of the law. And I think the second, the prosecutorial issue here that you raised, Senator, is that you do need to have in an agency the capacity—because the danger of this kind of thing always is that a small percentage of people who will intentionally use the good-faith, technical exceptions to justify what is essentially terribly dishonest and corrupt conduct, and they will hide behind the same mantle as the good-faith unintentional error. And so that is why you give your prosecutors, I think, whoever they are, absent being independent counsel, which I happen to have separate views about, but somebody can be held accountable as a prosecutor. That is what you give them the discretion and expect them to act professionally and with discretion in terms of trying to make those distinctions. And a very, very small percentage ever have to face this kind of a problem.

Chairman THOMPSON. Ms. McGinnis, did you have anything else on this?

Ms. MCGINNIS. No.

Chairman THOMPSON. Mr. Ornstein.

Mr. ORNSTEIN. Having been through the independent counsel era, the term "responsible prosecutor" rings just a little hollow for me, I am afraid, "reasonable prosecutor." I think there were instances in which—and there are instances in which prosecutors, to get something, threaten something else, and they will use technicalities often to squeeze out other things.

And so I am a little more uneasy about having criminal penalties for some of these things without a clearly established intent to deceive. At the same time, I think Cal has a very reasonable way to deal with this, and I would make it explicit. My own judgment would be that the categories here are if you have a holding that

represents either 10 percent or more of your net worth or over $25,000, pick a threshold amount, then that should be disclosed as a holding, something that really would involve a genuine conflict. We can probably argue about or settle amounts, but having all of these categories serves only a voyeuristic interest. And we know people in the press and people elsewhere love to rummage through this stuff just to see what people have made and what they are doing. It serves no other purpose than potentially to embarrass individuals.

At the same time, we know that there is another level of problem. We have some forms that require disclosure of one's own assets, some forms that require disclosure of a spouse's assets, other forms that require independent children's assets. And they don't all agree in this area either. So we need to synchronize those and figure out what has to be disclosed.

And, finally, let me say I would really think through some of these divestiture requirements as well, not in every instance——

Chairman THOMPSON. That was going to be my final question. Elaborate on that, if you would a little bit. Have we gone too far in that respect? We have all read about the recent instances and so forth. Frankly, I am not sure how much is required and how much is a matter within the discretion of the nominee and how much some ethics officers tells them that is what I think you ought to do, and that is a de factor requirement, you might say. Talk about divestiture for a minute.

Mr. ORNSTEIN. Well, a lot of this is not statutorily required, but it is a part of our culture now, that is, a part of either Boyden Gray's "guilty until nominated" or the broader "guilty until proven innocent." And it seems to me in some of these areas, what we need to do while maintaining vigilant ethical standards is to move back toward a variation of the old broken windows thesis, that we had a culture that encouraged criminal behavior, and we took a few small steps to try and suggest we are not going to tolerate that anymore. We have a culture now that basically uses nominees and political figures as pinatas, and we need to take a few steps to say we have maybe gone a little bit too far here and we need to rationalize these things to take away some of that pressure. So we ought to go back to it.

I think, frankly, if you have somebody like Mr. Rumsfeld, who clearly made decisions based on a belief that he would never again take government service, who didn't come in because he wanted to feather his own nest, has created a lot of very complex trusts that are almost impossible to get rid of, that to push him to do so when there is no reason to believe that he will make any decision based on his own financial holdings, goes too far.

We had an enormous amount of pressure on Sandy Berger when he was the National Security Adviser because his wife had a small holding—what began as a very small holding in Shell Oil that was a family thing given to her by a grandfather, I think—to get rid of it.

We had Jim Baker with a longstanding family holding in Chemical Bank, pressure to get rid of it.

Disclosure of those things is utterly appropriate. But in most instances, I think we have to start with an assumption that we are

dealing with honorable people here, and you don't need to go very far towards forcing people to make much deeper financial sacrifice than the simple act of public service makes.

Mr. HARSHBARGER. Let me simply distinguish between what the law requires and what, in fact, other reasons require. The law is limited in what it can do either way here. This is not—almost every one of those, I believe, could have proceeded by recusal, could have proceeded by any other method. I don't think the law required any of that action to be taken. It is, yes, we can blame the media, we can blame the public, blame the talk shows, blame the political partisanship. But it is a part—the law can't be looked at and say if we fix the law here we will eliminate that problem. And I think that there is an aspect that the laws have been passed here to deal with specific issues.

So my only disagreement—it isn't a disagreement that this is an issue, but the fact is it was not the law that required that. It was not the Office of Government Ethics. It was not the ethical requirements that often get blamed for this thing that caused that to occur. So I think that that is what I would simply distinguish. I think the positive piece that is going on, I think the Council of Excellence is engaged, and I would hope that Common Cause would come to be engaged again, in a much broader purpose, which is how do you reinforce people's confidence in public service, how do you find ways through education and other devices to get people more—to see public service in a much more noble light.

I don't believe that—I think there is nothing wrong with re-examining financial disclosure issues. I just urge people not to think and not to fall into the trap that changing this form here and that category there and these minor things will actually deal with the problem that we are here to address and that you are asked to consider or think that we have solved it if we have done that.

Chairman THOMPSON. Thank you very much.

Anything else on divestiture?

Mr. ORNSTEIN. There is just one other small item to keep in mind, which is that I don't think we have dealt effectively or adequately with stock options, which is a subject that has arisen really in a very different way in the last few years, and you just need to think that one through and modernize those rules.

Mr. HARSHBARGER. Thank you very much for giving us your time.

Ms. MCGINNIS. Thank you.

Chairman THOMPSON. Thank you very much. This has been excellent, very helpful. I look forward to working with all of you.

We are adjourned until tomorrow. Senator Kassebaum Baker, Mr. Raines, and Ms. Comstock will give us recommendations of the Office of Government Ethics.

We are adjourned.

[Whereupon, at 4:51 p.m., the Committee was adjourned.]

THE STATE OF THE PRESIDENTIAL APPOINTMENT PROCESS

THURSDAY, APRIL 5, 2001

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10:25 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Fred Thompson, Chairman of the Committee, presiding.

Present: Senators Thompson and Cochran.

OPENING STATEMENT OF CHAIRMAN THOMPSON

Chairman THOMPSON. Let us begin, if we may.

I want to welcome everyone this morning. We have an awful lot going on today, unfortunately; several Members have expressed great interest in this hearing but were pulled in many different directions even more than usual today. But I do want to thank everyone for attending and especially our witnesses today.

We are engaged in something very important. I cannot think of anything much more important than getting the right kind of people into government service. As government grows larger and gets more complex, we are oftentimes losing the very kind of people to public service that we need.

I think that after our hearing yesterday, it became obvious that the process of getting people to take out a little time from their lives and come into government service and give a little something back to their country is becoming much more difficult; the process is taking much longer than ever before. It is much more complex, it is much more intrusive, it is much more expensive than it needs to be. It is a system that no one thought up and no one constructed. It is like a lot of other things around here—you wake up 1 day, and you have something that no one ever thought to put together—it just happened and evolved.

That is what has happened with our process in terms of the way we bring people into the top levels of government service. It is clear that we are going to have to look at things a little differently and with regard to several different entities of government. The White House can certainly improve in the way that it addresses the issue with regard to its forms and process and coordination. Certainly the Senate needs to take a very close look at various aspects, from the timing to the hold policy to our own forms. Every committee up here has different forms and different requirements in terms of how far you go back with regard to information, the dollar level

that certain requirements kick in, and so on. There is really no reason for that.

The Office of Government Ethics, and the Transition Act—we asked them to come up with some ideas, and we have some excellent ones here today.

So as Paul Light wrote in *The Brookings Review,* "The most significant selling point for service is that it is a post of honor in which individual citizens can make a difference for their country."

Today we have several witnesses who can remind us of the nobility of public service and the difference that one can make. We welcome Amy Comstock, Director of the Office of Government Ethics; former Senator Nancy Kassebaum Baker; and former Director of the Office of Management and Budget, Franklin Raines.

Ms. Comstock will present the report of the Office of Government Ethics in response to this Committee's request that the OGE review the current financial disclosure requirements and make recommendations on streamlining the process.

The Presidential Transition Act of 2000 included specific provisions designed to address the growing concerns regarding the barriers to service embedded in the current Presidential appointments process. I appreciate the work that OGE has put into this report under a very tight time schedule, I might add.

I also commend Senator Kassebaum Baker and Mr. Raines and the Presidential Appointee Initiative for their dedicated efforts to improve public service. I look forward to receiving their recommendations that they are releasing today.

Fortunately throughout all of this, we have had the benefit of excellent, public-spirited people addressing this issue. I learned just recently that we have had 12 to 15 major reports over the last several years, all reminding us that the system is becoming more and more broken as we go along, and all basically coming to many of the same recommendations.

So finally, perhaps the cumulative effort of that, capped off by what we are doing here now, can have some effect.

I have just been told that there was another vote, and that I left before I voted. Some things never change, Nancy.

Excuse me. I will be right back. Do not go away.

[Recess.]

Chairman THOMPSON. Thank you very much for being so patient this morning.

Let us begin with opening comments. Ms. Comstock, would you care to make your opening comments?

TESTIMONY OF HON. AMY L. COMSTOCK,[1] DIRECTOR, OFFICE OF GOVERNMENT ETHICS

Ms. COMSTOCK. I would be happy to.

Mr. Chairman and Members of the Committee, thank you for the opportunity to appear today. I am here to discuss the report issued by the Office of Government Ethics in response to Congress' request under the Presidential Transition Act of 2000.

The confirmation process has grown increasingly complex and is viewed by many as being unduly burdensome for those being con-

[1] The prepared statement of Ms. Comstock appears in the Appendix on page 126.

sidered for Presidential appointments. Congress asked OGE to provide recommendations for streamlining the public financial disclosure requirements for Presidential nominees. I am happy to be here today to present OGE's recommendations for improving this process.

As we began our review, it was important to reevaluate the original purposes of public disclosure to see if they had changed. In general, public financial disclosure was originally intended to enable the public to judge the performance of public officials in light of personal financial interests and to deter conflicts of interest from arising. We do not believe that the original purposes of public disclosure have changed.

Moreover, we believe that the concept of public disclosure is generally not considered to be unduly burdensome. It is an accepted condition of government service that the public must be able to assure itself that government officials will act impartially. Rather, what is considered frustrating and unduly burdensome is the requirement to obtain and disclose excessive detail regarding financial interests, the redundancy among the various forms used in the process, and the intrusion into a nominee's personal finances beyond what appears to be necessary for a conflicts analysis or public confidence.

We believe that these concerns are valid, and OGE's report recommendations address them.

To streamline financial disclosure and reduce the burden, OGE offers specific recommendations to reduce valuation categories, shorten reporting periods, raise reporting thresholds, reduce unnecessary details, and eliminate redundant reporting. I will not go through each of the proposed changes in these remarks, although I would be happy to walk through them later if you wish.

I would like to comment here on one of the concerns that was raised yesterday. I understand that a concern was raised that the public financial disclosure system not be weakened. I, too, believe that the public financial disclosure system should not be weakened. What the recommendations in this report represent are the determinations of OGE and many agency ethics officials of the information that is not generally used or necessary for a conflicts analysis.

I am not here today to support a lessening of the ability to assess potential conflicts of interest of public officials.

In preparing this report, OGE considered the question of whether the financial disclosure process results in an unnecessary intrusion into personal finances. To do that, we first looked back to the original purpose of the system. While the system was intended to be a way to ensure impartiality of public officials, it has come to be used for more than that. The disclosure form itself is now used as a way to gauge the net worth of public officials. This was never intended to be the purpose of the system, nor should it be.

One of the changes that we are recommending to the public disclosure system is to reduce the valuation categories so that the top category would be over $100,000. This is a significant change from current law, which now requires that asset valuation be declared in much greater detail. We believe that this change will preserve the ability to evaluate potential conflicts and provide sufficient in-

formation regarding the significance of an asset without unduly intruding upon the financial privacy of the filer.

Addressing the concern about the redundancy of forms involves more entities than OGE. This Committee heard yesterday of the many forms that nominees must complete. Our comparison of just the SF–278, the financial disclosure form, the SF–86, the FBI background form, and Senate Committee forms identified extensive overlaps, many in the area of financial information.

OGE offers to serve as a resource to those working to reduce redundancy in these forms.

In preparing this report, many issues were also raised beyond the issue of financial disclosure. For example, it was suggested that the criminal conflict of interest statutes be revised. OGE agrees that the conflicts laws may be complex. Nevertheless, they provide essential safeguards for the integrity of government.

It is possible, however, that these laws can be simplified without sacrificing the protection that they provide. The revision of these laws is no easy task, and we are not prepared today to make detailed recommendations for change. We are prepared to undertake a thorough review of these laws with an eye toward modernization and improvement, and we have already been in contact with the Department of Justice to begin that process.

In addition, as you will see from our report, OGE is currently discussing with the Department of the Treasury expansion of OGE's Certificate of Divestiture authority to better address the kinds of private sector compensation packages that many nominees bring with them today. This generally addresses the issue of stock options.

Finally, I am pleased to inform the Committee that as part of the process of preparing this report, OGE looked at changes and improvements that we could make to the process that would not require any amendment to current law. We found that we could have an immediate impact by streamlining our own procedures and interpretations in certain areas.

I am pleased to say that we have already been able to lessen the burden imposed on some filers and will continue to do so wherever we can.

In closing, I would like to reiterate that OGE is ready to do whatever it can to make the appointment process smoother and less burdensome for all. In the 5 months that I have been Director of OGE, I have been very impressed by the commitment of the OGE staff to ensure that our ethics program, of which financial disclosure is a large part, serves its important public purpose with as little personal pain and intrusion as is reasonably possible.

I would be happy to answer any questions that you may have.

Chairman THOMPSON. Thank you very much. I appreciate that.

Senator Nancy Kassebaum Baker.

TESTIMONY OF HON. NANCY KASSEBAUM BAKER,[1] FORMER U.S. SENATOR FROM KANSAS, AND CO-CHAIR, ADVISORY BOARD, PRESIDENTIAL APPOINTEE INITIATIVE

Senator KASSEBAUM BAKER. Mr. Chairman and Senator Cochran, it is a great pleasure to testify here this morning. I know it is a busy time, but I am happy to be here with my co-chairman Frank Raines for the Advisory Committee on the Presidential Appointee Initiative.

You had an important hearing yesterday, and we very much appreciate the interest of this Committee in the report of the Office of Government Ethics and our report in trying to improve the process. And as you stated, Mr. Chairman—and I can only say that I agree with everything you said—it has been done before. There have been many reports. Lloyd Cutler and others have been engaged in commissions and advisory boards to send forward initiatives. So it is not going to be easy to accomplish what I think is important, and we stand ready to be helpful in any way that we can.

I would like to ask that my full report be made a part of the record.

Chairman THOMPSON. All statements will be made a part of the record.

Senator KASSEBAUM BAKER. I will just summarize. I think that what we seek to do with this report is to present a pragmatic agenda of reforms that might improve the speed and the fairness and the integrity of the appointment process.

I might add that it is not just Presidential appointments. I think that as the model is developed here, many States are doing the same thing, so it is reaching all levels of government at a rate that I think causes us and should cause us some concern.

So we are hoping to be able to engage, because we are convinced that the current process does desperately need reform.

Little did I know, Mr. Chairman, when I started out in this, that I would be more involved in the confirmation process than I had realized. I am reminded of a bit from "Alice in Wonderland" where she fell down the rabbit hole and asked the Cheshire cat which way she should go, and the cat said: "Well, it depends on where you wish to get to."

I think we know where we would like to get to, but getting there is not going to be easy. As I said, we have all tried it before. But where we want to get to is being able to attract the best and the brightest to give some time to public service, and doing so here is an important role, of course, from the Senate standpoint, and that is what I wish to speak to, and then Frank Raines will speak to the Executive Branch, because it is both sides of Pennsylvania Avenue, as they would say, which matter.

As I think you know from the testimony yesterday, an extensive survey has been done, and while all steps in the appointment process can and should be streamlined and improved, I think that particular attention could be focused on the Senate at this time. The Senate received particularly low marks for its handling of the proc-

[1] The prepared statement of Senator Kassebaum Baker appears in the Appendix on page 138.

ess in the two surveys that were done by the Presidential Appointee Initiative.

That was launched almost a year ago, and we released the results of the survey of 435 appointees from the Reagan, Bush, and Clinton Administrations. Nearly half of the appointees surveyed said the Senate has made the appointment process a real ordeal, and almost one-third said the same about the White House.

I think that that indicates a lot of the frustration which we all know. As the survey's co-authors, Paul Light of The Brookings Institution, and Virginia Thomas of The Heritage Foundation, noted in the survey report, "Familiarity with the process breeds a certain level of understanding and acceptance that is harder to embrace from afar." As we have gotten used to it, we sort of accept it and go on with it, without being willing to challenge it and say it should not be this way.

It is my hope that we can begin to recognize that we will lose attracting those whom we most would like to give some time to come and serve.

I would like to focus on the Senate and suggest some of the things that we believed were important for us to consider in the Senate.

I would just say that since 1978, when I was elected, and when I retired at the end of 1996, I saw real change. Senator Cochran and I came to the Senate at the same time in the class of 1978, and I think that through that period of time it began to change. In many ways, it was done to address flaws that occurred, so we created more paperwork to try to answer that.

I think that we are losing sight of the forest for the trees and that we need to recognize that asking more questions will not necessarily give us the type of representation that we need.

So it has become to a certain extent more contentious, but in many ways, I think it is just the laborious work of the paper process that has made it so distasteful.

One of the recommendations that we make is that "Congress should enact legislation providing that Senate confirmation only be required of appointments of judges, ambassadors, executive-level positions in the departments and agencies, and promotion of officers to the highest rank in each of the service branches."

I am a strong supporter of advice and consent—I think we all are—but the application of the confirmation requirement now extends to many thousands of positions, only a relatively small number of which benefit from the full attention or careful scrutiny of the Senate.

I think this would lessen the time that would be taken. By the time one arranges hearings, the paperwork comes through, there are a number of appointments that then take up an enormous amount of time of the hearing committees.

So we think that a simpler, more focused set of confirmation obligations can only yield a more efficient and more consistent performance of the Senate's confirmation responsibilities.

The second recommendation deals with the use of holds: "The Senate should adopt a rule that limits the imposition of holds by all Senators to a total of no more than 14 days on any single nominee."

I support holds—I think we all do. The intent of a hold is to allow a Senator the time to feel her or she has gotten all the answers to any questions they may have; to make sure that they were present on the floor or in the Committee for a hearing when they want questions answered. But what I think is a serious mistake, Mr. Chairman, is when holds are used as leverage to gain advantage in other endeavors. It is unfair to the nominee. We know that nominees are sometimes on hold for months and months and months, to the point that they withdraw rather than put families through the uncertainty of whether they will be moving to Washington or not, for instance.

So it seems to me, while this may be one of the more contentious of the recommendations presented, that it does allow the time given without simply destroying the process.

The third recommendation addresses the length of time it takes to vote on nominations: "The Senate should adopt a rule that mandates a confirmation vote on every nominee no later than the 45th day after receipt of a nomination. The rule should permit any Senator at the end of 45 days to make a point of order calling for a vote on a nomination. A majority of the Senate may postpone the confirmation vote until a subsequent date."

We all know that the average length of time required to confirm Presidential appointees has been growing steadily in recent years. I know that former Senator and Vice President Mondale said it took him 11 months from the time President Clinton nominated him to be Ambassador to Japan before he was confirmed as the Ambassador. It is hard to believe, but we all know that indeed when we stop and think about it, it takes months and months once a name has been suggested and all the paperwork is completed—all the additional paperwork that then may be required by a Senate hearing committee——

Chairman THOMPSON. I wonder when you found that out. [Laughter.]

Senator KASSEBAUM BAKER. Well, I thought it was such a good example, I would have used it anyway.

We have all heard the stories about the length of time it takes and the number of lawyers it takes to help fill out some of these forms and so forth.

So you know it even better than I do now, because it has not improved through the years, and it has only become, I think, extremely difficult not only for the nominee but for families concerned.

So we believe that this is an appropriate time for the Senate to impose a firmer discipline on the process; that a nomination would receive a confirmation vote by the full Senate in no later than 45 days, but under this procedure, any Senator could call for a vote at that time, a vote that could be postponed only by a vote of the majority of the Senate.

The final recommendation is that "The Senate should adopt a rule that permits nominations to be reported out of committee without a hearing upon the written concurrence of a majority of committee members of each party."

For most of our history, nominations were reported to the floor of the Senate without any formal hearings by its committees. The

practice of holding hearings began to emerge in the second half of the 20th century. Even then, it was common for hearings to occur in executive session without the nominee present. The current practice of formal public confirmation hearings on nearly all appointments, with the nominee present, is a relatively recent development.

It was the belief of many who have studied this that unless there was information that was important to be forthcoming in a hearing, which often can be the case, there are other times when a hearing really is not necessary; and again, if there is a concurrence of views on the Committee that that is the case, why not just go ahead and approve it without trying to spending the time to figure out a hearing schedule on a nomination that may be difficult to set up under the press of business. We have seen just this morning how difficult it does become when it is a busy time with voting on the floor and trying to get everybody together.

So we believe that no good purpose is served by the rituals of believing that everyone needs to have a confirmation hearing, and certainly not one that justifies the delays this often imposes on confirmation. So that would be a suggestion that we would have.

In conclusion, Mr. Chairman, a number of the reform recommendations that we are putting forth today would involve changes in the way the White House and the Executive Branch handle the nomination process, and as I said, Frank Raines will talk about the executive side.

I would just like to conclude by saying that we believe these recommendations are important and worthy of your attention. You have stated that, and we are very appreciative of the attention that this Committee has given to this. Those of us who are supporting these reforms feel strongly that our effort to strengthen and streamline the appointment process truly will enhance good governance. That is why I think we need to stick with this, to finally cross the final hurdle which we have come up to so many times but have never really been able to put in place.

I thank you, Mr. Chairman. Just know that we stand prepared to do whatever we can to assist in seeing this reach a conclusion which we think would be useful for public service and good governance.

Thank you, Mr. Chairman.

Chairman THOMPSON. Thank you very much.

Mr. Raines.

TESTIMONY OF HON. FRANKLIN D. RAINES,[1] FORMER DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET, AND CO-CHAIR, ADVISORY BOARD, PRESIDENTIAL APPOINTEE INITIATIVE

Mr. RAINES. Thank you, Mr. Chairman, and thank you, Senator Cochran, for being here today.

Thank you for this opportunity to appear today with Senator Nancy Kassebaum Baker. As her co-chair of the Presidential Appointee Initiative, my role today is to speak from the perspective of the Executive Branch.

[1] The prepared statement of Mr. Raines appears in the Appendix on page 147.

And thank you, Mr. Chairman, for admitting my written statement to the record, and let me just summarize the main points.

It was my honor to be confirmed by this Committee as Director of the Office of Management and Budget in 1996. I appreciate how hard the Committee worked to make my confirmation both rigorous and fair, and I also applaud the speed with which the White House moved in processing my nomination. Yet even my relatively noncontroversial appointment took 5 months from the time it was first announced by the President, and as you know, most nominations take even longer.

As Senator Kassebaum Baker made clear, a good experience with the appointment process is not always the rule, but it should be. Public service is a noble calling, and if the appointment process cannot also be ennobling, at the very least, it should be painless.

To that end, let me briefly offer the Initiative's six recommendations for improving the White House and Executive Branch nomination process.

First, to improve the operations of the White House Personnel Office, we recommend that Congress enact legislation to establish a permanent Office of Presidential Personnel in the Executive Office of the President. Congress would authorize staff levels sufficient to recruit the President's appointees efficiently and to provide them with transition assistance and orientation. This should include some career employees who retain appropriate records from one administration to the next and who are experts in the operation of all aspects of the appointment process.

One thing that I think is not generally known is that when a new President comes to the White House, there is no one there. The only permanent offices in the White House are the Office of Management and Budget; the National Security Council has a staff that ensures from one administration to another; and the Office of Administration. Every other office is literally vacant, and to start from scratch with a White House Personnel Office with no help, no records, no knowledge of the process, only puts every President at a disadvantage.

I believe this would not be an intrusion into the Presidency, but a big help, to have some permanent office with some permanent employees there to facilitate a new administration.

Second, to streamline and simplify the confusing welter of forms and questionnaires that appointees need to fill out and submit, we recommend that the President order all departments and agencies to simplify and standardize the information-gathering forms used in the Presidential appointment process. We would also recommend that the Senate should require that its own committees do the same. We also urge the President to direct the General Services Administration to develop and maintain on-line, interactive access to all such forms and questionnaires for persons who are going through the Presidential appointment process.

I know that the Office of Government Ethics had to suffer through my forms being in my handwriting since I did not have access to a typewriter, which is becoming more and more difficult for people. Indeed, my children on seeing a typewriter ask me "What is that?"

We also recommend that the President issue an Executive order reducing the number of positions for which FBI full-field investigations are required. The Executive order would also adapt the length and deputy of full-field investigations to the legitimate security concerns of each position where they continue to be required.

Third, to ensure that the burdens of the current ethics safeguards and procedures have not come to outweigh the benefits, we recommend that Congress undertake a comprehensive review of the ethics requirements for political appointees. The goal, we believe, should be to strike an appropriate balance between legitimate concerns for the integrity of those who hold these important positions and the need to eliminate unnecessarily intrusive or complex requirements that deter talented Americans from entering public service.

Disclosure should not degenerate into voyeurism.

Fourth, to ensure that the salaries of Presidential appointees do not continue to fall behind the cost of living, we recommend that Congress amend the Postal Revenue and Federal Salary Act of 1967 to ensure annual changes in executive-level salaries equal to changes in the Consumer Price Index.

Our fifth and sixth recommendations address concerns about the burgeoning number and levels of political appointments. We recommend that Congress enact legislation requiring each department and agency to set forth a plan for reducing the number and layers of political appointees by one-third. Such reductions, wherever feasible, would limit political appointments requiring Senate confirmation to the assistant secretary level and above in each department and to the top three levels only in independent agencies. Schedule C and other non-confirmed political appointees should be similarly reduced in number.

We realize that this reduction will also require improvements in the senior civil service system, because these appointees have been occupying senior executive positions.

Finally, we recommend that Congress grant the President renewed executive reorganization authority for the limited and specific purpose of de-layering the senior management levels, both career and political, of all executive departments and agencies.

Mr. Chairman, it was one of the great privileges of my life to serve in the Executive Branch as Director of the Office of Management and Budget. The most powerful and enduring impression of my tenure was not my confirmation process or even the chance to be part of the first balancing of the Federal budget in a generation. It was seeing and working with so many bright, talented and committed public servants in all branches of government.

Public service in America is made even nobler by the women and men who have dedicated themselves to it. Improving the appointment process will help to ensure that public service continues to be a positive experience for these appointees as well as for the Nation.

Thank you very much.

Chairman THOMPSON. Thank you very much, Mr. Raines. We really appreciate your work in this.

Let me ask Ms. Comstock a few questions—and I will be just skimming the surface, because you have an awful lot of material here, and you have an excellent report, and I want to congratulate

you for that. I know that it is probably somewhat risky for any of us to be doing anything that might be interpreted as making the standards easier or liberalizing them somewhat—the next scandal that comes along, somebody is going to point their finger at us for sure. But it is clear that this needs to be done, and I think you have faced up to that in your recommendations here with some good, common sense approaches.

Just to highlight a few of them—in the first place, you recognize that there are some non-legislative changes that you can make within OGE. Can you summarize those?

Ms. COMSTOCK. I would be happy to. First, I agree with you—some of them are just common sense, practical things that we were able to do. We are dealing with people here who are looking to get a new job, and we tried to look at it from that perspective.

Chairman THOMPSON. The encouraging thing about this process is that just by focusing attention on it and getting good people to focus on it, everybody starts thinking—I have looked at our own Committee rules and have been surprised to find out that we have a $100 threshold, which is ridiculous——

Ms. COMSTOCK. I remember. [Laughter.]

Chairman THOMPSON. Well, that happened after the Burt Lance hearings, I think. Every committee has its own threshold in terms of how far back you look. We go back 3 years and $100; some go back 1 year and $500; some go to $1,000. You can almost look at the rule with regard to the hearings that they have had with regard to some scandal or alleged scandal.

Ms. COMSTOCK. That is right.

Chairman THOMPSON. I did not mean to interrupt you, but I think that this is bringing about a reevaluation right at the beginning and is causing some things to happen that do not even require major rule changes or legislation.

Ms. COMSTOCK. That is right. We started with let us see what we can do at home first.

From a very practical approach, the first thing we did, looking at it from the nominee's perspective, was very simple—we tried to consolidate within our office the number of times we had to go back to the nominee with information. It sounds like a small thing, a simple thing; but if you think of it from the nominee's perspective and you get 10 phone calls from one office asking for financial information, you think they are disorganized, crazy, and you are really upset. However, if you get one call with a list of organized questions, it seems like a logical approach. It is a simple thing, but I think it has made a big difference.

From a legal perspective, we analyzed the financial disclosure requirements for situations where nominees have power of attorney for someone else's assets situations where someone serves as executor of an estate; situations where they have investments in limited partnerships that then turn around and invest in limited partnerships. These are all situations where——

Chairman THOMPSON. It is impossible to get an evaluation of that, isn't it?

Ms. COMSTOCK. That is right. These are situations where, under the conflict of interest statute, you would not have a personal conflict of interest, but there had been prior interpretations of this law

stating that those assets might need to be disclosed. Again, this is where the person does not have a beneficial interest in these assets. We have gone back and looked at those and made, I think, some very common sense determinations about where we can draw a line and say that that information no longer needs to be reported.

We are still in conversations with the Department of Justice on situations where a nominee has a non-beneficial interest in a trust, and we are hopeful that we can resolve that one in a less burdensome way as well.

Chairman THOMPSON. You made some recommendations to the Senate. You pointed out that officials who serve for less than 60 days and/or are not highly paid are not required by law to file a Form 278, yet many Senate committees ask them to do so.

Ms. COMSTOCK. That is correct.

Chairman THOMPSON. We need to take a look at that. OGE recommends that all the committees request only an OGE Form 450 from individuals who are nominated to a part-time position on a board, commission, or committee and who would not otherwise be required to file a public report. This OGE Form 450 is a more simplified version.

Ms. COMSTOCK. The OGE Form 450 is a much more simplified version of the SF–278, and I would like to add that some of these people are uncompensated. They are volunteering their services for the Federal Government, and it is a bit awkward to ask them to fill out a SF–278 if it is not even required by law. They are volunteering—the ultimate public service. I would very much like to see what we can do to make that process as simple as possible for them.

Chairman THOMPSON. You have also recommended some changes in the law. The Ethics in Government Act, actually, would have to be amended.

Ms. COMSTOCK. That is right.

Chairman THOMPSON. A lot of people do not realize that these categories are actually in the black-letter law.

Ms. COMSTOCK. It is a very detailed law.

Chairman THOMPSON. And what you have done is to reduce the 11 categories of asset values to 3; is that correct?

Ms. COMSTOCK. That is correct.

Chairman THOMPSON. Can you elaborate on that just a bit?

Ms. COMSTOCK. I would be happy to. Currently there are, as you indicated, 11 categories of asset value. The fact is that when I, as an ethics official, am looking at a nominee's form to determine if there is any conflict of interest, the information I basically need is what is the asset. The value is generally not needed for the initial determination of whether there is a conflict. So to be quite frank with you I can generally just gloss right over the 11 categories of value. I think it is burdensome on filers to ask them to come to fairly detailed determinations, because some of these categories are narrow, and the filers are trying to fill the form out correctly.

We have been able to reduce the 11 categories to 3. We did not eliminate asset valuation or recommend its elimination, because the substantiality of an asset is still of significance in terms of the appearance of a conflict in the public's assessment. The reality is the public does care whether an asset is worth $16,000 or over

$100,000 in terms of determining whether there is a conflict. We have reduced our categories to under $1,000, which is the reporting threshold; between $1,000 and $15,000, which is the regulatory de minimus exemption that we are proposing to raise to $15,000—for the ethics officials and nominees, it is important to know if the nominees' assets fall under the regulatory de minimis exemption; and then, whether the asset value is over $100,000, which is what we determine to be an asset of significance.

Chairman THOMPSON. Right now, we go to over $50 million.

Ms. COMSTOCK. We do. It is not a commonly used category.

Chairman THOMPSON. Really? I want to know who checks that off. [Laughter.]

So your point is that you are looking for conflict of interest.

Ms. COMSTOCK. Exactly, we are looking for conflict of interest.

Chairman THOMPSON. And it is more important that you know what the asset is than the value of the asset initially.

Ms. COMSTOCK. Right.

Chairman THOMPSON. And then, if there is a conflict, if it is a de minimis situation, you need to know that. But if it comes to a certain dollar amount, you know it is a problem, it is a conflict, regardless of whether it is $100,000 or $1 million.

Ms. COMSTOCK. Correct.

Chairman THOMPSON. All right. You also reduce the current 11 categories of income amount to 3. Could you elaborate on that a bit?

Ms. COMSTOCK. Absolutely. Income categories are areas that are a little bit more complicated. Once nominees are confirmed and enter public service, they are under outside earned income limitations which are tied to the pay scale. Currently, they cannot earn more under law than about $21,000 a year. It is extremely important while they are in Federal service that they adhere to those limitations, and ethics officials know if there is an issue that they need to counsel the employee about.

So it is particularly important for us to be able to ascertain if there is earned income. That is the explanation for the categories we have. We have a de minimis threshold for reporting of $500; then $500 to $20,000, to make sure we capture the outside earned income; and then $20,000 to $100,000, to capture something of significance.

Those categories are, of course, keyed to the kind of income. You will see on what we offered as a mock form that one has to check and continue to distinguish whether income is earned income or investment income.

There are circumstances where investment income is reported over $100,000 but the asset has been valued between $15,000 and $100,000. This is something that we would want to follow up on.

Chairman THOMPSON. You reduce the current categories of liabilities from 11 to 3. You shortened certain reporting time periods, and you do not require disclosure for certain amounts below—I think current law is $200, and you move that to $500.

Ms. COMSTOCK. Five hundred dollars. Correct?

Chairman THOMPSON. Perhaps we will have time a little later on to go into some of the other categories, but I am going to relent

right now and express my appreciation to Senator Cochran for being here and ask him for any questions he might have.

OPENING STATEMENT OF SENATOR COCHRAN

Senator COCHRAN. Thank you very much, Mr. Chairman.

Ms. Comstock, are these changes that you are recommending, or are these changes that you have the power to make right now?

Ms. COMSTOCK. No, Senator; these are changes that we are recommending. They would have to be amendments to the Ethics in Government Act.

If I may offer, it is a very detailed statute, and these are recommendations that we propose to the public financial disclosure reporting system. We have not drafted proposed legislation; but as we move forward, if these recommendations are well-received, a conversation I would propose that we engage in is whether the Office of Government Ethics could have a little more authority to establish by regulation things such as thresholds.

As you indicated, Mr. Chairman, the income reporting threshold right now is $200. It has been at that level for a long time, so the reality is that every year the reporting threshold is going down.

I would be interested in having conversations about whether there are certain areas where we could have regulatory authority.

Senator COCHRAN. It would seem to me that that would be appropriate. I also think that the forms that we fill out and file periodically as Members of the Senate should be consistent with the Office of Government Ethics' rules as well. If changes are made there, they should be the same in the Senate, it seems to me. I recall that what we do is just about what is required under the Ethics in Government Act, or is close to it.

Ms. COMSTOCK. Right now, the Ethics in Government Act covers all three branches. I would like to emphasize actually two things. One is that the proposals that we make here are intended for the Executive Branch. The way the ethics system is structured in the three branches, I cannot claim to have any expertise on Legislative Branch disclosure systems. We would certainly be happy to work with and assist others. But the proposals here are tied to our expertise in the Executive Branch.

I also just want to add, to make sure I do not lose the point, that attached to my written testimony. I offer a mock form that is for discussion purposes, so it is formatted almost exactly like the old form. I am not offering that a new form would in fact look like this, but for ease of review, I thought it would help you all.

Senator COCHRAN. Mr. Chairman, I think these hearings are very important, and I commend you and thank you for undertaking to organize them. Also, I think we owe a debt of gratitude to those who have served, Senator Kassebaum Baker and Mr. Raines, for doing the work of going through the questions and the issues and coming up with some very thoughtful recommendations, in my view. All of you have done a great job on this.

There is no question in my mind after hearing the things you have said and reflecting on the issues that there are some very burdensome requirements that in some cases are unnecessary for officials who are Presidential appointees. We need to modernize the conflict of interest laws. I am glad you are proceeding already with-

out any legislation to review and assess the current laws and see what changes can be made to simplify and make better sense of the laws that we have.

I think the pragmatic program that is suggested by Senator Kassebaum Baker to improve the speed, fairness, and integrity of the process is commendable. I hope we get busy and do some of these things and not just let the hearing record sit here—and I know the Chairman will not, but we need to enlist the support and hard work and cooperation of other Members of this Committee as well as others in the Senate to get these things done.

I think it may be more troublesome, frankly, in changing the Senate Rules than anything else. Regarding those suggestions that were made about holds, a lot of people do not understand what a hold is. It is really just a request from a Member to the Leader to be notified if something is going to be called up, whether it is a nomination or a bill or an amendment. It gives a Senator an opportunity to be heard on the subject, to object if he wants to, or to make a long speech or a short speech, or to have the opportunity to vote against it, whatever it is. That is all that a hold is. A Senator does not have the power to stop anything by himself or herself. You can stand there and talk until you run out of breath—that is protected, but that does not stop a nomination. If it is the will of the Senate to take action, the Senate will take action. Sixty votes may be required to shut off debate, but it can be done.

What happens, though, as a practical matter is that the Leader is confronted by somebody who wants to be heard, and he finds out that what they really want to do is kill the nomination or delay it. The Leader may just move on to other things and not call that up as a matter of independent judgment about the importance of the matter as it relates to the importance of other things that are on the agenda.

So the hold should not be exaggerated in terms of its power or described in any evil way, other than what it really is. It is abused by some, and it has been, but because it has been and Leaders have allowed Senators to abuse it, that is why it has become a difficulty. But a Leader can put a stop to a hold by simply calling it up. That is all that you need to do in many cases. And then, the Senator can object and make a speech or do whatever he wants to do.

Well, I am not going to get into the long, detailed version of that, but I do thing it is important for the leaders of the Senate to assume the responsibility to help ensure that these confirmations are handled in an expeditious way, and the chairmen of committees have that responsibility as well for confirmations that are subject to hearings in their committees.

I like the idea of not having hearings. That is a very refreshing suggestion. I know that I have been over here and had to preside, and we take turns doing these things, because one person cannot handle the great volume of confirmation hearings. And nobody is here attending the hearings, except the family and a few people who maybe want a job in that agency. We read these statements that are prepared and that have been in existence for 20 years or so, and I get tired and bored reading the same thing. I improvise and usually read my own so that I can stay awake or at least stay

interested. And I should not be belittling the process like I am, because it reflects an earnest and sincere desire to be sure that we discharge the responsibilities of advice and consent under the Constitution, and it is a constitutional responsibility of the Senate. The Senate did not dream this up and just decide that we are going to have to confirm all the nominees, whether it is to Executive Branch positions or to the Federal Judiciary Branch. That is what the Constitutional requirement is. The Senate shares with the Executive Branch the selection of people to serve in high-level positions of responsibility in the Executive and the Judicial Branches. So we have to take it seriously, but because it has been abused, it is in need of improvement, and I am delighted the Chairman is spending this time on it. I think we will see improvements made. I want to pledge myself to the effort and will cooperate with the Chairman in whatever way he decides we need to proceed after the hearings to make some improvements.

I talked a lot longer than I expected to, but I appreciate very much the opportunity, Mr. Chairman.

Chairman THOMPSON. We appreciate your historical perspective and your wisdom on it. You are absolutely right. I think the problem with the duties and responsibilities of the Senate and the balance of powers that we have is similar to the problem that we have in other areas—we are always adding on, and we never take anything away. And we are not just dealing with things that we were originally supposed to be dealing with; we are adding on more and more nominees of lesser and lesser significance in terms of our constitutional responsibility, and we never pay anything back. We just keep adding on and view it as a reflection on our authority or a diminution of our power if we ever cut anything back. I hope we can change this.

Senator you were here for a good while. What is your read on the dynamics of that? I know that we can count on you and Mr. Raines and the Initiative and on others who have been here to help us with this, but maybe we just need a better lobbying effort with regard to the Senate on this and bringing this to everyone's attention in a little bit more detail. We all understand it to a certain extent. And now we have a new administration, and people are undergoing this—they have a skeletal crew over there. We had the No. 2 person at OMB here, and he had to hustle back because he and Mitch Daniels were the only guys over there. People do not realize that. It takes just about a year now to get your team together—one-fourth of your term of office, you do not have your team together.

So we really need to bring this to the attention of Members, and I think we can do something, but it is institutional. I was not aware that hearings for everyone was of fairly recent vintage, for example. I think most people consider it to be a problem with the media more than anything else, that you were not taking your job seriously if you did not have hearings on everybody.

Anyway, having listened to us for a while, what thoughts come to your mind?

Senator KASSEBAUM BAKER. Well, I think that you are right, Mr. Chairman. It is interesting, because in many ways, you do not realize how burdensome the process has grown. As you said, you looked

into the requirements from the standpoint of reporting for the Office of Government Ethics for this Committee. I think one of the best points was made by Frank Raines about making the personnel office in the White House permanent so you have continuity and some process that is at work.

But I tell you we really do not know what is taking place and some of the requirements for those who are serving and not receiving compensation on special boards and commissions who are even required to go through full-field investigation. Former Governor Tom Kean of New Jersey was co-chairing a commission and had to go back and report all honoraria he had ever received. And there are other requirements that just do not seem necessarily important for giving some certain amount of time to a special commission or board that, as Amy Comstock pointed out, is frequently without compensation, and these people are asked to give some time and serve.

I do not think any of us really realize how often that occurs, and unless you are talking to someone who has gone through it, you do not realize what is involved. And how to improve it, as you say, is sort of like adding barnacles to the ship of State, so to speak. We just add on, and we never realize what could be removed and changed.

That is what we hope to do, and I sensed, Senator Cochran, from your observations that the recommendation on holds might be one that would be a little difficult to get approved. And as you said, it is not necessary to put it in legislation, really, because it is the responsibility of the chairman or the leadership in the Senate. But on the other hand, I hope that we can be supportive in any way, and maybe people will realize some of these stories that we can use about what has been part of the process is an important story.

I can just tell you that I was asked to serve on the new Kansas Hospital Board, which was set up as a State board. The forms that I was required to fill out were the same, really, as those required for an extensive government position here. I told my friend, Governor Graves of Kansas, sorry—I did not have a typewriter to do it, either, nor did I have any assistants who could look back to my high school records and so on. I do not want to bother, and I did not.

So that somewhere, I think we have to find the means of making it something that we can do, that we can answer the questions that the public has, and provide a sense of one of the responsibilities that we have and yet not make it such a laborious process.

Chairman THOMPSON. I know that you do not want to personalize this too much, but as everyone knows, Senator Howard Baker, my mentor and all of our friend, is going to be nominated to be Ambassador to Japan. Have you gotten into the process yet, and were you surprised by anything? How daunting is it?

Senator KASSEBAUM BAKER. Well, as you well know, it requires a couple of lawyers and so on to go back through records, and as we all know, you have to report everybody whom you have visited with abroad in the last 7 years or something like that. Some of us have really not even kept good records. I do not think I would make it through the process.

You have to wonder just at what point it is important, and I think that that is what we need to stop and think through—is anybody even reading the paperwork. I always wonder where it goes.

Ms. COMSTOCK. We do read it.

Senator KASSEBAUM BAKER. You do, but some of it just piles up. I think that what we would like to find is a sensible way that ensure that we can answer questions that need to be answered so that we can really provide a structure that will give us the participation——

Chairman THOMPSON. The obvious just occurred to me, and that is that it does not really matter whether you are a citizen who has never been in government before or a former Senator or an advisor to the President, who has access to the most sensitive secrets that the Nation possesses. I guess the process is essentially the same. Governor Kean is another example.

Senator KASSEBAUM BAKER. Yes. So maybe it is getting those stories out and finding some people who are willing to document what they have gone through that would help us to better understand—and you have pointed out some of the things that you realized, too. If we can perhaps make these case studies of what people have had to go through—and should they for that particular position. A standardized form, as has been pointed out, would be helpful and somehow working to make sure that once you go through what the White House form is, what the agency's form is, what the Senate committee's forms are, we have run through quite a few different loops, and that may be useful, to have a better understanding of what really takes place.

Chairman THOMPSON. Mr. Raines, on the Permanent Office of Presidential Personnel, what would they do once a President came in and the first year, let us say, was over with? Would they have a staff much greater than they would need for the balance of that term? How would that work?

Mr. RAINES. The experience of most White House Offices of Personnel is that they are in a constant state of flux.

Chairman THOMPSON. Excuse me. We heard yesterday that the average stay now is something like 2.1 years.

Mr. RAINES. Yes, that is of the appointees. Within the Office of Presidential Personnel, it is probably less than a year, because many people who go into that office go there hoping that they will go to another office at some point. But given the volume, much of the work that was done there in the last administration was done by volunteers or interns, because every President comes into office and says, "I am going to make the White House staff smaller," and when they look around as to where to make it smaller, they will take people out of Personnel, out of the Correspondence Unit, so that what you have is typically a group of volunteers with very few senior people whom the President brought with him, but that office is constantly seeing people coming and going.

The suggestion here is simply for an office that is authorized a small number of career employees that will ensure that it will be able to continue not only between administrations but during an administration, because if you have ever been an appointee, and you try to find out who it is that is processing your forms even in the administration, that person can change typically over the

course of months from the time that they first start to seek an appointee; and then, when they agree to the appointee and move him through the process, you might have three or four or five different people within the Office of Presidential Personnel who are supposed to be the ones in charge of your nomination.

So there is nothing like the Office of Management and budget where, when you come in, there is a career staff, and they have been there with the last President, they will be there with this President, and they will be there for the next Director, and all of that institutional memory continues—there is none of that within the Office of Presidential Personnel because it had never been thought to be the kind of office that required that kind of continuity.

One thing you learn heading a company is that the most important thing that you do is choose people. You ask people when they take on these jobs, and they list a lot of grand things that they would like to do and how they are going to spend their time, and when you ask them when they leave the job, all of them say that the most important thing they did was work on people—picking people, developing people, promoting people—that had the biggest impact on the institution. But we rarely focus on that in the government, and in a government that has such a short tenure among its appointees in office, and where I think at the end of the Clinton Administration, there was a 25 percent vacancy—and I do not think that varies very much from the time an administration gets going that you will probably have at any given time 20 to 25 percent of the senior positions unfilled.

Chairman THOMPSON. Well, you can extrapolate that for the government as a whole. GAO now has put the human capital problem on the high risk list. About half of our employees will be eligible for retirement in about 5 or 6 years, and of course, we are losing the very kinds of people that we need to be keeping. So we are concentrating just on the tip of the iceberg here, but it is a major government-wide problem.

With regard to the changes in the FBI full-field investigations, this really started in its comprehensive form during the Eisenhower Administration. Is it your understanding that this is something that could be corrected by Executive order? Would that be the way to do it if the President decided that he wanted to cut back on the kinds of positions where you would have the full-field?

Mr. RAINES. Yes. We believe that the full-field investigations should be reserved for national security questions. It should not be a form of generalized background check on appointees. Then, the FBI could do a better job on those fewer cases where the person will be dealing with national security information and which would be appropriate to that kind of investigation.

Chairman THOMPSON. But it is within the President's power, and you think that that is the way it should remain—should the President make that decision, I guess is what it boils down.

Mr. RAINES. I think the President should make that decision. I think that a recommendation, for example, from this Committee that the President should consider that would give the President an ability to take it on without anyone wondering, particularly if

it were a bipartisan recommendation, whether he somehow was limiting the process for his own people.

This is a problem that again faces all administrations, and it raises a particular concern—and Nancy alluded to this a little bit—that I am very concerned with. The full-field investigation and the ethics forms require a level of precision that puts innocent people at jeopardy of violating the law without any recourse. In the full-field investigation, for example, last month, I took a trip to Europe to visit investors. In the course of a week, I saw about 150 investors and made 28 separate presentations in five different cities in Europe. And I will do a similar trip in Asia.

If I were asked to undertake another full-field investigation, by the terms of that form, I should fill out each and every meeting I had, each and every person who was at that meeting, and the topic. Over a course of time, anyone who has international business dealings will have met with thousands of people and have almost no recollection of what cities they have been in—but technically, you are required to put each and every one of those trips and meetings and the substance of the conversation onto a form.

Well, particularly in countries where the government may have investment units where there may be a financial institution, for example, that is owned by the government, and where it says a government entity, that legally is required. Almost no business person now could literally fill out that form and abide by each and every one of those requirements.

Chairman THOMPSON. The real question is for what purpose. If you are a business person, I can hardly think of you being in a room with anybody that you had no control over their being there would be a major problem in and of itself. You would think the idea would be that if you happened to have met with someone—let us take the worst-case scenario—who was known to be recruiting spies for another country or something like that, that that would be checked out, that each of those individuals you listed would be checked out. But do you think that that is happening—it would take years instead of months, I suppose, if you were really going to use that information that you were submitting, wouldn't it?

Mr. RAINES. Exactly. And when you think of people who are not going to be exposed to national security information, you wonder why are we using up the FBI's resources there, whereas on the other hand, someone who is going to be dealing with top secret, compartmentalized information, you would expect there to be a very extensive investigation that probably would go beyond a paper form to get more of a qualitative information.

But the FBI devotes a lot of resources to these efforts, and currently, this administration is ahead of schedule in many ways in terms of proposing people, but there are only so many people who can go through the FBI pipe.

So we think that the FBI full-field investigation has been extended far beyond its useful purpose, and it really should be reserved for significant national security positions, and not just simply people who may be exposed to any information that may be, for example, secret. As you know, Senator Moynihan spent quite a bit of time trying to limit the amount of information that was classified. But it really should be things where there is a concern about

national security. We think that that would speed up the process enormously, because a number of people would be out of that process, and for everyone who had to go through it, more FBI resources could be expended on that smaller group, and it could be done much more quickly.

Chairman THOMPSON. "Review of the ethics requirements currently imposed on appointees." Do you have anything in mind there particularly that you think might be particularly onerous or unnecessary?

Mr. RAINES. We have not had a chance to discuss this, because we have not discussed the report in the Initiative directly, but the proposals that the director was just outlining, I think are a terrific step forward.

Limiting the amount of information that is not relevant to an ethics determination should be the key. You indicated the absurdity, Mr. Chairman, of asking for the distinctions between assets that we currently inquire—we put equal emphasis on assets between $200 and $1,000, and then we ask them "over $1 million," "between $1 million and $5 million," "between $5 million and $25 million," "$25 million and $50 million," and "over $50 million." I would have thought that the conflict problem would have emerged somewhere earlier than that stage. [Laughter.] But these provisions are in law, and indeed, as I recall, the top category used to be "over $1 million," but then there were some appointees who came in for whom they could not exactly determine their net worth, so they added provisions to go up higher. Well, this should not be about determining what the net worth of an appointee is. It should be when does a conflict of interest kick in.

Now, I am even more radical. I may be the most radical person here. I believe that you should simply ask people to state any asset above "X", whatever you determine could cause a conflict.

Chairman THOMPSON. Conflict-level.

Mr. RAINES. "X"—as far as I am concerned, it could be $1 or it could be $1,000 or it could be $10,000—just list them. Now you know that these are things that you have to pay attention to. And then, if someone would like a waiver or something, you can ask them for additional information; but those are going to be in special cases where you would not have burdened thousands of people with gathering information that typically will only be of interest to Freedom of Information requests when the newspapers do their annual update on the net worth of the members of the Cabinet and Members of Congress.

Chairman THOMPSON. You mentioned, as others have, the need for executive reorganization and the layering and that every deputy assistant has an assistant deputy. This is so obvious, and I suppose it is a question without an answer—but how do you convince any chief executive that he ought to be the one to deprive himself of a number of political appointees that others have not? I mean, do you make it become effective the next time, or what? Clearly, everybody has got to understand this problem, but is there anything you can point to to highlight the fact that it would be more advantageous to the Executive Branch than disadvantageous to do that? It is a political-personal kind of difficulty, I guess, more than it is anything else.

Mr. RAINES. Well, I think the number of patronage jobs at some point becomes far less important than actually running the agency. I am one who believes that the layering has occurred not so much from a desire to create more patronage but that executives come in, and they want to gather their team around them, and they have lost quite a bit of faith in the senior executives in the civil service to have the management skills or the capabilities or the loyalty to carry out the executive responsibilities. I think this is true of every administration; it is not a partisan question.

So I think it has to have two pieces. One, there should be greater flexibility in being able to choose your team among the career civil service. Political executives should be able to quite freely move around career civil servants to meet their needs, which will then keep them from layering on top of the career civil servants more and more people to supervise them.

Chairman THOMPSON. Aren't they free to do that now if they choose?

Mr. RAINES. There is some freedom, and that was the theory of the senior executive service, that there would be tremendous movement within the senior ranks of senior civil servants. But in reality, there is almost none; there is almost none in reality, and the ability to move and choose whom you would like without having significant limitations I think is part of what causes them to say, "Well, if I cannot have the right person I want there in the civil service, I will get a political appointee, and then I will have the civil servants report to my political appointee." And then that political appointee says, "I cannot do this by myself," and they then need to have a cadre of people to help them supervise the civil servants. I think that that has as much to do with it as patronage. I think the average senior executive could do with a lot fewer political appointees if they had greater flexibility in the career service, particularly in being able to move people in and out of these senior management jobs who are political only because we call them that, but they may simply be an expert.

Let me give you one example. When I was in the government, there was a big concern about the operation of the Guaranteed Student Loan Program and how could it be made to function more effectively. We had a big discussion, and we said let us hire an executive who knows something about running a big financial program, because that is what this is—it is a very large financial program. Let us go into industry and hire someone to do that.

It was very difficult to do, because in order to really bring them in directly, you had to make them a political appointee, you had to find an appropriate slot for that political appointee. They became associated with that administration rather than being someone who was brought in because of their inherent expertise. They had no knowledge of how long they might be there, because if the Secretary changed, they could be moved out of there as a political appointee. So it became a big negotiation over this one job of how do we just get someone in who knows something about running a big financial program.

No one had a patronage person that they wanted to put in the job; it was all agreement—this had to be a substantive person.

Well, we have not spent much time on this intersection between the career civil service and the political appointees, and we tend to think of them in totally separate batches, but they do impact each other. I think that that is where the layering comes from.

In our recommendation, we simply say give the President the reorganization authority. We are not making him do it. Give him the authority. Have Congress set a goal of a reduction by one-third—Congress not telling him exactly where to do it—and then let the President use this to try to manage better, and then the Committee can monitor how the President is doing. And I think in some ways, the way that you did with the Accountability Act and with the audit program, you can get a competition going as to who has done the best job, why haven't you been able to do more. That has as big an impact as a law, and I think that what this Committee has done on following up on those had as big an impact as going in and trying to tell them in detail how you should implement an audit, how you should implement future planning.

So we are not trying to mandate here how this administration or any administration does it, but we think that administrations in their own interest will want to do this in quite a few cases.

Chairman THOMPSON. Thank you very much.

It is almost noon. Are there any parting comments?

Ms. COMSTOCK. I did want to respond to one thing that was mentioned earlier. The question was raised rhetorically, does anyone even read these forms. In fact, of course, we read them for conflicts purposes, but the others who read these forms are also behind some of our recommendations. These public financial disclosure forms are requested regularly, often by the media, but by others as well. So our recommendations include the balance, the best we could offer to you, of minimizing the intrusion into privacy issues with what we needed for conflicts purposes. It was very important to us to maintain as much privacy as we could, because our forms are read. And as Mr. Raines indicated, there is the annual posting in the newspapers of the best estimate of net worth. So that is one of the theories behind it.

Chairman THOMPSON. I think a better question is who reads all the full-field investigations material. Senator Lieberman and I have to—some of it—but quite frankly, it has become very much pro forma in most cases.

Anyway, thank you all very much. This has been excellent. I look forward to working with all of you, and hopefully, we can do some good.

Thank you. We are adjourned.

[Whereupon, at 11:57 a.m., the Committee was adjourned.]

APPENDIX

STATEMENT OF SEAN O'KEEFE BEFORE THE UNITED STATES SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS

"THE STATE OF THE PRESIDENTIAL APPOINTMENT PROCESS"
APRIL 4, 2001

Mr. Chairman and Members of the Committee, thank you for the invitation to participate in this important hearing. The Committee is to be commended for your thoughtful inquiry into the Presidential appointment process. Your collective attention to the challenges provides cause for optimism that your search for remedies to current problems will yield much needed solutions. The successful outcome of your inquiry and subsequent action will be nothing less than a significant contribution to the quality of public governance.

During the course of my professional life I have been privileged to serve the public in a variety of capacities, initially as a career federal servant, on the professional staff of the Senate, and on three separate occasions as a Presidential appointee following Senate confirmation. It has been an honor and I have been most fortunate.

For each of the three Presidential appointments I have been honored to receive, I was treated to the most expeditious consideration of almost any appointee below the level of Cabinet officer. Indeed, this Committee's prompt treatment of the President's nomination of me to be OMB Deputy Director accounted for a small fraction of the six weeks of accelerated consideration from the date of the President's preliminary decision to Senate confirmation. My previous appointments were, similarly, mercifully brief in the consideration phase. As such, I am not here to complain by way of testimony before this Committee. Rather, my objective is to offer observations on how this process has become more difficult in the span of my public service experience which, in my judgment, has deprived the public of talent that would otherwise be called to public service.

In short, all of the parts leading to confirmation have become more extensive, more onerous and more complicated by a factor of at least two since last I was privileged to be appointed nearly a decade ago. While there is a fair degree of repetitiveness in terms of the information required at each level of the process, it is more the depth of information and disclosure required which is at least intimidating, and at worst, deters candidates who might otherwise be disposed to considering service. For example, the background investigation process, I've come to learn, takes longer if the candidate has been previously investigated and there is considerable reluctance to share information between the investigative units. These kinds of impediments are thoroughly explored by the Brookings Institution's Presidential Appointee Initiative, so I won't dwell on them and risk repetition of testimony the Committee has or will hear. On these matters, I associate myself with the observations expressed by Senator Kassebaum and former OMB Director Raines.

Mr. Chairman, I conclude with an observation of what I believe will be the consequence of this ever more difficult process. Fewer and fewer citizens of my comparatively modest financial means and geographic diversity are likely to respond to the call to public service. In

the quest to remove conflicts of interest, the process has reached near perfection in leading to the inevitable conclusion that candidates must eliminate significant if not all financial interests. While this is equally onerous for any potential nominees, it has a particularly shuddering effect on those of us who can least afford to divest interests particularly at a directed time – especially during a market slump. The consequence translates to a diminished standard of living which is acutely felt by families. Public service at these levels could tend to default to those of more substantial means who can withstand the consequences of this policy. This is not my condition, to be sure. Rather my presence here is testimonial to the extraordinary support, sacrifice and tolerance of my wife and children, despite the cost.

In tandem with the financial impact is the near absence of support for relocation to the Capitol City. My family is still in upstate New York and will hopefully join me here this summer. In the interim, there is no provision for easing that transition. We, nonetheless, have elected to weather that range of challenges by virtue of our commitment to the important public service task. Many others would not choose to withstand these challenges and would find cause to withdraw from further consideration. Unfortunately, the effect of these two factors, could yield a more dominant tendency toward those who can withstand the financial penalty and/or who live in the Washington, DC metropolitan area. The increasingly more complicated, intrusive and lengthy confirmation process further compounds this result. In either or both events, this hardly augers in favor of attracting Americans from all backgrounds, walks of life, and diversity in its widest definition, to answer the call to public service.

Again, Mr. Chairman, it is a privilege to be here and I thank the Committee for the opportunity to testify.

Testimony by Bob J. Nash before the United States Senate Governmental Affairs Committee on the State of the Presidential Appointment Process

Wednesday, April 04, 2001

Dirksen Senate Office Building

2:00 p.m.

Chairman Thompson, Ranking Member Lieberman and members of the Committee, Thank you for giving me this opportunity to provide brief comments and recommendations on the Presidential Appointment Process.

There is no doubt that future presidential nominees and appointees will some day gain an appreciation for the time and effort you are spending on this issue.

Given my roles as former Director of Presidential Personnel, and as undersecretary of Agriculture – a position for which I was confirmed by the U.S. Senate - I think I have a unique perspective on the presidential appointment process.

I first want to say it was an honor and a privilege to serve President Clinton, and my country. In spite of the selection process, the background check, the nomination and confirmation obstacles, I went through – I would go through the process again, if the opportunity to make a difference, as I feel we did, was offered me.

I might add that a survey of appointees and nominees, conducted by the Brookings Institute and other non-partisan groups, indicate that a majority of those surveyed felt the same as I do. They would go through this process, again, as well.

Given the volumes of information published on this subject and the collaborative efforts of the individuals on your panels today, I will not make a lengthy presentation because it would largely duplicate some of your other presentations.

I do want to make the following comments and recommendations, however.

1) The process takes too long. In the last twenty to twenty-four years, the length of time for confirmations have averaged between six and eight months. This is too long for a potential appointee to put their lives on hold. It is also too long for an important position to be left vacant as we scrutinize the nominee's background.

2) The lengthy process also reduces the number of qualified applicants willing to go through the process. No matter how much they would like to serve their country, these people also have livlihoods to maintain, as well.

3) The new President assumes office on January 20th. The former President and hundreds of top-level senate-confirmed appointees leave on January 20th, as well.

There are hundreds of decisions affecting individuals, families and communities that need to be made after that important date, by appointees in those senate-confirmed positions.

While some short period without a decision-maker at the helm is understandable and workable, six to eight months is not.

My recommendations are as follows:

1) Shorten the average appointment process to no more than four months – and there has been a number of ideas batted around as to how to do this. I won't bore you with redundancy.

2) Eliminate the full field investigation for most senate-confirmed positions that do not deal with defense, national security or Justice issues.

3) Reduce the Financial Disclosure Form, by fifty percent.
For most nominees, the truncated From 278, could be used. rather than the much lengthier Form 450.

4) Reduce the number of senate-confirmed positions. on part-time boards and commissions. This will give the white house and the Senate more time to work on more important full-time nominees.

5) Limit the use of a senate "holds" on nominees, when the issue being debated between congress and the white house has little or nothing to do with the nominee.

Thank you very much for this opportunity, and, now. I would be happy to entertain any questions you might have.

PAUL C. LIGHT
VICE PRESIDENT AND DIRECTOR OF GOVERNMENTAL STUDIES
THE BROOKINGS INSTITUTION

I am delighted to appear before this committee to speak on behalf of past and potential presidential appointees regarding the state of the appointments process. Speaking from two recent opinion surveys, I can safely attest that past and potential appointees believe the current process is in desperate need of repair. Although the spirit of service is clearly strong, the process for nominating and confirming presidential appointees has become the most significant barrier to accepting the call to service when it comes. To all of us involved in rebuilding the public service, the message is clear: improve the process and more talented Americans will stand ready to serve.

The surveys, which were conducted in 1999-2000 on behalf of the Presidential Appointee Initiative by Princeton Survey Research Associates, offer a mix of hope and frustration regarding the presidential appointments process. On the one hand, they suggest that both past and potential appointees see great honor in serving their country. The vast majority of past appointees would recommend a presidential post to their friends and family, while the vast majority of potential appointees believe that service would generate a host of long-term benefits. On the other hand, past and potential presidential appointees alike view the process of entering office with disdain, describing it as embarrassing, confusing and unfair. They see the process as far more cumbersome and lengthy than it needs to be.

More troubling, both surveys suggest that the presidential appointments process may be failing at its most basic task. It does not give appointees the information they need to act in their best interest throughout the process, does not move fast enough to give the departments and agencies of government the leadership they need to faithfully execute the laws, and produces a less than enviable pool of actual appointees. More than three-quarters of the Reagan, Bush, and Clinton appointees interviewed for the Presidential Appointee Initiative rated their colleagues as a "mixed lot," while only 11 percent considered their colleagues the best and the brightest.

Fortunately, past and potential nominees offered a range of simple solutions for redressing the most destructive of the problems facing the presidential appointment process and building a more persuasive case for service. In a sentence, they urged the president and Congress to simplify the appointments process and make it easier for appointees to return to their previous careers after service. Although these changes would not guarantee a "yes" when the president makes the call to service, they would eliminate some of the most significant burdens that confront the nation's most talented citizens as they make the choice between accepting a post of honor or just staying home.

The Surveys

Before reviewing these findings in greater detail, it is important to introduce the two surveys that produced the data presented in this statement. The two surveys were conducted by Princeton Survey Research Associates on behalf of the Presidential Appointee Initiative, a project of the Brookings Institution funded by the Pew Charitable Trusts. Both surveys were completed by telephone. The final report on each survey was co-authored by Virginia L. Thomas, of the Heritage Foundation, and myself.

The survey of former appointees came first, and was conducted in the winter of 1999-2000. The survey was designed to examine the actual experience of 435 Executive Level I-IV (Secretary to

Assistant Secretary) appointees who had gone through the process during the Reagan, Bush, and Clinton Administrations (1984 through 1999). The sample was limited to those serving in a cabinet department or one of six independent agencies: the Environmental Protection Agency, the Federal Emergency Management Agency, the National Aeronautics and Space Administration, the Small Business Administration, the United States Agency for International Development, and the United States Information Agency. These six agencies were selected to assure comparability with a 1985 project by the National Academy of Public Administration that studied appointees from 1964 to 1984. In all, 107 Reagan, 127 Bush, and 201 Clinton appointees were interviewed for this first survey, yielding a 59 percent response rate of those contacted for the study. The respondents were mostly men (81 percent) and over 50 years old (76 percent).

The survey of potential appointees was conducted during the summer and fall of 2000, and focused on civic and corporate leaders. The survey was designed to examine the willingness to serve among individuals who might be, perhaps even should be, asked to serve. The study targeted six elite groups of likely appointees: (1) *Fortune 500* executives, (2) presidents of the nation's top 300 colleges and universities, as ranked by the 2000 *U.S. News & World Report*, (3) executive directors of the nation's largest nonprofit organizations, as measured by donations, (4) scholars at the nation's nine leading think tanks, as identified in a survey of impact and credibility, (5) registered lobbyists at the nation's 117 largest lobbying firms as measured by revenues, and (6) senior state and local officials. Interviews were completed with 100 *Fortune 500* executives, 100 university presidents, 85 nonprofit CEOs, 95 think tank scholars, 100 lobbyists, and 100 state and local government officials. The overall response rate was 29 percent of those sampled and eligible. The demographics of the potential appointees were similar to those of the former appointees surveyed, mostly male (81 percent), over 50 years old (66 percent) and, white (92 percent).

Together, these two surveys provide a unique opportunity to judge the state of the presidential appointments process today. To the extent the process leaves appointees exhausted, embittered, and unprepared for the rigors of service, or discourages talented Americans from ever serving in the first place, it is failing in its most basic obligation to help the president fill some of the most important jobs in the world. The Founders clearly understood that the quality of a president's appointments was as important to the public's confidence in government as the laws that its leaders would enact. "There is nothing I am so anxious about as good nominations," Thomas Jefferson wrote at the dawn of his presidency in 1801, "conscious that the merit as well as reputation of an administration depends as much on that as on its measures." Unfortunately, the merit and reputation of future administrations appear to be imperiled by a process that has calcified and corroded beyond any reasonable justification.

The Motivation to Serve

The Founders did more than just hope for a government led by the nation's most talented leaders. They also accepted the call to service themselves. Most had served in public office before traveling to Philadelphia for the Constitutional Convention, and most served after. Having argued so passionately for a republic led by citizens, the Founders willingly left their farms, small businesses, law firms, newspapers, and colleges to bring their new government into being.

The two surveys clearly suggest that America's most talented citizens continue to be motivated to serve. Even as they recognize the sacrifices in service, past and potential appointees have an overwhelmingly positive view of their impacts in office. Indeed, 83 percent of past appointees said they would recommend an appointment to a close friend (table 1), while the same percentage, 83 percent, of potential appointees were favorable toward serving as a presidential appointee (table 2). An overwhelming majority potential appointees (78 percent) said they would find serving an enjoyable experience, and almost all (97 percent) considered an appointment an honor. Over half (57 percent) of these potential appointees think they would gain more respect from family, friends, and neighbors by serving as a presidential appointee than in a senior post outside government.

Table 1: Recommending Service

% Recommending that a good friend consider an appointment	Former Appointees (1984-1999)
Strongly recommend	54%
Somewhat recommend	29
Somewhat discourage	7
Strongly discourage	1
N	435

Table 2: Impressions of Service

% With a favorable initial impression of serving as an appointee	Potential Appointees
Very favorable	41%
Somewhat favorable	42
Somewhat unfavorable	12
Very unfavorable	4
N	580

The Benefits of Service

The decision to accept the call to service is more than just an assessment of the rewards of service in the short-term. It also involves a calculation of the benefits and costs of service that follow a term in office. Potential appointees clearly recognize the balance. Most (77 percent) felt that they could return to their career after their appointment ended and were not concerned about losing out on promotions in their field (74 percent). Moreover, 83 percent of potential appointees predicted that their service would make them more attractive for future leadership posts. Lobbyists (95 percent), state and local government officials (93 percent) and think tank scholars (84 percent) were most inclined to equate returning from presidential service with career advancement. Almost all of the potential appointees (97 percent) said they would make valuable contacts, which could also be profitable in the future.

While many potential appointees (42 percent) said their salary would be much lower while serving than in their current job, these valuable contacts and the opportunity to advance in their

field may help explain why 61 percent thought serving a president would increase their earning power outside government. Lobbyists (80 percent), local government officials (79 percent), and think tank scholars (72 percent) were most likely to believe that serving a president would increase earning potential later in their career. All three sets of chief executive officers – corporate (46 percent), academic (41 percent) and nonprofit (46 percent) – saw less potential for increased earning power than the other groups. After all, they are already at the top of the salary scales in their industry.

These calculations are confirmed in part by the experiences of past appointees. While 46 percent of the former appointees had a higher salary before their appointment than while serving, only eight percent felt their service decreased their earning power over their career. Twenty percent of the former appointees left their appointment for a higher paying job in the private sector.

It is important to note that not all potential appointees saw the benefits of service. Only 26 percent of potential appointees felt that their ability to make a difference through their work would be much enhanced by serving as a presidential appointee. Nonprofit CEOs (11 percent), university presidents (20 percent), and corporate CEOs (20 percent) were least inclined to think presidential service would significantly increase their ability to make a difference. As two respondents who declined offers to serve explain:

"I felt I was doing more important work as editor-in-chief."

"I was at a critical point in my prior company's development and I would have been leaving a bit of work in the change of the company which I thought was quite important."

The Costs of Service

Much as past and potential appointees saw the benefits of service, both past and potential appointees acknowledged that presidential service has burdens that are often heavier than a temporary decline in salary. Nineteen percent of past appointees said burnout or stress was the reason they left service. Of the former appointees, 68 percent found their position stressful compared to other places they worked (table 3). Having most likely come from challenging, senior leadership positions, their comparative assessment of the level of stress as a presidential appointee is particularly troublesome.

Table 3: Stress as an Appointee

% Rating stress of appointment compared to other work, on a 1 to 5 scale	Former Appointees (1984-1999)
5 (Very Stressful)	36%
4	32
3	20
2	7
1 (Not stressful)	2
N	435

Table 4: Impact of an Appointment on Personal Life

% Rating an appointment's perceived disruption to personal life, compared to other senior, non-government positions	Potential Appointees
Much more disruptive	32%
Somewhat more disruptive	37
Equally disruptive	28
Somewhat less disruptive	2
Much less disruptive	<1
N	580

Potential appointees also saw presidential service as highly disruptive. Seven in ten said that an appointment would be more disruptive to their personal life than a senior position outside government (table 4). This sentiment was held most firmly among think tank scholars. Almost half of the think tank scholars (47 percent) perceived serving as much more disruptive compared to 25 percent of university presidents, and 29 percent of lobbyists, corporate and nonprofit CEOs. As one civic or corporate leader who declined an offer to serve explains:

> *"I had a daughter entering high school and I knew the time commitment would have taken away from that."*

Living in the Washington, D.C., area is a final barrier to service. Of the Reagan, Bush, and Clinton appointees living outside of Washington before their appointment, 36 percent found living in the area a lot more expensive and another 24 percent found it somewhat more expensive. Only 13 percent found the Washington area less expensive than where they lived before serving.

More than half of the potential appointees who lived outside Washington at the time of the survey rated the nation's capital city a much or somewhat less favorable place to live than their current residence. Although this reluctance is almost certainly linked to the high cost of living and real estate in what has become one of the nation's most expensive places to live, it is also driven by worries about relocating one's spouse or partner to a new city. Fifty percent of potential appointees said relocating their spouse or partner would be somewhat or very difficult.

To those who have served and those who may be asked, presidential service requires great sacrifices balanced with great rewards. Taking into account all of the trade-offs, America's leaders still seem to value presidential appointments. Unfortunately, their strongly negative views of the confirmation process may cause some to bow out before they have a chance to think about what it would be like to serve.

Views of the Process

As noted above, the presidential appointment process exists to recruit and confirm talented citizens for presidential service. As such, it is relatively easy to describe the components of a

successful process. It should give nominees enough information so they can act in their best interest throughout the process, move fast enough to give departments and agencies the leadership they need to faithfully execute the laws, and be fair enough to draw talented people into service, while rigorous enough to assure that individual nominees are fit for their jobs. Unfortunately, this is not the process former and potential appointees describe.

The Burdens of Review

For past appointees, the process was viewed as unnecessarily burdensome at virtually every step (table 5). At best, the confirmation process is viewed as a necessary evil by those who endured it (47 percent); at worst, it was seen as unfair (by 24 percent). Twenty-three percent of former appointees described the nomination and confirmation process as embarrassing, and another 40 percent as confusing. Half of the Clinton appointees described the process as confusing compared to just a third of the Bush and Reagan appointees.

This consternation is particularly unsettling given the apparent skill with which they were able to master their jobs after their confirmation. Much as they felt challenged by the confirmation process, very few past appointees found any of the substantive aspects of their positions difficult. Over two-thirds found the details of the policies they dealt with and directing career employees fairly easy. Over half found the decision making procedures of their department and managing a large government organization relatively simple.

As troubling as the nomination and confirmation process was for those who actually went through it, the perception among America's potential appointees sounds an even louder alarm. Fifty-seven percent considered the process a necessary evil and 40 percent viewed it as unfair. The majority of the civic and corporate leaders asked (51 percent) described the appointment process as embarrassing and even more (59 percent) thought it was confusing.

Table 5: Summarizing the Appointment Process

% Who say word describes the appointment process very or somewhat well	Former Appointees (1984-1999)	Potential Appointees
A necessary evil	47%	57
Unfair	24	40
Embarrassing	23	51
Confusing	40	59
N	435	580

Some of these opinions were almost certainly based in a lack of adequate information. Just over half of the past appointees (56 percent) said they received enough (40 percent) or more than enough (16 percent) information about the process from the White House or other official sources. Roughly four in ten (39 percent) said they did not get enough (28 percent) or got no information at all (11 percent). Women (51 percent) were more likely than men (37 percent) to

report that they did not get enough information. An overwhelming 77 percent of the Reagan, Bush, and Clinton appointees surveyed found the financial disclosure forms less than straightforward.

It is no surprise, therefore, that so many past appointees sought help in the process, thereby compounding the less tangible burdens of being confirmed with the all too real monetary costs. Half of the Reagan, Bush, and Clinton nominees said they sought outside help to get through the process, and one in five spent more than $5,000 in doing so.

Delays in the Process

These frustrations are multiplied by a process that is filled with what past and potential appointees view as unnecessary delays. A nomination and confirmation process lasting more than six months was nearly unheard of between 1964 and 1984. Just 5 percent of those appointees reported that more than six months elapsed from the time they were first contacted by the White House to when the Senate confirmed them.

But times have changed. Nearly a third (30 percent) of the appointees who served between 1984 and 1999 said the confirmation process took more than six months. By the same token, while almost half (48 percent) of the 1964-1984 cohort said the process took one to two months, only 15 percent of the 1984-1999 cohort said the same. Although the delays have increased with each successive administration since 1960, the jump was particularly significant during the Clinton administration. On average, it took Clinton appointees two months longer to enter office than Reagan or Bush appointees.

Past appointees were particularly frustrated by the Senate confirmation process. Almost two-fifths of the appointees who served between 1984 and 1999 felt the Senate confirmation process was too lengthy, an increase from less than a quarter between 1964 and 1984 (table 6).

Table 6: Sources of Delay in the Appointments Process

% Who say stage took longer than necessary	Former Appointees (1964-1984)[1]	Former Appointees (1984-1999)
Senate confirmation process	24%	39
Filling out financial disclosure and other forms	13	34
FBI full-field investigation	24	30
White House review	15	27
Initial Clearance with members of Congress	7	18
Conflict of interest reviews	6	17
N	532	580

1 The 1964-1984 figures are drawn from a survey of 532 Johnson, Nixon, Ford, Carter, and first-term Reagan appointees interviewed by the National Academy of Public Administration in 1985.

The Senate was hardly the only problem, however. A third of the Reagan, Bush, and Clinton appointees also complained that filling out the financial disclosure and other personal information forms (34 percent), the FBI full investigation (30 percent), and the White House review, excluding the president's personal approval, (27 percent) took too long. One former appointee described the frustration of the delays this way:

> *"Everybody says, 'Oh, it's two months maximum.' Turned out to be six months. And that's pretty off-putting because your whole private life is on hold kind of while this is going on."*

The delays did not affect all levels of nominees equally, however. Secretaries, deputy secretaries, and under secretaries reported fewer frustrations than assistant secretaries. Higher-level appointees were less likely to say the White House review (19 percent versus 31 percent), initial clearance with members of Congress (10 percent versus 20 percent), or Senate confirmation (28 percent versus 43 percent) dragged on too long.

Placing Blame

Past appointees found problems in the process at both ends of Pennsylvania Avenue. Forty-six percent said the Senate was too demanding and made the process more of an ordeal than necessary. The frustration has risen over time. Only 30 percent of the Reagan appointees and 40 percent of the Bush appointees saw the Senate as too demanding, compared to 55 percent of first-term Clinton appointees and 62 percent of second-term Clinton appointees.

Past appointees also found fault with the White House. Thirty percent of past appointees thought the White House was too demanding and made the process more of an ordeal than necessary. Frustration toward the White House has also risen over time. Only 15 percent of the Reagan appointees and 24 percent of Bush appointees saw the White House as too demanding, compared to 36 percent first-term Clinton appointees and 44 percent of second-term Clinton appointees.

Potential appointees also found fault at both ends of the Avenue (table 7). Of the potential appointees surveyed, two-thirds percent felt the Senate asks for too much and 42 percent perceived the White House as too demanding.

Table 7: Describing White House and Senate Demands

% Who say each is too demanding, making the process an ordeal	Former Appointees (1984-1999)	Potential Appointees
Senate	46%	66
White House	30	42
N	435	580

Together, these burdens, delays, and pressures have created an appointments process that appears to favor Washington insiders. Half of the 1984-1999 appointees worked inside the Beltway at the time of their nomination, and over a third actually worked in another position in the federal government (35 percent) when they were chosen to serve the president.

Living in Washington does more than provide an easy transition into office, however. It also provides the kind of experience and information needed to survive the current process. Roughly half of the Washington residents among the past appointees surveyed (52 percent) said they knew a great deal about the process at the outset, compared with just a third (31 percent) who lived outside Washington. Forty-nine percent of those whose most recent job was in the federal government knew a great deal about the process compared to 23 percent of those coming from other industries. Although Washington experience allows appointees to more skillfully and smoothly take control of the functions of government, the Founders clearly hoped that presidents would draw upon a talent pool that extended well beyond the nation's capital city. They did not want a government led by a class of semi-professional appointees, but by citizens from every corner and occupation. To the extent the current process favors only candidates with the resources and knowledge that comes from living within a few miles of the White House, a citizen government becomes more an abstract notion than a real possibility.

Explaining the Decline in Timeliness

The Founding Fathers did not intend the presidential appointments process to be easy. Otherwise they would not have required Senate confirmation as part of their complex system of checks and balances. The question is whether the recent increase in appointee complaints is an appropriate expression of such constitutional obligations or a sign that the presidential appointments process has become a hostage in disputes that are better solved through other means.

These studies cannot offer a definitive answer, if only because the impact of divided control from 1984-1999 has been decidedly mixed (table 8). In fact, appointees reported that some delays were actually longer when the Democrats controlled both the presidency and the Senate, in part because the only moment of unified control during the period happened to come during one of the most haphazard presidential transitions in recent history.

Table 8: Impact of Divided Government on Delays

% Former appointees who say stage did not take longer than necessary	Divided 1984-1986	Divided 1987-1992	One Party 1993-1994	Divided 1995-1999
The president's personal approval of nomination	73%	79	59	71
Other White House review Of nomination	69	68	47	50
Filling out financial disclosure and other forms	70	68	67	50
The initial clearance of selection with Congress	78	75	71	63
The conflict of interest reviews	84	78	86	66
The Senate Confirmation process	67	59	59	50
FBI full field Investigation	67	68	57	57
N	67	123	58	102

Just because divided government did not have a strong impact on delays does not mean the Senate confirmation process is working well. To the contrary, it suggests that the delays may have become part of the institutional norms within the Senate that will govern future presidential appointments regardless of party control.

A Note on Financial Disclosure Requirements and Conflict of Interest Laws

The Reagan, Bush, and Clinton appointees were divided over the problems associated with financial disclosure requirements and conflict of interest laws. On the one hand, two in five appointees (41 percent) saw the laws as reasonable measures to protect the public interest, while almost as many (37 percent) thought they were unreasonable. On the other hand, nearly a third of Reagan, Bush and Clinton appointees described the financial disclosure process as somewhat or very difficult.

Table 9: Describing Financial Disclosure Requirement and Conflict of Interest Laws

% Rating the reasonability of financial disclosure requirements and conflict of interest laws, on 1 to 5 scale	Former Appointees (1984-1999)	Potential Appointees
1 (Go too far)	18%	5
2	19	14
3	19	22
4	14	27
5 (Reasonable measures)	27	30
N	435	572 [1]

1 Based on those aware of the financial disclosure forms and conflict of interest laws.

Potential appointees were much less likely than actual appointees to rate the financial requirements and conflict of interest laws as a burden (table 9). The vast majority (81 percent) did not believe it would be difficult to collect and report the information needed to complete the financial disclosure forms, relatively few (16 percent) believed the conflict of interest laws would have much of an impact, and only 19 percent thought they are unreasonable.

The think tank scholars and lobbyists clearly understood enough about the disclosure forms to recognize the burdens involved, while the corporate CEOs sense the potential problems embedded in disclosing their financial holdings. Only sixty-eight percent of think tank scholars and 65 percent of lobbyists thought filling out the financial disclosure forms would be easy, compared to 94 percent of state and local government officials and 89 percent of nonprofit CEOs. Only 34 percent of lobbyists and 41 percent of CEOs thought the conflict of interest laws would have little or no impact, compared to 83 percent of government officials and 81 percent of nonprofit CEOs. The state and local officials were unconcerned (only 9 percent found these rules unreasonable) one suspects in part because they are governed by similar statues that they already know well and have been spared the problems involved in the acquisition of great wealth.

At least compared to the actual experiences of former appointees, as a group, the potential appointees clearly underestimate the difficulties associated with financial disclosure requirements and conflict of interest laws. This mistaken impression may be the reason potential appointees do not rank these areas as a high priority for reform.

Prescriptions for Reform

There is only so much that the president and Congress can do to improve the odds that talented Americans will accept the call to serve. They cannot move Washington D.C., to say San Francisco, for example, and most certainly should not eliminate the constitutional requirement for the Senate confirmation or the conflict-of-interest protections embedded in federal statutes. Moreover, the Founders clearly expected government service to be inconvenient and a sacrifice, lest elected and appointed officials become so enamored of their jobs that they never go home. "I

will not say that public life is the line for making a fortune," Thomas Jefferson wrote in 1808 just before leaving the presidency. "But it furnishes a decent and honorable support, and places one's children on good grounds for public favor." But certainly, both the president and Congress can redress some of the drawbacks of service while accentuating its draws.

Past and potential appointees largely agreed on ways to improve the system, starting with providing basic information on how the process works. As already noted, the desire for more information among past and potential appointees is undeniable: 39 percent of the Reagan, Bush, and Clinton appointees said they either did not get enough information from the White House or got none at all, while 47 percent of the potential appointees said they knew little or nothing about how the process works. The impact of information, or a lack thereof, is also unmistakable. Past appointees who said they had enough information about the process were more likely than those with little or no information to describe the process as fair and not embarrassing.

Past and potential appointees also agreed on the need for a simpler, faster process. When asked what can be done to make the process easier, 37 percent of the Reagan, Bush, and Clinton appointees focused on streamlining the process and 28 percent on accelerating action (table 10).

Table 10: Making the Appointment Process Easier

% Of former appointees who think the reform would make the process easier	Total	Reagan	Bush	Clinton (1st)	Clinton (2nd)
More efficient information collection	37%	19	38	33	40
Faster process	28	31	23	40	31
Nonpartisan process	11	6	9	9	17
Better communication with both White House and Congressional staff	7	6	4	12	12
Better communication between White House and Senate	2	4	4	0	1
N	435	67	123	58	102

Similarly, 73 percent of the potential appointees said that simplifying the process would make a presidential appointment either somewhat or much more attractive (table 11). The potential appointees also pointed to other reforms that might increase the odds of service, most notably increases in pay and help returning to their previous jobs once their presidential appointment comes to an end.

Table 11: Making an Appointment More Attractive

% Potential appointees who say change would make a presidential appointment more attractive	Total	Fortune500 CEOs	University Presidents	Nonprofit CEOs	Think Tank Scholars	Lobbyists	Govt. Officials
Simplified process	73	80	74	72	78	79	58
Better pay	71	57	69	75	72	77	74
Could return to previous job	67	68	70	76	64	70	56
Conflict of interest laws easier to meet	36	53	30	18	29	62	20
Financial disclosure Easier to meet	35	47	33	24	34	46	23
N	580	100	100	85	95	100	100

Where potential appointees stand on reform depends in part on the sector in which they sit. Looking just at which changes would make a presidential appointment much or somewhat more attractive, lobbyists were the most supportive of higher pay (77 percent said the change would make a presidential appointment much more attractive, compared with just 57 percent of corporate CEOs and 69 percent of university presidents). Nonprofit executives were the most supportive of return rights to their previous careers (76 percent said that option would make an appointment more attractive, compared with just 56 percent of state and local government officials).

Although roughly half of the potential appointees said their employers would strongly or somewhat encourage them to take a presidential appointment, the percentages were not uniform across the six groups of civic and corporate leaders. Only 18 percent of the nonprofit executives and just 10 percent of the corporate and university executives said their employers would strongly encourage them to take a presidential appointment, suggesting that of they leave, it may not be with the support of their employer. Unfortunately, the majority in all three groups would find service more appealing if returning to their previous job were an option.

Both former and potential appointees agree. Simple reforms, like removing unnecessary bureaucracy, improving access to information, better communication, and working with employers to let their employees serve and return, may help to ensure that the nation's most talented leaders don't exit the process before it even begins.

In addition, there is clear evidence from the survey of past appointees that the White House Office of Presidential Personnel often creates more problems than it solves in handling the onslaught of candidates for appointment. This office is often the first point of contact for lower-level appointees, and handles most of the paperwork at key points in the process. If it is not working well, the entire process suffers.

Unfortunately, the office received mixed grades from their primary customers, the appointees themselves (table 13). Asked to grade the helpfulness of the White House Office of Presidential Personnel staff on a range of issues from competence to staying in touch during the process, half or fewer awarded As or Bs. Although appointees gave the office high grades both for competence (50 percent As or Bs) and personally caring whether the appointee was confirmed (46 percent), half gave the office a C (21 percent) or lower (30 percent) for staying in touch during what has become a long relationship.

Table 13: White House Office of Presidential Personnel Report Card

% Giving grade to the White House Office of Presidential Personnel	A (Excellent)	B (Good)	C (Average)	D (Poor)	F (Very Poor)
Caring whether you were confirmed	26%	20	18	13	7
Competence	21	29	23	9	3
Responding quickly to your questions	20	23	20	12	4
Devoting enough time to your appointment	19	24	23	11	6
Staying in touch with you during the process	13	21	21	21	9

There were significant differences in performance across the three administrations, however. Clinton appointees were much more critical of the personnel office than either Reagan or Bush appointees, giving the office average or below average grades on all of the questions asked. More than 40 percent of the Clinton appointees gave the office a D or F on staying in touch with them during the process.

Making the Case for Service: A Statistical Analysis

Given all the opinions summarized above, it is useful to ask which, if any, factor into the willingness to serve. Do views of the confirmation process matter? Are individuals who see the honor in service more likely to be favorable toward the president's call than those who don't? Do concerns about relocating family make potential appointees less willing to accept an appointment? One way to answer these questions is to subject the data presented above to more sophisticated statistical analysis using a regression model. Simply summarized, regression allows the researcher to test competing explanations for a greater or lesser willingness to serve.

A regression analysis of eleven different measures discussed above clearly suggests that some considerations are more important than others. The eleven measures involved are a mix of impressions about the effects of serving (the extent to which potential appointees saw the honor in serving and a greater impact from that service), impressions of the process (the extent to which potential appointees described the process as fair, confusing, or embarrassing), demographics (gender, age, race, political ideology, and whether a potential appointee had actually been

considered for an appointment in the past), and the ease, or difficulty, associated with relocating a spouse/partner to the Washington, D.C. area. The variables were tested for significance at a 95 percent confidence level.

The regression analysis showed four significant predictors of greater favorability toward service: (1) a sense that the process of appointment is fair, (2) a sense that service would allow an individual to have an impact, (3) a sense that service would be an honor, and (4) the ease with which the potential appointee's spouse could relocate to Washington. The regression analysis shows, however, that the honor to serve is overwhelmingly more important as a predictor of service than any other measure, and therefore should be emphasized above all else. Moreover, spousal relocation, while an interesting variable to consider, is not all that important, and can be ignored as a concern, especially when the spouse/partner is in the medical, legal, or literary research fields. There is no consequence, for example, involved in prohibiting spousal/partner relocation in the real estate and entertainment industry.

Although it may be impossible to ease the challenges of relocating families to Washington, D.C., the regression offers several ways the government could improve the image of serving. First, presidents and the Senate should reassure candidates that they are committed to building an appointments process is both reasonable and fair, including visible, substantial reform in how the process works.

Second, presidents should talk incessantly about the impact of presidential appointees on the nation. Doing so emphasizes one of the great advantages of public versus private or nonprofit service: it enhances the ability of one person to make a very large difference, indeed. As mentioned earlier, only 26 percent of civic and corporate leaders believe that their ability to make a difference through their work would be greatly enhanced by serving as a presidential appointee. People tapped for presidential appointments are likely to be at the top of their fields, steering major universities, directing nonprofits and businesses in which they believe, advocating for the issues about which they care, doing the research they feel is important, and providing leadership in their state or local government. It is not surprising that these leaders would need to be convinced they could have a more meaningful impact through government service.

Third, presidents should constantly remind appointees of the honor involved in service to one's country. Old fashioned though it may seem, patriotism and the love of country are still powerful motivators for public service.

Conclusion

There is much to admire in the views of the past and potential appointees inventoried above. America's most talented citizens remain ready to accept the call to serve, are still motivated by the old-fashioned values of patriotism and honor embedded in the Constitutional system created more than two hundred years ago, and recognize the extraordinary difference a single person can make by answering the call to service. The nation can be proud, as well as relieved, that there is such a deep reservoir of readiness to serve in the wake of what has been one of the most partisan, intensely divided periods in recent American history.

Yet, if the spirit of service is willing, the process for nominating and confirming America's most senior government leaders is weak. To the extent the nation wants leaders who represent the great talent and wisdom that resides across all sectors of society and regions of the nation, it must address the growing toll the presidential appointments process takes on nominees for office. Not only must America's civic and corporate institutions be more willing to "let their people go" to Washington for service, the president and Congress must work harder to "let those people come" by creating a simpler, fairer, faster appointments process.

G. Calvin Mackenzie

Distinguished Presidential Professor of American Government

Colby College

Testimony
Before
The Governmental Affairs Committee
United States Senate

April 4, 2001

Let me express my gratitude to the chairman and members of this committee for inviting me to testify on this important matter.

For almost 30 years, I have been a student of the presidential appointments process. In that time, I have had frequent and often lengthy conversations with almost everyone who has served as a principal personnel advisor to all of our presidents back to President Truman. I have spent many days up here observing confirmation hearings and debates and asking questions of members of this body and the staff directors and chief counsels of these committees. I have served on or directed most of the blue-ribbon commissions that have studied the appointment process over the past two decades, including one chaired by two distinguished former Senators, Mac Mathias and John Culver.

In these years, I have interviewed hundreds of presidential appointees, collected and sorted and analyzed data, probed for patterns, sought broader meanings. That is the work of scholarship, and that is my business. My work is not partisan; I have no one's axe to grind nor ox to gore.

What has carried me through all these years is a simple notion: that in a democracy the purpose of an election is to form a government. Those who win elections should be able to govern.

But in a democracy as large and complex as ours, no one leader can govern alone. As the Brownlow Committee noted in 1937, "The President needs help." And these days

presidents need the help of hundreds of people possessed of courage and stamina and creativity. It is fundamental and essential that victory in a presidential election should be swiftly followed by the recruitment and emplacement of the talented Americans who will help a president to do the work the American people elected him or her to do.

That is to say, simply, there ought to be a presidential appointments process that works -- swiftly, effectively, rationally. Nothing could be more basic to good government.

But we do not have a presidential appointment process that works. In fact, we have in Washington today a presidential appointments process that is a less efficient and less effective mechanism for staffing the senior levels of government than its counterparts in any other industrialized democracy. In this wonderful age of new democracies blooming all around us, many have chosen to copy elements of our Constitution and the processes that serve them. But one process that no other country has chosen to copy is the one we use to fill our top executive posts. And for good reason. Even those untutored in democracy know a lemon when they see one.

In the early 1980s, I helped to write a book called America's Unelected Government that complained about some of the flaws in the presidential appointments process. Watching the travails of the Reagan administration as it sought to get its appointees in place, it was hard then to imagine that things could get much worse. But in retrospect that seems almost like a golden age for presidential appointments. The average Reagan appointee was confirmed and in place in a little over 5 months. That was about twice as long as it took the Kennedy appointees to get into place, and we made much note of that.

How fast that now seems. In the two administrations after President Reagan's, the pace slowed even further. For both Bush I and Clinton appointees, the average time from inauguration to confirmation was more than 8 months. Every indication now is that the current administration will be hard pressed to move any faster.

Think what that means. It means for nearly a quarter of his term, a new president must operate without his full team on the field. Most Washington veterans know that the first year in office is the time ripest with opportunity

for a new president: the honeymoon, the window of opportunity. But too often our presidents are unequipped to take advantage of that time because their administrations are caught up in the agonies of staffing rather than in the responsibilities of governing. What recent president hasn't been diverted and slowed by appointment snags and controversies, by false starts and restarts as candidate after candidate turns down an appointment offer, or new recruits accept job offers then confront the realities of the appointment process and change their minds?

And then, as soon as the initial round of staffing is finally completed, the new administration's appointees start to leave and the process starts again.

How did we get into this mess? The answer is not simple, but there is one explanation we can reject out of hand. No one planned this appointment process, no one designed it, no one approved it. I can tell you that in several decades of conversations with presidents, their personnel advisors, senators, their committee staffs, and appointees themselves, I have never heard a single person praise the appointments process. I have heard many, however, who would like to bury it.

Can you imagine in your wildest fantasies any group of rational people sitting down and designing an appointment process like the one we're discussing today, a process:

- Where an average position requires more than six months, and frequently a year or more, to fill.

- That reaches down so deeply into the federal hierarchy that new administrations have to come up with thousands of recruits and somehow hope to meld them into effective management teams.

- That imposes on potential appointees so many torturous, humiliating and invasive questions and investigations that far too many refuse to accept the president's call to service, and many who do so come through it feeling bloodied and abused.

- That virtually ensures that a quarter or more of the top positions in the government will, at any moment

in time, be without an incumbent who is a confirmed presidential appointee.

No rational body would design such a process, and none did. The presidential appointment process -- the in-and-outer system, as we sometimes call it -- was one of the great inventions of American political genius. It sought to tie the government directly to the people by ensuring a constant flow of new people, drawn from real lives in the real world of affairs, into their government for tours of energetic and creative service. We Americans early on rejected the notion that government was an enterprise best left to a governing class, turning instead to a new idea: that government should be the responsibility of the best of the governed.

And for much of our history it was that, as men and women like Josephus Daniels, Henry Stimson, Herbert Hoover, Frances Perkins, and John Foster Dulles set aside their private pursuits, often at great financial sacrifice, to lend their estimable talents to the service of their country.

In those times, Americans looked with pride on their appointment process and the kinds of leaders it produced. Transitions were swift and smooth. The White House called, the candidate accepted the job, he or she was at work in Washington a few weeks later. Investigations, questionnaires, hostile confirmations, bludgeoning of reputations all were largely unknown. Public service was an honor and, to most of those who undertook it, it felt that way.

But those are times past, and increasingly -- and distressingly -- these days we find that our appointments process is hostile and alien to the very Americans we would like to welcome to public service. So instead of a steady flow of leaders in and out of the private sector and from all over the country, we have instead a process that relies heavily on the Washington community and on people already in the government or lobbying the government as its major source of personnel.

Here is a stunning measure of how the yield of the appointment process has changed. In the years from 1932 through 1964, barely a quarter of all presidential appointees were working in the Washington metropolitan area

at the time of their appointment. In the last three presidential administrations, the number of appointees drawn from the Washington area was nearly 60%.

We have come perilously close now to relying on the very governing class that our Founders and most previous generations of Americans rejected.

Have we done this because, after careful and thoughtful consideration, we decided to junk our old system and debunk our old notions and replace them with a new approach to staffing the highest levels of our government? Of course not. Change occurred unintentionally because we let our appointments process fall into a desperate state of disrepair so that now it often undermines the very purposes it was designed to serve. It doesn't welcome talented leaders to public service; it repels them. It doesn't smooth the transition from the private to the public sector; it turns it into a torture chamber. It doesn't speed the start-up of administrations just elected by the American people; it slows the process almost to a standstill.

All of us who have allowed this to happen -- citizens and representatives and leaders -- should be ashamed. We deserve better, we need better, and we once had better. Then we let it slip away.

But hope is not lost. The appointment process is not irreparably broken, not by a long shot. And what it will take to restore this uniquely American idea to high gloss is clear and in most cases highly possible.

Tomorrow, the leaders of the Presidential Appointee Initiative will testify here and will present some proposals for fixing the presidential appointments process. These are not very complex and many of them are not very new. We have known for some time what ails the appointments process and what steps we must take to cure those ailments.

What is needed now is some common sense, some commitment to undertake this task -- commitment that reaches across party and institutional lines -- and, most importantly, some leadership.

I hope these hearings will be the incubator for these reforms and that this committee will be their shepherd. That is noble and important work.

Lead us to a restoration of pride in public service. Help us reconstruct an appointments process that draws this society's best leaders to government, facilitates a smooth and rapid transition, and keeps them here long enough to have real impact. Re-establish that article of our democratic faith that American elections do -- in fact, not just in theory -- produce governments that can govern.

If you succeed in all of this, I will be out of business. And after 30 years, I will be the happiest unemployed person in America.

Common Cause

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Chairman

SCOTT HARSHBARGER
President and CEO

ARCHIBALD COX
Chairman Emeritus

JOHN GARDNER
Founding Chairman

Testimony of

Scott Harshbarger

President and CEO

Common Cause

Regarding public financial disclosure laws for Presidential appointees

Before the Committee on Governmental Affairs

of the Senate

April 4, 2001

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Mr. Chairman and members of the committee:

Thank you for the opportunity to testify today about the history and importance of public financial disclosure laws for Presidential appointees as the Committee looks into the appointment process for the Executive branch. The possibility that negative aspects of the appointment process are deterring good people from serving in federal government positions is a real and legitimate concern. The efforts of this Committee and others to explore reforms to the appointment process are therefore worthwhile and commendable.

We have been asked to focus our comments on public financial disclosure laws. Common Cause has long been an advocate of public financial disclosure, dating back to the 1970s when we pushed to replace confidential disclosure rules with a public disclosure apparatus, and the late 1980s, when Common Cause fought against weakening the Ethics in Government Act.

Public financial disclosure laws are essential safeguards against both corruption in government and the appearance of corruption. Public disclosure of personal financial interests reveals potential conflicts of interest among government officials. It is essential to assure the public that individuals are not using public office for personal gain or making public policy decisions on any other basis other than the public interest. Any changes regarding current public disclosure rights should be made with great caution and should not damage the ability of the Office of Government Ethics (OGE) or agency

officials to meaningfully gauge real, potential, or perceived conflicts of interest that create the appearance of corruption.

In exploring the possibilities for reform, it is important to note that, while some financial disclosure procedures have drawn their share of criticism, other aspects of the appointment process are more responsible for turning good people away from public service. Numerous studies on the appointment process support our view that the worst problems in the appointment process stem not from financial disclosure laws, but rather from the politicization of appointments and media frenzies surrounding high-profile scandals. Many of these incidents, such as "nanny scandals," are unrelated to financial disclosure forms.

REFORMING THE APPOINTMENT PROCESS

A recent Brookings Institution Presidential Appointee Initiative survey of 435 senior level officials from the Reagan, Bush, and Clinton administrations found that former presidential appointees had mixed feelings about the state of federal government service. On one hand, more than half of those surveyed "said they would strongly recommend presidential service to a good friend," and 71% said the appointment process was fair.[1] Yet, on the other hand, the survey also found that the former officials felt the nomination process "exacts a heavy toll on nominees, leaving them exhausted, embarrassed, and confused."[2]

Flaws in the Appointment Process

In 1997, the Century Foundation (formerly the Twentieth Century Fund) released a report by Colby College Professor G. Calvin Makenzie that identified several problems in the presidential appointment process, many of which can be addressed without harming the disclosure system. Makenzie found that "the administration as a whole experienced a vacancy rate in appointed positions in the executive branch that frequently exceeded 25 percent."[3] "The appointment process is no longer merely a mechanism for filling important jobs," he wrote, "it is a political and policy battleground of the first order – one in which the qualifications of nominees are often merely incidental to the real purposes of those who support and oppose them. Too many good people decline to enter this obstacle course, or get ambushed by it, or waste too many months enduring it."[4] He concluded that there is an increase in the practice of Senators blocking nominations, lackluster protection of sensitive FBI files, a trend of appointments getting batched to regulatory commissions, a tendency for the Senate to shy away from its "traditional deference to presidential authority in the selection of subcabinet appointees," and a frequency of high-profile nomination controversies – all of which serve to deter people from government service.[5]

In their recent article for *Foreign Affairs*, entitled "The Confirmation Clog," Norman Ornstein and Thomas Donilon also detail problems in the appointment process. The two authors identify five points of "blockage" which have led to a "crisis" for

government service: an expansion in the number of federal appointees, "incremental changes in the law and executive orders...[that] have accumulated into an unworkable morass of rules intended to legislate morality," the frequent use of Senate holds as a means of holding "nominees hostage to the whims or unrelated demands of individual senators," the frequent use of lawsuits as a means of embarrassing political opponents, and the intense media scrutiny of nominees during which "public figures are deemed guilty until proven innocent."[6]

Ornstein and Donilon argue that one of the major symptoms of politicization of the appointment process is that nominations are held up, much to the detriment of both the nominees' well-being and the public interest. "For many selected to serve at the beginning of an administration, a year or more in limbo is typical," they write. "This wait leads to widespread frustration and demoralization for individuals who must give notice to their employers, plan moves across the country, coordinate school schedules for their children, and make home sales and purchases."[7] They give the example of Peter Burleigh, "one of America's most seasoned and effective diplomats," who resigned from government service after his nomination to a foreign service post was held up in the Senate for nine months.[8] Burleigh's nomination was delayed "because Senator Charles Grassley [of Iowa], upset about the State Department's treatment of an American whistle-blower at the United Nations, had exercised his senatorial prerogative to hold up Bruleigh's nomination and two other ambassadorial appointments indefinitely."[9]

As do Ornstein and Donilon, the National Academies Committee on Science, Engineering, and Public Policy's "Panel on Ensuring the Best Science and Technology

Presidential Appointments," asserts that one of the most serious flaws in the appointment process is its slow pace. "The appointment process is slow, duplicative, and unpredictable," the panel writes in its publication, *Science and Technology in the National Interest.* "From 1964 to 1984, almost 90% of presidential appointments were completed within 4 months ... from 1984 to 1999, only 45% were completed in 4 months."[10] The panel also complains that "variations in pre-employment and post-employment requirements among agencies, departments, and congressional committees create an environment of uncertainty and inequity for appointees."[11]

Repetition in the Disclosure Process

Like other aspects of the appointment process, the financial disclosure system is not flawless. One of its particularly problematic aspects is the repetition involved in filling out the required forms. "While nominees complain about several aspects of the process, they regularly and uniformly express frustration with the repetitive and duplicative questions," writes Terry Sullivan of the University of North Carolina.[12] In a recent article for the *Brookings Review*, he details the process:

> Anyone nominated for a position requiring Senate confirmation must file four separate forms. The first, the Personal Data Statement (PDS), originates in the White House and covers some 43 questions laid out in paragraphs of text. Applicants permitted by the White House to go on to the vetting stage fill out three other forms. The first, the Standard Form (SF) 86.... has two parts: the standard questionnaire and a "supplemental questionnaire" that repackages some questions from the SF-86 into broader language often similar though not identical to questions asked on the White House PDS.
>
> The second additional questionnaire, SF-278, comes from the U.S. Office of Government Ethics (OGE) and gathers information for financial disclosure.... Having returned each of these four forms, some nominees will receive a fifth

> questionnaire ... with more specific questions about the nominee's agency or policies it implements." [13]

According to Sullivan, the forms are highly repetitive. For instance, 78% of the questions which relate to the appointees' public and organizational activities are repeated across the various forms.[14] In addition, 71% of questions relating to legal and administrative proceedings are repetitive, as well as 66% of questions regarding tax and financial information, 64% of questions regarding professional and educational background, and 36% of questions that deal with family and personal background.[15] Ornstein and Donilon argue that "simply filling out the forms...takes weeks of effort and a considerable amount of money ... Most of the information on the forms goes into public files for any inquisitive neighbor, opposition researcher, or reporter to peruse or even publish."[16]

Clearly, the difficulty for the appointee and repetitive nature of disclosure forms are problems worth addressing. As will be discussed in further detail later, Common Cause supports efforts to streamline the disclosure process and make it user-friendly, so long as important categories of disclosure are not eliminated.

Reforming the Appointment Process

In addition to streamlining the disclosure process, there are other proposals for appointment reform that have been made by various individuals and organizations. While some proposals may prove detrimental to the public interest, many of these reform plans would improve the system without detracting from the ability of the public, the government, and the appointee to prevent corruption or the appearance thereof.

Among the various reform proposals, there are several common proposals which could help reform the system without harming the disclosure process. The "findings of the half-dozen bodies that have studied the appointment process over the past two decades cluster around seven major ideas," writes Alvin S. Felzenberg of the Heritage Foundation. "First, start transition planning early.... Second, assist new nominees.... Third, decide which positions merit a 'full-field' FBI investigation.... Fourth, clarify conflict-of-interest restrictions.... Fifth, allow cabinet officers to do the hiring in their departments.... Sixth, make fewer political appointments.... Seventh, establish limits on senatorial 'holds' and make fewer positions [subject] to Senate approval."[17] Any of these proposals would be worth exploring.

Ornstein and Donolin propose several of the aforementioned reforms, and also recommend implementing a common electronic nominations form, removing criminal penalties from the appointment process, limiting access to FBI files to the chair and ranking minority member of a Senate committee, enacting procedural reforms in the Senate, holding hearings on national security-related appointees before Inauguration Day, reducing the number of political appointees, and taking measures to reduce the "legal assault on the executive branch."[18] Removing criminal penalties for false disclosure, which, as will be discussed in further detail later, would be detrimental to the public interest, as would placing too many restrictions on access to relevant information. However, the other proposals set forth by Ornstein and Donilon are further examples of ways that the system could be reformed without removing essential disclosure safeguards.

In a December 2000 letter to then President-elect Bush, the Council for Excellence in Government also made recommendations for improving the presidential appointment process. The Council recommended utilizing financial disclosure software, streamlining the FBI investigation process, setting up an orientation program, and easing revolving door restrictions on post-government employment. While most of these proposals are worthy of consideration, weakening "revolving door" restrictions would be a mistake. If government employees arrange for future employment with the companies they are regulating, it is a recipe for corruption or the appearance thereof.

THE BENEFITS OF PUBLIC DISCLOSURE

I now want to turn to more close attention to the issue of public financial disclosure.

Public financial disclosure is a powerful tool for identifying potential corruption stemming from conflicts of interest. Public disclosure helps officials help themselves determine if they have a conflict; "the reports have the...benefit of necessitating a close review by each government official of the possibilities for conflicts of interest represented by his personal financial interests," wrote the President's Commission on Federal Ethics Law Reform in 1989. "The counseling of employees, particularly those new to government service, by agency ethics officials during the report review process has also proved invaluable."[19] Former Common Cause Chairman and U.S. Solicitor General Archibald Cox explained during 1988 testimony before the Subcommittee on Governmental Affairs that public disclosure serves "three vital interests. First, the

officials making disclosure pay more attention to complying fully and accurately with the Act. Second, Designated Agency Ethics Officials are made more diligent in advising officials of potential conflicts of interest and in dealing with violations of ethical standards. Third, the officials guilty of intentional or unintentional violations may be brought by publicity to take corrective action." [20]

Recently, Treasury Secretary Paul O'Neill's holdings in companies such as Alcoa, General Motors, and Microsoft were called to public attention after he submitted his financial disclosure forms. Following public pressure, in what *The New York Times* referred to as "an abrupt reversal," O'Neill decided to divest himself of his Alcoa holdings.

During the Clinton Administration, financial disclosure forms revealed that Treasury Secretary Lloyd Bentsen had extensive holdings in the stock market which amounted to a potential conflict of interest with his government post.

During the 1980s, as Cox pointed out in his testimony, "it should be remembered that it was public disclosure of Attorney General Edwin Meese's 'limited blind partnership' and of Attorney General William French Smith's $50,000 severance arrangement from a firm in California that raised serious questions about the impropriety of such arrangements."[21]

BACKGROUND ON FINANCIAL DISCLOSURE

Laws mandating the public disclosure of Presidential appointees' personal finances were enacted in 1978 as part of the Ethics in Government Act, a sweeping ethics reform

bill which also established the executive Office of Government Ethics (OGE) and amended "revolving door" restrictions on post-government employment.[22]

Prior to the passage of the Ethics Act, a flawed system of confidential disclosure was in place. Studies conducted by the General Accounting Office (GAO) found that non-compliance with disclosure laws was rampant under the confidential system. A follow-up GAO study concluded that this problem was remedied by the public disclosure provisions of the Ethics Act.[23]

After ten years, the Ethics in Government Act's financial disclosure provisions were widely credited with preventing and exposing conflicts of interest in the executive branch. In its 1989 report on federal ethics reform, the President's Commission on Federal Ethics Law Reform concluded that "in the Commission's view, ten years of experience with the Ethics in Government Act requirement have demonstrated the value of public financial disclosure to the maintenance of public confidence in the integrity of the actions of government officials."[24] Common Cause was also pleased with the success of the Ethics Act's public disclosure provisions. "The record of experience after a decade under the Act shows that the financial disclosure provisions have proved to be reasonable and balanced and have worked very well," Common Cause wrote to President Bush.[25]

In 1989 President Bush signed the Ethics Reform Act, which modified federal financial disclosure laws. Under the new provisions, all appointed employees of the Executive Office of the President were covered by financial disclosure rules, and low-

level foreign service officers were exempted. A $200 threshold for reported income was established (an increase from $100 under the old rules) and disclosure requirements were extended to unearned income – capital gains, rent, interest, and dividends – in excess of one million dollars. Additionally, appointees were exempted from reporting gifts worth $75 or less (up from $35 or less) and from reporting financial holdings in mutual funds, pension plans, regulated investment companies, and other investment funds with widely diversified holdings. Furthermore, new regulations regarding reimbursements from travel expenses were put into place (appointees were required to list travel itineraries, dates, and nature of expenses). The Act also broadened the disclosure requirements to include honoraria paid to appointees' spouses and gifts to dependent children (that are received independently of the appointee).

CHANGES IN THE DISCLOSURE PROCESS

As was previously noted, it is clearly problematic if good potential public servants are deterred from accepting federal posts because of disdain for the nomination process. It is equally problematic if honest servants fail to comply with rules because of the difficulties involved in the disclosure procedures. Thus, efforts to make the disclosure process more user-friendly are commendable. However, it is vitally important that reforms do not come at the expense of providing the public the information necessary to prevent and expose corruption. Specifically, any reforms to the financial disclosure system must not prevent disclosure from being public, infringe on the ability of the public

to determine conflicts of interest, substantially reduce the "categories of value" components of the disclosure form, or weaken the penalty for false disclosure.

- Keeping Disclosure Public

In Archibald Cox's words, "by reason and definition, 'confidential' disclosure is not disclosure at all."[26] Public disclosure puts extra pressure on the appointees to tell the truth and the government to weed out conflicts of interest. It allows the public to be the final arbiter of whether a conflict is inappropriate and it allows for public pressure to check and balance the government.

- Protecting the Public's Ability to Determine Conflicts of Interest

It is crucial that efforts to make the disclosure forms more user-friendly do not result in the removal of meaningful reporting categories. Significantly reducing the categories would be like removing a major piece from a puzzle – it would create a loophole in the overall disclosure process.

Disclosing information regarding assets, sources of income, financial transactions, arrangements or agreements (such as future employment promises and pensions), positions held outside government, and excessive compensation, allows the public to determine if there are sizable outside influences on an appointee's professional behaviors that result in favoritism of private interests over the public interest. The public should have the right to know if, for example, an appointee to the Department of Interior holds millions of dollars in oil stock, if the spouse of an appointee to the Department of Labor has a large union pension, if the spouse of an appointee to the Department of Justice anti-

trust division works for Microsoft, or if an employee of another agency sold millions of dollars in stock in a company whose industry he or she was regulating.

Similarly, gifts, reimbursements, and travel expenses are methods of wielding influence. As former Senator Paul Douglas put it, gifts create "some real problems for a public official. If he accepts everything that comes his way...he is likely to have his independence undermined."[27] If Dow Chemical, for example, flies a public official's spouse and children to Hawaii for a conference, clearly it may influence that official's judgment, or, just as importantly and potentially damaging, may create the appearance of a conflict of interest.

- Categories of Value

Common Cause has never favored the disclosure of tax information, which is essentially designed to gauge the personal net worth of an appointee. The OGE disclosure form, however, does not ask for the actual amount of each appointee's assets and income. Rather, the form requires the appointees to indicate categorical value ranges for each item. For instance, someone with $350,000 in Microsoft stock would check off a box for $250,001-$500,000. It is important for the public to have some sense of the value of each asset or income source, since the size of one's holding, debt, gift, etc. is directly related to the degree of influence it wields; someone with $3,000 of Dupont stock is less likely to be influenced by their holding than someone with three million dollars worth of the same stock. Former Secretary of the Treasury and Secretary of State James Baker III, for example, had millions of dollars of Chemical New York bank securities

while he "play[ed] a leading role in Third World debt issues, even though he...held substantial shares in a bank that was a major holder of such debts."[28] Had his holding been smaller in Chemical Bank, he would have had a greatly reduced financial stake in such policy, and, thus, less of an opportunity for a conflict of interest.

- Penalties for False Disclosure

In order for the enforcement of disclosure laws to be most effective, appointees need to have the maximum incentive to be honest. Public scrutiny is one important incentive. Civil and criminal penalties are another. Eliminating civil penalties would create a disincentive for prosecutors to investigate problems with appointees' disclosure statements that they do not view as criminal-worthy, while eliminating criminal penalties would weaken the incentive for the worst potential offenders (i.e. those who would intentionally lie on their forms) to be honest. Criminal penalties are appropriate for willful and knowing violations.

- Positive Reform to the Disclosure Process

Common Cause supports efforts to streamline this process in order to make it more user-friendly, as long as important categories of disclosure are not eliminated. We applaud the OGE's efforts to simplify the disclosure process through the production of "new pamphlets, booklets, videos, and games for agency use and [utilizing] satellite broadcasts to do annual ethics training nationwide."[29] Efforts to better utilize Internet technology may provide the key to making disclosure more user-friendly. We also support the use of standardized software to decrease duplication.

CONCLUSION

The presidential appointment process can be reformed for the better without weakening federal disclosure laws by streamlining the disclosure process and enacting non-disclosure related reforms. Gutting disclosure rules as part of reform would be a big mistake. Public disclosure of financial information for Presidential appointees has proven over time to be an essential safeguard against corruption and conflicts of interest – both intentional and unintentional.

"Despite recent disclosures," wrote Senator Paul Douglas in 1953, "there is little doubt that the general level of conduct on the part of most government employees is relatively high."[30] The same can be said of government officials today. However, as was the case in 1953, there are some public officials who – intentionally or unintentionally – place private interests over the public interest. "Try as we may to make the standards of judgment and the procedures of administration more definite," wrote Douglas, "there will still remain a tremendous field for administrative discretion....and wherever there is discretion, there is possible field for corruption and abuse."[31] Public financial disclosure is an important safeguard against corruption, abuse, and the appearance thereof.

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[1] Paul C. Light, "Placing the Call to Service," *Brookings Review, Spring 2001*, Vol. 19, No 2: Pages 44-47.
[2] Norman Ornstein and Thomas Donlon, "The Confirmation Clog," *Foreign Affairs*, November-December 2000; Pages 89-90.

[3] G. Calvin Mackenzie, "Starting Over: The Presidential Appointment Process in 1997." *The Century Foundation*. Obtained from the internet: "http://www.centuryfoundation.org/" Accessed 3/28/01.
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[5] Century Foundation.
[6] Ornstein and Donilon, 92-93.
[7] Ornstein and Donilon, 89.
[8] Ornstein and Donilon, 87.
[9] Ornstein and Donilon, 87.
[10] National Academies Committee on Science, Engineering, and Public Policy, "Science and Technology in the National Interest." Page 3.
[11] National Academies, 3.
[12] Terry Sullivan, "Fabulous Formless Darkness." *Brookings Review*, Spring 2001, Vol. 19, No. 2; Pages 22-27.
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[14] Terry Sullivan.
[15] Terry Sullivan
[16] Ornstein and Donilon, 90.
[17] Alvin S. Felzenberg, "Fixing the Appointment Process: What the Reform Commissions Saw." *Brookings Review*, Spring 2001, Vol. 19, No. 2; 17-21.
[18] Ornstein and Donilon, 94-99.
[19] President's Commission on Federal Ethics Law Reform, "To Serve with Honor." Page 80.
[20] Archibald Cox, testimony before the Senate Subcommittee on Oversight of Government Management, 1998; Page 12.
[21] Cox, page 12.
[22] Presidential Commission Report, Page 121
[23] Archibald Cox, Page 12.
[24] Presidential Commission Report, 1989, page 80.
[25] Common Cause letter 3/27/89
[26] Cox, page 12.
[27] Senator Paul H. Douglas, "Ethics in Government." Cambridge: Harvard University Press; 1953; Page 46.
[28] Walter Pincus, "Which Ethical Rules for Baker." *Washington Post*, March 23, 1989; A25.
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[30] Douglas, 27.
[31] Douglas, 43.

Statement of
Patricia McGinnis, President and CEO, Council for Excellence in Government
before the
Committee on Governmental Affairs
United States Senate

April 4, 2001

Mr. Chairman, I want to thank you and the other members of the committee for the opportunity to be with you today to talk about the state of the presidential appointments process.

From my vantage point as the head of an organization whose mission is excellence in government, I have to say that the state of the appointments process is far from excellent. In fact, it is going in the wrong direction in terms of the time it takes for appointees to get through it. It takes a toll on many highly qualified people who sometimes unknowingly become pawns in complicated and often obscure political games. It has a dampening effect on attracting excellent people around the country to government service. For these reasons, the process has aptly been called an obstacle course.

Mr. Chairman, I know you and the other members of the committee are concerned about public trust in government, which today is less than half of what it was in the early 1960s. An appointments process that gets well qualified people on the job in a reasonable period of time to manage the public's business—and does so in a professional and respectful manner—will go a long way toward restoring confidence in government. It will also encourage citizens around the country to take time out from their private pursuits to serve in government.

In the early 1960s, it took an average of about two and a half months to fill presidentially appointed positions. The average time has increased to more than eight months in the past two administrations. If we can return to the two and a half month time frame of the sixties, perhaps we can also move toward that period's higher level of trust in government—76 percent in 1964, compared to 30 percent in 2000.

I congratulate you for focusing on these problems and seeking to improve the presidential appointments process. You and your colleagues also deserve praise for your work in the enactment of the Presidential Transition Act of 2000. One of that Act's most important provisions is its requirement that the Office of Government Ethics recommend ways to improve the appointments process, including streamlining its financial disclosure requirements.

As you well understand, the problems of the process are not a partisan issue. Nor are they new problems. Over recent years, organizations and individuals too numerous to name here have turned their expert and thoughtful attention to why this situation exists and what should and can be done about it. Representative of these efforts are the Transition to Governing Project, begun in 1999 and co-chaired by my panel colleague, Norman Ornstein of the American Enterprise Institute; the Presidential Appointee Initiative of the Brookings Institution, also launched in 1999; and the activities of my own organization, the Council for Excellence in

Government, going back more than a decade. These activities include, most recently, the development of *A Survivor's Guide for Presidential Nominees* in collaboration with the Presidential Appointee Initiative. We have been pleased to partner with the PAI, whose research and insight have now set the stage for reform of the appointments process. We have also been pleased to partner with the Center for the Study of the Presidency in exploring barriers to public service.

This recent work builds upon a steady flow of analyses, conferences, reports, and books over the last several years, many with detailed recommendations. Just a partial list of works on these subjects published over the last decade includes:

- The 1990 *Report of the President's Commission on the Federal Appointments Process.*
- The 1993 report of the American Bar Association's Committee on Government Standards, entitled *Keeping Faith: Government Ethics and Government Ethics Regulation.*
- The 20th Century Fund's *Obstacle Course*, published in 1996.
- Two other publications of the Council for Excellence in Government—*Ethical Principles for Public Servants*, an effort led by the late Elliot Richardson; and the *1997 Prune Book*, which discusses the appointments process and its problems at length.

The striking characteristic of this body of work is its bipartisan consensus, which spans the ideological spectrum about the nature of the problem and possible solutions.

In advance of my talking to you today, I polled the 650 Principals of the Council for their views of the appointments process and comments about their own experiences as presidential nominees and their service in government. I would like to share with you just a few representative excerpts from their responses.

- Too long, too expensive, too often inappropriate, too intrusive. Yes, I'd do it again, though with grave doubts about delays, uncertainties, and extraneous "games."

- The larger problem was the length of time between nomination and confirmation. I waited six months, even though there was no opposition to my confirmation. Even with all my complaints on the process, I would have gone through it again even if the wait were much longer.

- I would absolutely do it again, because the challenges and psychological rewards of public service are not matched anywhere.

- Rather than being lauded for their willingness to serve and examined on the basis of their real qualifications, nominees are instead treated as suspects. Despite my comments, I would not hesitate to serve again.

- Public service is immensely rewarding; I'd rank it (at the top on a scale of one to five). But I wouldn't do it again, to a substantial extent because the nomination/confirmation process is dispiriting, demeaning, and exhausting.

- The people, the issues, the engagement in serious matters and the opportunity to serve made it a great experience. I did go through the process a second time in order to serve again, but having seen what now happens, I'm not sure I would do it again.

- Government service is a unique opportunity to contribute and make a difference. I would go through the process again—even as it is—for the right job.

Mr. Chairman, let me remind you that the authors of these comments have all experienced the appointments process at first hand. What came through in their responses was not only war stories and suggestions for improvement. They are also saying strongly that their time in government was the best, or one of the best, experiences of their careers. And though some had some hesitancy, most said they would do it again.

These are intelligent, skilled, and capable men and women. The country needs their kinds of talent to manage the national agenda effectively and get results. It is truly a strength of this democracy that people of their caliber are willing to commit and recommit themselves to public service.

Can we count on this indefinitely? I don't think so. The worse the process becomes, the less response we can expect from gifted people throughout the country to the great challenge of appointed service.

Mr. Chairman, what we need now is the leadership to do what we know is necessary to improve the presidential appointments process:

- We need a system that judges nominees on their qualifications for the jobs they are being asked to do.

- The financial disclosure and ethics regulations need to be streamlined and refocused on promoting public service as a public trust—not creating a stranglehold of regulations and restrictions in a futile attempt to legislate ethical behavior. I am attaching to my testimony a copy of a letter with recommendations on this point, sent recently to Amy Comstock, the director of the Office of Government Ethics. Joining me in signing the letter were David Abshire, President of the Center for the Study of the Presidency; Sally Katzen, former Chair, Committee on Government Standards, American Bar Association; and Boyden Gray, White House Counsel in the first Bush Administration. The purpose of the letter was to assist the OGE director in preparing the recommendations mandated by the Transition Act of 2000.

- The Senate should work together with the executive branch to streamline, to shorten, and in some cases, to combine their paperwork and investigative processes for nominees. The piles of paperwork potential nominees must complete includes requests for specific information stretching back over years that almost anyone would find hard to assemble—such as trips outside the country or every financial contribution made to parties and candidates.

- The management of the vetting and clearance of prospective nominations in the Executive Branch needs re-engineering to expedite the process and keep nominees informed every step of the way. We have all seen the speed with which administrations get their Cabinet choices processed and nominated. That's good. But that speed usually slows to a snail's pace—or worse—for the hundreds of sub cabinet nominees who follow. While the process creeps forward, many nominees don't have a clue about what is going on. And while they wait, those new Cabinet officers must run their agencies without them.

- The FBI's scrutiny of nominees should be revised. The FBI should limit full-field investigations—which can take months—to individuals tapped for national security and other sensitive positions and use shorter background checks for other appointees.

- Finally, the Senate and the executive branch should agree on principles that will govern the confirmation phase of the appointment process. Among the objectives should be the timely handling of nominations, with a commitment to vote them up or down within a reasonable period, with 90 days as a target. The Senate should agree to limit holds on nominations, both in purpose—only to gather information on nominees—and in time. It should take steps to protect raw information gathered by the FBI that is often unsourced and unverified. Serious consideration should go to reducing the number of appointees requiring Senate confirmation.

In short, Mr. Chairman, the Senate and the executive branch share grave responsibilities for the presidential appointments system. They are responsibilities assigned by the Constitution. Carrying them out effectively and expeditiously is fundamental to the health of our democracy.

Thank you again, Mr. Chairman and the other members of the committee, for your leadership to ensure that the insights and proposals you will be hearing this week translate into real reform of the presidential appointments process.

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March 12, 2001

Ms. Amy L. Comstock
Director
U.S. Office of Government Ethics
1201 New York Avenue NW
Suite 500
Washington, D.C. 20005-3917

Dear Amy:

In connection with the report your office will present in April, as required by the Presidential Transition Act of 2000, you have requested suggestions for specific remedial steps that would improve the presidential appointments process in the area of ethics regulations. We are writing to offer our views.

First, we would emphasize again the particular merit of the discussion and recommendations that the American Bar Association several years ago brought to the issue of properly regulating ethical conduct in government. (*Keeping Faith: Government Ethics and Government Ethics Regulation*, in the ABA Administrative Law Review issue for the summer of 1993.) The report is richly informed and well argued. On several issues, its counsel is reflected in current regulations or is under serious consideration. The document remains an authoritative, relevant, and highly useful resource. It made the preliminary point that:

> *...the more zealous the effort to identify and legislate against wrongful conduct, the more elusive the goal of achieving ethical behavior has become... The result is a complex and formidable rule structure, whose rationale is increasingly obscure and whose operation is increasingly arcane...We urge an open-minded examination of current law which recognizes that more regulation is not synonymous with better regulation...We urge the cultivation of ways of thinking about government service, and about regulation of that service, that will help us find the right balance between the utopian naivete of a simple primer of ethical ideals and the soulless formalism of a byzantine behavioral code.*

The ABA's recommendations cover five areas of ethics regulation. While we support all five, we believe two are particularly critical for reform of the appointments process (and of ethical conduct in general). They are financial conflicts of interest and financial disclosure.

On conflicts of interest, we would especially emphasize three recommendations. One of these is to focus regulation on financial interests that actually risk weakening an individual's impartiality. It suggests specific amending language that would invoke the rules only when an employee's financial interest would directly and tangibly affect his or her official actions. Second, the report favors encouraging divestment as a solution to conflict of interest situations, principally by further easing divestment's tax impact. Since the report was published, of course, the OGE has put into effect the rollover opportunity set out in the Ethics Reform Act of 1989. The ABA report supported the rollover provision as well, but also recommended extending that opportunity to people outside the executive branch and broadening the categories of "neutral" investments into which capital gains can be rolled

over. We believe these would be valuable additional steps. Third, the report recommends decriminalization of the basic conflict of interest statute.

Concerning disclosure, we support the principle that it be limited to "circumstances in which need outweighs burden." In that regard, the report discusses two conditions that warrant mandatory disclosure—first, that the individual has a substantial role in making policy or decisions, or advises those who do; and second, that the individual holds a non career position. The report also recommends simplified reporting requirements, which among other steps would include cutting down on the detail now required in reporting valuation, making family members' requirements for reporting identical to those for the employee, eliminating duplicative reporting, and working toward more standardization. We believe that the latter two issues can be tackled (1) through the use of software like that developed by the American Enterprise Institute and the Brookings Institution, which allows nominees to enter required information once and have it transmitted to all necessary forms, and (2) by simplifying and consolidating such forms as SF-278, the White House Personal Data Statement Questionnaire, and—to the extent possible—the varying forms used by Senate committees.

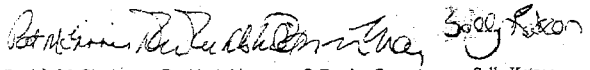
Second, we favor streamlining the FBI's scrutiny of nominees. This would mean limiting full-field investigations—which can take months—to individuals tapped for national security and other sensitive positions, and using shorter background checks for other appointees.

Third, we believe the executive and legislative branches should reach agreement on certain principles that govern the confirmation phase of the appointment process. Among the objectives should be the timely handling of nominations; the limiting of "holds" on nominations both in purpose and in length of time; and the protection of raw information gathered by the FBI that is often unsourced and unverified.

Fourth, on the basis of first-hand experience, we strongly support orientation for sub cabinet appointees, not only to discuss policy objectives but the management tasks they must master in order to get the desired results. This would build on the orientation of cabinet members and top White House staff provided for in the Presidential Transition Act of 2000.

We hope these suggestions will assist the preparation of your April report and would of course be happy to discuss them further with you.

Sincerely,



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President and CEO
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David Abshire
President
Center for the Study of the Presidency

C. Boyden Gray
Former Counsel
The White House

Sally Katzen
Former Chair, Committee on Government Standards, American Bar Association

Norman J. Ornstein
Resident Scholar
American Enterprise Institute

The presidential appointments process is broken. The process of selecting nominees, vetting them, and confirming them is unconscionably long, overly complex and unnecessarily invasive of individual privacy.

No single institution is responsible for the problem. The administration takes too long to find and vet nominees. The Senate takes too long to confirm nominees. There are overlapping jurisdictions among the many agencies and offices involved in the process. The media and outside interest groups contribute substantially to the problem by adopting a cynical attitude that everybody going into public life has some base motive or can't be trusted to protect the public trust, by obsessing on scandals or hints of scandal, and by emphasizing a "gotcha" mentality about presidential appointees.

In order to better understand how the appointments process needs fixing, let me lay out the problems along a timeline beginning with the pre-election period and continuing through the transition, administration, and post-administration.

Pre-election planning for appointments needs improvement.

Planning for a transition is a substantial job. Taking control of an administration and filling more than 3000 posts cannot be done efficiently without significant pre-election planning. And it is hard to do such planning when most of the candidate's time and resources are dedicated to winning the election. Planning is also often hampered by the fear that the public will view planning before an election as presumptuous.

For this reason most planning is done secretly. It is often underemphasized. And it is sometimes not coordinated with other players in the campaign, which can lead to conflicts between transition and campaign officials later in the process. The Carter campaign had an extensive transition planning operation run by Jack Watson, but it was wholly separate from the campaign, and the early parts of the Carter transition were marked with conflict between the pre-election planning staff and campaign staff. Similarly, the Clinton transition was not as smooth as it might have been because Mickey Kantor, who had headed the transition planning effort, was opposed by campaign officials, and did not head up the transition as many had expected. The counter example is the Reagan transition where Pendleton James started his planning operation early, but he regularly reported to Edwin Meese on the campaign.

A major task of pre-election planning is to understand the large number of positions to be filled and the qualifications for those positions, and to begin to identify people who might serve in an administration.

The challenge is both to legitimize pre-election planning and to make it a clear priority for presidential candidates. In response to the criticism that such planning is presumptuous, we should remind people of the significant hurdles a new administration faces in taking office and argue that a responsible presidential candidate is one who plans ahead for such a large task.

The pre-election process could benefit from transition funding, the creation of liaisons in the executive branch and the Congress to aid such planning, a role for the parties in such planning, and a study of past experiences of pre-planning.

The selection of nominees must take place in a short period of time.

The transition period and early part of the administration places the greatest demands on the personnel operation. It is important to allow the personnel operation to staff up during the transition and the first year to handle the crush of nominations at the start of an administration.

There are too many full field FBI background checks

By an executive order in the Eisenhower administration, full-field background checks are required for all political appointments requiring Senate confirmation. This requirement slows the process and unnecessarily invades the privacy of nominees. Background checks may be warranted for positions with national security implications or department or agency heads. But there is no reason that an Assistant Secretary of Education should have to undergo such a background check. A full field FBI background check for every PAS position is a relic of the cold war and the contemporary scandal mentality.

Nominees worry about the privacy of their FBI files

Nominees worry that personal details gathered in FBI checks will be made public. Provisions should be made to limit access to raw FBI files and to notify the nominees of the content of their own files and who will have access to them. When Anthony Lake was nominated for National Security Adviser, Congress demanded that every member of the reviewing committee see the FBI report. Similarly, in 1989, John Tower's FBI file was widely disseminated—and leaks, by many accounts, fueled rumors about Tower's personal life that were deeply damaging to his reputation and confirmation chances.

Nominees need a shepherd to help them through the process

Appointees from past administrations complain that they were often ill-informed about the process and their progress through it. Further, many appointees do not have executive branch experience. The Presidential Transition Act of 2000 will help in this regard by allowing transition funds to be spent for orientations. But more can be done. The administration, the Senate, and committees could designate individuals to act as shepherds for nominees, to keep them abreast of developments and provide advice.

The forms are too complicated

Nominees are required to fill out forms that are overly long and have overlapping or redundant questions. Terry Sullivan of the James A. Baker Institute has calculated that the average nominee is asked 234 Questions. Of those 8% are identical questions and a

full 42% ask for the same type of information, but require it in different formats. The obvious solution is to simplify and harmonize the forms. But this recommendation has been around for many years, and there has been little progress. Recognizing the difficulty of getting so many institutions to change their forms, the Transition to Governing Project commissioned a piece of software, which is akin to Turbo Tax for political appointees. The software asks for basic information, sends that information out to all of the forms, and walks the nominee through unique questions. At the end, the nominee can print out all of the forms for submission (the technology is also here for online filing when the government allows it in the future). The software is nearly ready and should be complete as soon as the various institutions make their final decisions on the content of this year's forms.

But even the software faces legal and other obstacles. Most of the forms need to be filed with a paper copy, not online. The goal of reform should be to have simpler, shorter forms that can be filed online.

Incorrect filling out of forms carries criminal penalties

Nominees may face criminal penalties for providing false and misleading information on the forms they must fill out for the administration and Congressional committees, whether intentional or not. The threat of criminal prosecution scares off potential nominees and feeds our investigation culture.

Financial disclosure should be designed to identify conflicts of interest, not to satisfy prurient interest or the whims of various agencies.

Some forms ask for the appointee's assets, other for the appointee's spouse's assets, still others include dependent children. Various forms also have different valuation methods and different categories of assets, with no particular rhyme or reason other than the arbitrary judgments of agency drafters . While we should maintain financial disclosure and divestment rules that promote a high standard of ethical behavior, they need not require information that is merely to satisfy the prurient, nor should they require unnecessarily duplicative or conflicting reporting requirements

Stock options are not adequately handled by current law.

While changes have been made in the past decade to allow appointees to divest themselves of stocks and other assets without bearing all of the disadvantageous tax consequences, no such provision has been made for stock options. As stock options have become a more common form of corporate compensation, the lack of rules for option divestment may deter good people from serving in government.

Senate holds

Over the past forty years, the appointments process has lengthened considerably. Both the selection and nomination process in the White House and the confirmation process in

the Senate are longer. One significant development in the Senate is the increasing use of holds. Holds have been used not merely to delay nominations, but to kill them. And holds are often used as bargaining chips for other priorities. Nominees are taken hostage with a hold until a deal can be struck for legislation, sometimes in a wholly unrelated arena. Holds should be public, limited in time, and limited to concerns about the specific nominee held.

In certain departments there are unnecessary political positions
Many study groups have recommended reducing the number of political appointees and the number who require Senate confirmation. There are two potential benefits to such a reduction. First, more managers do not necessarily lead to more efficient government or more control from the top. Second, the increasing number of appointees is partially to blame for the backlog of appointments. But as the balance between career and political positions varies widely from agency to agency, reductions would be best after a serious consideration of political and career positions agency by agency.

Post-Employment Restrictions
Part of an effective appointments process is the ability to recruit talented, knowledgeable people from business, labor, universities, think thanks, and other organizations. Restrictions on post-employment lobbying are appropriate as cooling off period to lessen conflicts of interest. But overly onerous post employment restrictions scare promising candidates away from government service. President Clinton's recently rescinded five year ban for senior official is an example of taking the restrictions too far. Take for example, an aviation lawyer who is willing to take a pay cut to serve in government at the Transportation Department. If that person is subject to a one or two-year ban, he or she might reasonably expect to return to practicing aviation law after government service. But if there is a five-year ban, he or she might as well look for another career. Post employment restrictions generally strike a reasonable balance between attracting the best people to government service and limiting conflicts of interest, but a review of these laws and simplification where possible would help attract better people into public service.

Compensation issues
Part of an effective appointments process is attracting good people to government service. Compensation is only one area that affects recruitment, but it deserves serious consideration.

While the list of problems associated with the appointments process is long, addressing even a few of them will have a beneficial effect on the process and on the climate in Washington. The general perception that people who serve in government must subject themselves to harsh treatment is perhaps the greatest problem facing the appointments process. But reform in a few areas might begin to turn around that sentiment.

Recommendations

1. Implement a common electronic nominations form – Simplify and harmonize the existing forms by removing redundant and unnecessary questions. Allow forms to be filed on line. A nominee for a Senate-confirmed position at the State Department is asked to fill out three separate background forms and a financial disclosure form for the Office of Government Ethics. This multiplicity of forms is common to all executive departments. Most of the required information is redundant, much of it irrelevant. The forms should be harmonized. In addition, as mentioned above, the Transition to Governing Project of the American Enterprise Institute and the Brookings Institution has commissioned a piece of software to help nominees fill out forms online. This software should be the first step in simpler forms that can be filed electronically.

2. Decriminalize the appointments process – A misstatement on a nominee's financial disclosure form may be subject to criminal prosecution. Decriminalize the appointments process by having the Office of Government Ethics enforce the disclosure and post-employment statutes as civil or regulatory matters.

3. Streamline the FBI background check. FBI checks should only be performed for the heads of departments or agencies and for positions related to national security. It should be possible to develop a sliding scale of background checks from a simple expedited computer scan to the full field investigation, and apply different levels to different categories of nominee. A president-elect should be able to submit a list of potential top appointees to sensitive positions to the FBI just after the election to have their FBI checks begin immediately, even before they have been formally nominated for specific positions.

4. Protect FBI files – access should be limited to the chair and ranking member of the relevant Senate committee. The FBI usually does not edit or judge the information it gathers in its full field investigations. As a result, FBI files contain both accurate and inaccurate information, both legitimate well-sourced facts and hearsay.

5. Change the "hold" custom in the Senate. Holds should be not be secret, and they should be limited in time. The hold is not a rule, but an informal practice. The legitimate purpose for a hold is for Senators to delay consideration of a nomination or a piece of legislation in order to collect more information on the subject. It is meant to prevent the Senate from rushing through a nomination without notice to the members. We should limit the hold to no longer than one week, and we should make it known which Senator seeks the hold.

6. Enact other Senate procedural reforms. The Senate should schedule hearings and votes for nominees on an expedited basis. An executive nomination should be scheduled for a vote no more than twenty days after it comes out of committee. Committees should use their authority to waive hearings for lower level appointees. The Senate should meet in executive session when reviewing a candidate's personal or other sensitive matters.

7. Reduce the number of political appointees. The appointments process is much longer than it once was, in part, because of the growing number of political appointees. More appointees do not necessarily lead to greater White House control of the agencies, in fact, the increasing number of layers may make the political appointees more inefficient.

8. Stop the legal assault on the executive branch. Congress should repeal Clinton v. Jones, which held that Paula Jones could bring a civil action for sexual harassment against the president while he was in office. In its decision, the Court asked Congress to review its decision. Civil litigation can be used as a political tactic. And the threat of high legal bills and ethical taint discourages good people from coming into government service.

STATEMENT OF

AMY L. COMSTOCK
DIRECTOR
OFFICE OF GOVERNMENT ETHICS

ON

OGE RECOMMENDATIONS ON STREAMLINING PUBLIC FINANCIAL DISCLOSURE AND OTHER ASPECTS OF THE PRESIDENTIAL APPOINTMENTS PROCESS

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ON

April 5, 2001

MR. CHAIRMAN, AND MEMBERS OF THE COMMITTEE:

Thank you for the opportunity to appear today to discuss the report issued by the Office of Government Ethics. Congress had asked for this report under the Presidential Transition Act of 2000.

The nomination and confirmation process has grown increasingly complex over the years so that today it is viewed by many as being unnecessarily complicated and unduly burdensome for persons being considered for Presidential appointments. Various commissions and studies in the past have made recommendations for simplifying and rationalizing this process. In 2000, with the approach of another Presidential transition, attention once again turned to this process.

In the Presidential Transition Act of 2000, Congress told the Office of Government Ethics (OGE) to provide recommendations for streamlining the public financial disclosure requirements for Presidential nominees to confirmed positions and for improving other aspects of the nomination and confirmation process. I am happy to be here today to present our recommendations.

Before I discuss our recommendations, I would like to describe the steps that we took to prepare this report. OGE obtained the opinions of interested parties first by reviewing their studies of the nomination and confirmation process. We also reviewed the questionnaires used by confirming committees of the 106th Congress and the White House, as well as the forms and instructions used by all three branches for public financial disclosure required by the Ethics in

Government Act. We sought and obtained comments about the process through a notice in the Federal Register. Finally, we discussed possible proposals with executive branch ethics officials, and spoke with individuals who have been or are currently involved in the process.

As we reviewed the current requirement for public financial disclosure, it was important to re-evaluate the original purposes of public disclosure to see if they had changed. Public financial disclosure was intended to --

--increase public confidence in Government;

--demonstrate the high level of integrity of the vast majority of Government officials;

--deter conflicts of interest from arising because official activities would be subject to public scrutiny;

--deter persons whose personal finances would not bear public scrutiny from entering public service; and

--better enable the public to judge the performance of public officials in light of an official's outside financial interests.

We do not believe that the original purposes of public financial disclosure have changed. Moreover, OGE's own experience with nominations has indicated, and our outreach efforts confirmed, that the concept of public financial disclosure is not considered, in general, to be unduly burdensome by nominees or those considering going into public service. It is an accepted condition of Government service that the public must be able to assure itself that Government officials will act impartially. Rather, what is considered frustrating and unduly burdensome to many nominees is the requirement to obtain and disclose seemingly excessive detail regarding financial interests, the redundancy among the various forms used in the process, and the intrusion into a nominee's personal finances beyond what appears to be necessary for a conflicts analysis or public confidence.

Based upon more than 20 years of experience administering this statutory system, we believe that these concerns are valid. OGE's report recommendations, we believe, will begin to address these concerns.

With regard to excessive detail, we believe that the current public financial disclosure system requires the reporting of more information than is necessary or useful for the purposes of conflict of interest analyses or maintaining public confidence in Government. Some of the specific detail regarding assets, transactions and other reportable items is burdensome to the filer and could be eliminated without "lessening substantive compliance with any conflict of interest requirement." Eliminating such unnecessary detail would relieve the burden that falls not only on Presidential nominees but also on approximately 20,000 executive branch employees who are subject to public reporting.

We also believe that a reporting system should be designed so that it is practical for the vast majority of filers. For example, it is neither necessary nor desirable to require every filer to provide details for every asset that is reported, whether or not that asset presents a potential conflict. Even the existing reporting system does not require the reporting of so much detailed information that ethics officials never need to obtain additional clarifying information. Ethics officials as well as OGE currently request additional information from a filer that is relevant to the resolution of a potential conflict, and it is the filer's obligation to provide it.

To simplify financial disclosure and mitigate the burden, OGE is recommending changes to the Ethics in Government Act for the executive branch to (1) reduce the number of valuation categories; (2) shorten certain reporting time-periods; (3) limit the scope of reporting by raising certain dollar-thresholds; (4) reduce details that are unnecessary for conflicts analysis; and (5) eliminate redundant reporting. I will not go through each of the proposed changes here. Once you have reviewed them, I hope you will agree that we can significantly reduce and streamline the information sought from nominees, without reducing the ability to ascertain impartiality and conduct a conflicts analysis. I have also attached to my testimony a copy of the current financial disclosure form and a mock up of what the form would look like if OGE's recommendations became law.

Addressing the concern about the redundancy of forms involves more entities than OGE. In addition to the form used for public financial disclosure in the executive branch (the SF 278), there are several other forms requiring financial and other information that must be filed by potential nominees. These include the White House Personal Data Statement, the Questionnaire for National Security Positions (SF 86), and Senate confirming committee questionnaires. Our comparison of the SF 278, SF 86, and committee forms identified extensive overlap and inconsistency. We believe from the comparative charts we have made those areas of overlap and inconsistency are reasonably easy to discern, and the parties responsible for these forms can balance the burdens that they create against the need to obtain the information they seek.

When considering the question of whether the financial disclosure process results in unnecessary intrusion into personal finances, we first looked back to the original purpose of the public financial disclosure system. This system was intended to be a way to ensure impartiality of public officials. It has come to be used for more than that. The disclosure form itself is now used, often by the media, as a way to estimate the net worth of public officials. Yet, this was never intended to be the purpose of the public reporting system, nor should it be.

One of the changes that we are recommending to the public financial disclosure system is that the highest category of value that would now be reportable for public filers would be "over $100,000." This is a significant change from current law, which requires that asset valuation be declared in much greater detail, with the highest valuation at "over $50,000,000." We believe that this change will preserve the ability to evaluate potential conflicts and provide sufficient information regarding the magnitude of an asset, without unduly intruding upon the financial privacy of the filer.

In addition to the recommendations summarized above, OGE analyzed the many recommendations for improvement of the appointments process that have been made over the years.

We believe, based on our experience, that there are several issues raised in the studies that are timely. These issues include simplifying and standardizing the financial disclosure process; providing for electronic filing of information; and using an existing form such as the SF 278 as a more relevant source of financial information than the net worth questions in many Senate committee questionnaires.

A number of these outside studies also suggested that the criminal conflict of interest statutes of Chapter 11 of Title 18, U.S.C. be revised or decriminalized. OGE agrees that the conflicts laws may be complex. Nevertheless, they provide essential safeguards for the integrity of Government operations and programs. It may be that these laws, however, can be simplified without sacrificing the protection that they provide for a fair and impartial Government process. The revision of these laws is no easy task and we are not prepared to make detailed recommendations for changes at this time. We have already been in contact with the Department of Justice to begin exploring the revision of the conflicts laws.

Finally, I would like to inform the committee that, as a result of the directive to OGE in the Presidential Transition Act, we looked at changes and improvements that we could make to the process that would not require any amendment to the Ethics in Government Act. We found that we could have an immediate impact by consolidating the various levels of review of a nominee financial disclosure report within OGE. We also analyzed whether certain of our interpretations of the Ethics in Government Act should be revisited. We looked particularly at certain cases where filers have been required to report the holdings of limited partnerships, trusts, estates, and powers of attorney. We determined that some flexibility was warranted where filers were unable, without extraordinary effort, to ascertain the value and income of the subholdings of limited partnerships (i.e. where one limited partnership invests in another limited partnership). Those values are not necessary for conflict of interest analysis and obtaining them can sometimes impose a heavy burden on filers. In addition, upon reevaluation, we have decided that filers generally need not be required to disclose the assets of a person for whom they have a power of attorney, or the assets of an estate for which the filer serves as an executor. We are consulting with the Department of Justice to determine the reporting requirements for trust assets when a nominee has a non-beneficial interest in a trust. These changes should go a long way toward relieving the burden on nominees without diluting our ability to assess actual or apparent conflicts of interest.

In closing, I would like to reiterate that OGE is ready to work with both the executive and legislative branches to make the appointment process smoother and less burdensome for all parties. We have set out in the report a list of steps we are prepared to take alone and in conjunction with others. We believe that improvements can be made to the financial disclosure system and to the Presidential Appointments process. We are ready to work with the Congress and others toward that goal in those areas that are within our jurisdiction.

Current SF 278

SF 278 (" 3/2000)
5 C.F.R. 634
U.S. Office of Government Ethics

Reporting Individual's Name

SCHEDULE A

Page Number 2 of

Assets and Income — BLOCK A

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income.

For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse).

None ☐

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

	Asset	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples	Central Airlines Common				x												x						x										
	Doe Jones & Smith, Hometown, State			x																												Law Partnership Income $14,000	
	Kempstone Equity Fund					x								x										x									
	IRA: Heartland 500 Index Fund							x						x											x								
1																																	
2																																	
3																																	
4																																	
5																																	
6																																	

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot Be Used.

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Do not complete Schedule B if you are a new entrant, nominee, or Vice Presidential or Presidential Candidate

Reporting Individual's Name

SCHEDULE B

Page Number of

Part I: Transactions

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss.

Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

None ☐

	Identification of Assets	Transaction Type (x): Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	Amount of Transaction (x): $1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
Example	Central Airlines Common	x			2/1/99			x									
1																	
2																	
3																	
4																	
5																	

*This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260, and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. **Exclude** anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See instructions for other exclusions.

None ☐

	Source (Name and Address)	Brief Description	Value
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/99 (personal activity unrelated to duty)	$500
	Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	$300
1			
2			
3			
4			
5			

Pr[illegible]tions Cannot Be Used.

SF 278 (Rev. .000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name

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SCHEDULE C

Page Number

of

Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at **any time** during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None ☐

	Creditors *(Name and Address)*	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (x): $10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			x								
	John Jones, 123 J St., Washington, DC	Promissory note	1999	10%	on demand					x						
1																
2																
3																
4																
5																

*This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None ☐

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1			
2			
3			
4			
5			
6			

Prior Editions Cannot Be Used.

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name	SCHEDULE D	Page Number
,		of

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization *(Name and Address)*	Type of Organization	Position Held	From *(Mo., Yr.)*	To *(Mo., Yr.)*
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1					
2					
3					
4					
5					
6					

Part II: Compensation in Excess of $5,000 Paid by One Source

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

None ☐

	Source *(Name and Address)*	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1		
2		
3		
4		
5		
6		

Prior Editions Cannot Be Used.

"Revised Model" SF 278

Reporting Individual's Name	**Schedule A**	Page Number

Assets and Income	Asset Value at close of reporting period			Type						Amount of Income			
For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $500 in income during the reporting period. For yourself, and your spouse, also report the source of earned income exceeding $500 (other than from the U.S. Government). For honoraria earned prior to Government service report source as earned income -- do not report exact amount. For honoraria earned during Government service, report source, exact amount, and date. None ☐	$1,001-$15,000	$15,001 - $100,000	over $100,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Investment Income	Earned Income	Honoraria	$501 - $20,000	$20,001 - $100,000	over $100,000	If Honoraria, exact amount, and date (mo/yr)
1													
2													
3													
4													
5													

Reporting Individual's Name	Schedule B	Page Number

Part I: Transactions

Report any real property, stocks, bonds, commodity futures, or other securities not already listed on Schedule A, which were valued at over $1000 at any time during the reporting period but which you no longer hold.

None ☐

Do not complete if you are a nominee or a new entrant.

1

2

3

4

5

*

Part II: Gifts, Reimbursements, and Travel Expenses

For you, and your spouse, and dependent children, report the source, a brief description, and the value of: (1) gifts (such and tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260, and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as a personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. **Exclude** anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See instructions for other exclusions.

None ☐

	Source (Name and Address)	Brief Description	Estimated Value
1			
2			
3			
4			
5			

Reporting Individual's Name	Schedule C	Page Number

Part I: Liabilities

None ☐

Report Liabilities over $20,000 owed to any one creditor at **any time** during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliance; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

	Creditor's Name	Type of Liability	Date Incurred	Interest Rate	$20,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000
1							
2							
3							
4							
5							

Part II: Agreements or Arrangements

None ☐

Report your agreements or arrangements for (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

	Status and Terms of any Agreement or Arrangement	Parties
1		
2		
3		
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6		

Reporting Individual's Name	Schedule D	Page Number

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization of educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
1					
2					
3					
4					
5					
6					

Part II: Compensation in Excess of $25,000 Paid by one Source

Report sources of more than $25,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $25,000. You need not report the U.S. Government as a source.

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

None ☐

	Source (Name and Address)	Brief Description of Duties
1		
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NANCY KASSEBAUM BAKER
FORMER UNITED STATES SENATOR, KANSAS

It's my pleasure to testify before the Committee today with my co-chair Franklin Raines. I commend the work you've done over the years to strengthen public service, be it at the top of the government in the presidential appointments process or at the entry-levels of the career civil service. While we might not always agree on the solutions, I think we all recognize the extreme importance of this undertaking.

We seek with this report to present a pragmatic agenda of reforms that might improve the speed, fairness, and integrity of the presidential appointments process. As co-chairs of the advisory board of The Presidential Appointee Initiative, we are convinced that the current process desperately needs reform, and we urge the Committee to move quickly on our agenda of reform.

Simply stated, we are not going to attract the best and the brightest to Washington unless we can improve the appointments process. I think disillusionment with government service has reached a really dangerous level. I'm reminded a bit of Alice in Wonderland when she dropped through the rabbit hole and asked the Cheshire cat which way she should go, and he said, "Well, it depends on where you wish to get." Well, I think the answer to that question in this case is that we want to get to an appointments process that will help us attract talented men and women to government service, and get away from one that deters people from serving.

The State of the Presidential Appointments Process

According to research conducted by The Presidential Appointee Initiative, there is not a single stage of the appointments process -- not one -- where appointees do not say that it takes longer than it should. That goes for their initial contacts with the White House, the president's approval of their nomination, the FBI's full-field investigation, their early contacts with members of Congress and congressional staff, to their final confirmation by the Senate.

There is simply no stage of the process that we can point to and say, "Well if we just fix this, the average time it takes to complete the appointments process will go from nine months to seven months."

While all steps in the appointments process can and should be streamlined and improved, particular attention should be paid to strengthening the Senate confirmation process. The Senate received particularly low marks for its handling of the process in two surveys conducted for The Presidential Appointee Initiative.

Almost a year ago, when we launched The Presidential Appointee Initiative, we released the results of a survey of 435 appointees from the Reagan Bush and Clinton administrations. Nearly half of the appointees surveyed said the Senate has made the appointments process an ordeal; almost a third said the same about the White House.

Earlier this year, the initiative published the results of a survey of nearly 600 corporate and civic leaders who have never served as presidential appointees. These Fortune 500 CEOs, college and university presidents, nonprofit executives, think tank scholars, lobbyists and state and local government officials are exactly the types of individuals who should serve in what Benjamin Franklin called the "posts of honor" in the executive branch.

The vast majority of these corporate and civic leaders did indeed think that serving as a presidential appointee would be an honor, but many had harsh views of the system by which appointees are selected, cleared and confirmed. More than half said the words "confusing" or "embarrassing" fit the process well compared with 43 percent who said "fair" was an accurate description.

Potential appointees actually had more negative views of the process than appointees who served in prior administrations. Some 71 percent of the Reagan, Bush, and Clinton appointees surveyed by PAI last year described the process as "fair," while just 47 percent described it as "a necessary evil," 40 percent as "confusing," and 23 percent as

"embarrassing." As the survey's co-authors -- Paul C. Light of the Brookings Institution and Virginia L. Thomas of the Heritage Foundation -- noted in the survey report, "familiarity [with the process] breeds a certain level of understanding and acceptance that is harder to embrace from afar."

Potential appointees think the problems lie at both ends of Pennsylvania Avenue. Two-thirds of the respondents said the Senate made the process an ordeal and 42 percent said the White House was too demanding. Once again, corporate and civic leaders were more negative in their assessments than past appointees. Only 30 percent of the Reagan, Bush, and Clinton appointees interviewed last year described the White House process as an ordeal, while 46 percent described the Senate process as such.

The perceived benefits of presidential service were lowest among those who had been offered an appointment but turned it down or said they would have declined it. Just 2 percent of these respondents said an appointment would generate much greater respect from their family and friends, while 20 percent strongly agreed that an appointment would reduce their abilities to return to their careers. By comparison 23 percent of respondents who had never been considered for an appointment saw much greater respect through service, and only 7 percent strongly agreed that they would have trouble returning to their careers.

The more respondents knew about the appointments process, the lower they rated the benefits of service and the more they worried about the costs. Thus 9 percent of respondents who knew little or nothing about the system said salaries would be much or somewhat better than other comparable senior positions, compared with just 2 percent of those who knew a great deal or something.

Many corporate and civic leaders know little about the process. Nearly half of all respondents said they knew little or nothing about the appointments process. Lobbyists, think tank scholars, and university presidents were the most knowledgeable, nonprofit

executives were in the middle, and corporate CEOs and state and local government officials were the least informed.

Many potential appointees base their impressions of the system on what they see in the media. All the groups interviewed said the media had some influence in forming their impressions of the process. Think tank scholars and lobbyists were more likely than the other groups to base their impressions on personal experiences or the experiences of their friends or colleagues.

Role of the Senate in the Appointments Process

Let me speak for a moment about the role of the Senate in the appointments process.

I'm sure there are some presidential appointees who wish the Senate wasn't involved in the process at all. But I think that the Founding Fathers were correct when they wanted a system of checks and balances, wanted the Senate to have a role of advice and consent.

The Senate itself has changed in the years since I left after serving for three terms. I've seen it become a much more contentious body, and confirmations become a much more laborious process.

But a hostile political environment is only part of the problem. More troublesome, but also more subject to correction, is the expanded utilization of procedures and practices that unnecessarily delay the confirmation process and create inviting opportunities for small groups of Senators, sometimes even for individual Senators, to thwart action by Senate majorities. Practices intended to be used only in the most extreme cases of concern about nominees' qualifications are now routinely employed on both sides of the aisle, often simply to use nominees as hostages in political conflict over larger policy issues or legislative efforts.

The accumulated effect of these practices is deeply injurious to the federal government's ability to recruit and retain talented leaders in the executive and judicial branches. The following steps, we believe, will help to set the confirmation process on a sounder and more sensible foundation.

Reforming the Confirmation Process

The first recommendation deals with the number of positions requiring confirmation. We believe:

Congress should enact legislation providing that Senate confirmation only be required of appointments of judges, ambassadors, executive-level positions in the departments and agencies, and promotions of officers to the highest rank (0-10) in each of the service branches.

Confirmation of appointments is a constitutional duty of the Senate and a valuable component of the government's responsibility to ensure the fitness and diversity of those who serve in the highest administrative and judicial offices. But the application of the confirmation requirement now extends to many thousands of positions, only a relatively small number of which benefit from the full attention or careful scrutiny of the Senate.

We believe that this is an appropriate time for the Congress to do something it has never done: to review the entire scope of Senate confirmation responsibilities and to scale those responsibilities down to only those positions that are appropriate to its collective attention. We see no value, for example, in the continued requirement that all military, foreign service, and public health service promotions be subject to Senate confirmation. Nor do we believe there is sufficient justification for Senate confirmation of part-time appointments to the government's many boards and commissions.

The Senate's participation in the appointments process is most valuably applied to positions of genuine management authority and to the judicial and ambassadorial positions for which it has constitutional responsibilities. A simpler, more focused set of confirmation obligations can only yield a more efficient and more consistent performance of the Senate's confirmation responsibilities.

The second recommendation deals with the use of holds:

The Senate should adopt a rule that limits the imposition of "holds" by all Senators to a total of no more than 14 days on any single nominee.

Few features of the modern appointments process are as troublesome as the Senate practice that permits any single Senator to delay indefinitely the confirmation of a nominee. Senators are under no obligation to announce the reasons for their holds nor to place only holds that are directly related to concerns about the individual's fitness to serve in the office to which nominated. With ever greater frequency in recent years, holds have been used to make well-qualified nominees hostages to some other dispute between the Senator placing the hold and the administration. The harmful consequences to efficient government management and to individual nominees are obvious.

We recognize that there may be times when Senators want to know more about a nominee and may require more time to gather information. In such cases, placing a temporary hold on a nomination may be useful. But we believe the Senate needs to limit the duration of these holds to ensure that they don't unduly delay the confirmation process nor unduly complicate the lives of the nominees in that process. A simple time limit on the total length of holds on any single nomination would better balance the legitimate needs of all parties to the confirmation process.

The third recommendation addresses the length of time it takes to vote on nominations:

The Senate should adopt a rule that mandates a confirmation vote on every nominee no later than the 45th day after receipt of a nomination. The rule should permit any Senator, at the end of 45 days, to make a point of order calling for a vote on a nomination. A majority of the Senate may postpone the confirmation vote until a subsequent date.

The average length of time required to confirm presidential appointees has been growing steadily in recent years. While there are many reasons for this, few of them are directly related to the task of reviewing and assessing the qualifications of nominees. But these delays impede the ability of presidents to manage the government and of courts to process their caseloads efficiently. Equally important, long confirmation delays leave nominees in an extended and awkward limbo. Nominees withdrawing in the midst of such long confirmation delays has been a more common phenomenon in recent years than ever before.

We believe that this is an appropriate time for the Senate to impose a firmer discipline on the confirmation process by establishing through Senate rule an expectation that any nomination would receive a confirmation vote by the full Senate no later than 45 days after receipt. Under such a procedure any Senator could call for a vote at that time, a vote that could be postponed only by vote of a majority of the Senate.

This would permit the Senate, in extraordinary circumstances, to take more than 45 days before voting on confirmation. But it would establish a standard review period and offer a mechanism for any Senator to request a confirmation vote at the end of a time long enough for careful review of all but the most complex nominations.

The final recommendation addresses the practice of holding formal confirmation hearings. We believe:

The Senate should adopt a rule that permits nominations to be reported out of committee without a hearing, upon the written concurrence of a majority of committee members of each party.

For most of American history, nominations were reported to the floor of the Senate without any formal hearings by its committees. The practice of holding hearings began to emerge in the second decade of the 20th century. Even then, it was common for hearings to occur in executive session or without the nominee present. The current practice of formal public confirmation hearings on nearly all appointments, with the nominee present, is a relatively recent development.

But with the growing number of presidential appointments subject to Senate confirmation, a heavy burden falls on the Senate to arrange and schedule hundreds of confirmation hearings each year. Scheduling conflicts often lead to unnecessary delays in confirmation. Many nominations provoke no controversy whatsoever. With the lengthy questionnaires nominees now complete and the individual meetings they typically have with senators and committee staff, hearings are sometimes unnecessary. And public hearings force nominees and staff from the agencies to which they are nominated to spend long hours preparing, usually for questions that are never asked.

Clearly the Senate should hold public confirmation hearings whenever there is a justification for that: unresolved concerns about a nominee's qualifications, a desire by several committee members to engage the nominee in a discussion of his or her future duties, some charge against a nominee that the nominee seeks to rebut. But for a great many nominations, none of these conditions obtain, and confirmation hearings are little more than a time-consuming ritual. We believe that no good purpose is served by these rituals, certainly not one that justifies the delays they often impose on confirmation. It would be better for the Senate to hold public confirmation hearings only when there is a valid reason for so doing. We believe that written expression of that desire from the majority of each party's members on a committee would be an appropriate indication of the need for a public hearing.

Conclusion

A number of the reform recommendations that we are putting forth today would involve changes in the way the White House and executive branch handle the nomination process. Frank Raines will address those suggestions in his testimony.

Let me conclude by saying why I think these recommendations are so important and worthy of your attention. Those of us who are supporting these reform feel strongly that our effort to strengthen and streamline the appointments process truly will enhance good governance.

Nothing perhaps can undo decades of cynicism and deterioration of the appointments process in a moment. Overcoming that painful legacy – and its harmful effects on the quality of citizen leadership in government – will require leaders in both parties to come together to make public service more attractive. We can think of no other issue that deserves bipartisan attention more than the need to renew citizen service as a basic democratic duty.

FRANKLIN D. RAINES

CHAIRMAN AND CEO, FANNIE MAE

I am delighted to appear before this committee today as a co-chair of the advisory board of The Presidential Appointee Initiative, a project of the Brookings Institution funded by The Pew Charitable Trusts. The Presidential Appointee Initiative was created precisely to address the problems raised yesterday before this committee, and we applaud your commitment to increasing the odds that talented Americans from all walks of life will accept the call to public service.

As co-chair of the Initiative's advisory board, I bring an executive branch perspective to this hearing. I was confirmed by this committee as director of the Office of Management and Budget. I appreciate how hard you worked to make my confirmation both rigorous and fair, and also applaud the speed with which the White House moved in processing my nomination. Unfortunately, too many of my colleagues in past administrations, Democratic and Republican alike, report that my experience was the exception to the rule. Indeed, I think it is fair to argue that the presidential appointments process is now on the verge of complete collapse.

Problem Statement

Let me start my assessment of the presidential appointments process with a simple point: American government was designed to be led by citizens who would step out of private life for a term of office, then return to their communities enriched by service and ready to recruit the next generation of citizen servants. The Founding Fathers believed in a democracy led by individuals who would not become so enamored of power and addicted to its perquisites that they would use government as an instrument of self-aggrandizement. They fully understood that the qualities of a president's appointments were as important to the quality of government and the public's confidence in it as the laws that its elected leaders would enact. "There is nothing I am so anxious about as good nominations," Thomas Jefferson wrote at the dawn of his presidency in 1801, "conscious that the merit as well as reputation of an administration depends as much on that as on its measures."

The Founders themselves modeled their vision of citizen service by accepting the first presidential appointments, leaving behind their farms, businesses, and law practices to accept their country's call. For many, presidential service was the least of their accomplishments. They accepted the call as an obligation of citizenship. Indeed, Jefferson did not even list his ascension to the Presidency on his epitaph. He believed his greatest service to the nation was in creating the University of Virginia.

Two hundred years later, the Founders' model of citizen service is under deep duress as more and more of the nation's most talented leaders reject the call to lead. Presidential recruiters report a rising tide of turndowns as they begin the recruiting process. The problems are particularly visible at the start of each presidential administration where the process for entering office has become a torture chamber of isolation, endless review, personal expense, and unrelenting media scrutiny. Those who survive the process enter office frustrated and fatigued, in part because they so often endure the process with little or no help, and in part because the process has become an almost insurmountable obstacle course.

The forms themselves are a briar patch of complexity as the White House Office of Presidential Personnel, Office of Government Ethics, Federal Bureau of Investigation, the separate departments and agencies, and Senate committees collect often needless information. Most appointees must fill out Standard Form 86, "Questionnaire for National Security Positions," listing every residence they have occupied, ever job they have held, and the dates and purposes of every foreign trip they have taken over the past 15 years, and every appointee must fill out Standard Form 278, "Executive Branch Personnel Public Financial Disclosure Report," a form so complicated that it carries an 11-page instruction sheet. One need only read the first paragraph of the general instructions to sense the complexity:

> This form consists of the front page and four Schedules. If possible, use a black ink pen or typewriter to fill out your report. You must complete each Part of all Schedules as required. If you have no information to report in any Part of a

> Schedule, you should indicate "None." If you are not required to complete Schedule B or Part II of Schedule D, you should leave it blank. Schedule A combines a report of income items with the disclosure of certain property interests. Schedule B deals with transactions in real property or certain other assets, as well as gifts and reimbursements. Schedules C and D relate to liabilities and employment relationships. After completing the first page and each Part of the Schedules (including extra sheets of any Schedule where continuation pages are required for any Part), consecutively number all pages.

Most appointees also must fill out the White House Personal Data Statement Questionnaire, the Internal Revenue Service Tax Check Waiver, the White House Permission for FBI Investigation, and the White House Consent Form for Nomination. In addition, all Senate-confirmed appointees must fill out entirely separate forms for their respective committees, almost none of which fit the categories defined by the White House or SF-278, and almost all of which change from year to year as new committee members come and go. By one recent count, a typical appointee must wade through 233 separate questions. Although the forms are burdensome for everyone, they are particularly painful for appointees to advisory committees, volunteer boards, and blue-ribbon commissions where service is part-time, genuine authority nil, and remuneration nonexistent.

Together, the sheer number of jobs to fill and the rising tide of paperwork have contributed to five basic problems with the presidential appointments process:

1. Vacancy rates are rising.

   At the start of President Clinton's second term in the spring of 1997, nearly 250, or one third, of the government's 726 top jobs were vacant. Although the number came down as the year wore on, vacancy rates now average roughly 25 percent per year. During 1998, for example, the Federal Election Commission was unable to get a quorum to do its job monitoring election

finance, while the Food and Drug Administration operated without a commissioner for 18 straight months until last year.

2. Delays are increasing.

The length of time required to fill the top jobs has been rising steadily over the past 30 years. The average appointee in the Kennedy administration was confirmed 2.4 months after the inauguration; the average appointee in the Clinton administration was confirmed in 8.5 months. Despite Herculean efforts to accelerate this process, the Bush administration will be lucky to have a full administration in place by next November.

3. Talented Americans appear to be opting out.

Presidential recruiters report two parallel trends in the appointments process. The first is an increase in turndowns by people who have been approached for an initial review. The second is an increase in the number of reversals by candidates who accept a nomination but eventually withdraw due to delays or costs. The result is that merely identifying someone willing to endure the process takes more time, increasing the delays between the opening of an administration and the actual nomination of candidates for positions. Hence the growing vacancy rate discussed above. Although good people are still coming into government, the anecdotal evidence suggests that presidents often are "drafting" from the fifth, sixth, and seventh rounds instead of the first, second, and third. As David Gergen wrote in 1991, "If the nation is to restore a measure of civility and common purpose in meeting its domestic crises, it must find ways to end the relentless, ugly assaults upon the character of its public figures." It is little wonder that talented people would opt out of a system that exposes every detail of their lives to the public.

4. Turnover appears to be rising.

   Burned out by the process of entering office, appointees appear to be leaving office faster. A 1994 report by the General Accounting Office showed that the average length of service between 1981 and 1991 for appointees without fixed terms was only 2.1 years. Other data confirm the pattern. The Federal Aviation Administration has had seven appointed and four acting administrators over the past 15 years; the Federal Housing Administration has had 13 commissioners over the past 14 years; and the General Services Administration has had 18 administrators over the past 24 years.

5. Most importantly perhaps, the appointments process has become increasingly abusive to those who decide to serve.

   Nominees report that the euphoria of being called to service is quickly replaced by the twin emotions of uncertainty and isolation. No institution in American society is so cavalier or cruel in its treatment of the very people it seeks as its leaders. Fears of making a bad appointment have created such anxiety that high level appointments are delayed for months as names are vetted.

The Founders most certainly expected the time spent in citizen service to be inconvenient, even burdensome. That was part of the obligation to serve. "In a virtuous government," Jefferson wrote, "public offices are what they should be: burdens to those appointed to them, which it would be wrong to decline, though foreseen to bring with them intense labor and private loss."

So noted, they did not expect the process of entering office to exact such delay and frustration. They clearly wanted presidents to make speedy nominations and the Senate to discharge its advice-and-consent function, aye or nay, with equal dispatch. Two hundred years later, it is safe to argue that the presidential appointments process is increasingly incapable of fulfilling its most basic responsibility, which is to recruit talented citizens for

government service. More and more citizens are saying no, and those who do say yes are being forced through a process that is more torturous than the Founders ever could have imagined.

Reforming the Process

The Presidential Appointee Initiative was designed not just to identify problems in the presidential appointments process, but to seek pragmatic solutions. It was toward that end that the Brookings Institution created the advisory board which I co-chair with Senator Nancy Kassebaum Baker. Our task was simple: develop an agenda of reforms that would make the process faster, fairer, and still rigorous, an agenda that would help talented Americans accept the call to service, while making sure that all candidates are fit for service.

Because I represent the executive branch view at this table, let me focus on the six recommendations that deal with changes in the White House/executive branch nominations process.

The first recommendation deals with the White House Office of Presidential Personnel, which is the primary point of contact for recruiting presidential appointees. Our recommendation is simple:

The Congress should enact legislation to establish a permanent Office of Presidential Personnel in the Executive Office of the President and to authorize staff levels sufficient to recruit the president's appointees efficiently and to provide them with transition assistance and orientation. This should include some career employees who retain appropriate records from one administration to the next and who are experts in the operations of all aspects of the appointments process.

As a practical matter, there has been an office of presidential personnel since 1970. Earlier permutations and analogs can be traced back to the Eisenhower administration.

No modern president can function without an effective staff agency overseeing the chief executive's personnel recruitment responsibilities.

But too little attention has been paid to the form and operation of the office of presidential personnel. It has always lacked an adequate institutional memory. Staff turnover is often too high to produce any stability in performance. And staff size is often too small to meet the steady demands of recruiting hundreds of political appointees every year and shepherding them through the appointments process.

It is time now to formalize and institutionalize this critically important component of the contemporary presidency. The Congress created a Bureau of the Budget in 1921 and moved it into the new Executive Office of the President (EOP) in 1939. In subsequent years it created a Council of Economic Advisers, a National Security Council, and other statutory elements of the EOP. The Bureau of the Budget became the Office of Management and Budget more than three decades ago. But Congress has never focused on the management of the presidential appointments process. We believe the time has come to establish a formal Office of Presidential Personnel with authority to employ staff adequate to its needs, including some career staff who would remain as administrations change to provide professional supervision of the systems and information that now affect every president's personnel-selection efforts.

The costs of inexperienced personnel management are too high. Every president should be free to designate his own subordinates to supervise the recruitment of appointees for his or her administration. But those designees will be much better able to serve the president who chooses them if they are supported by an institutional structure and staff of adequate size and skill.

Our second recommendation focuses on the morass of forms and questionnaires that all appointees must now navigate in the appointments process.

The president should order all departments and agencies to simplify and standardize the information-gathering forms used in the presidential appointments process. The Senate should require its committees to do so as well. The president should then order the General Services Administration to develop and maintain on-line, interactive access to all such forms and questionnaires for persons who are going through the presidential appointments process.

The Presidential Transition Act of 2000 requires the Office of Government Ethics (OGE) to "conduct a study and submit a report on improvements to the financial disclosure process for Presidential nominees." That is a welcome undertaking. The forms and questionnaires imposed on candidates for presidential appointments have grown like Topsy over the past two decades and now drown them in a bewildering, duplicative, and often irrelevant flood of invasive questions and information requirements. We hope that OGE's recommendations will call for a significant reduction and simplification of this part of the appointments process and for the employment of common and consistent data elements by the agencies and Senate committees that create forms and questionnaires. We especially hope that OGE's simplification efforts will reduce the amount and detail of information required of nominees to only that which is necessary to detect a potential conflict of interest.

To further facilitate appointee responses to legitimate information demands, we urge the General Services Administration to develop and maintain a secure website at which nominees can find all of the forms and all of the guidance they need to complete them. We also believe that this website should be interactive so that nominees can complete their information requirements electronically. Those who select presidential appointees and those who confirm them need to know some things about the people they consider. But we have fallen into the unfortunate practice of replacing or compounding effective and incisive personal interviews with endless forms and questionnaires. Current information demands on nominees greatly exceed anyone's need to know, and the process of information gathering is embarrassingly inefficient. Corrective action is long overdue.

The FBI full-field investigation is another ripe candidate for reform.

The president should issue an executive order reducing the number of positions for which FBI full-field investigations are required and adapting the length and depth of full-field investigations to the legitimate security concerns of each position where they continue to be required.

President Eisenhower ordered the first FBI full-field investigations for presidential appointees during the height of the McCarthy period. The order was a response to the heated national security concerns of the time. The immediate concerns abated, but the full-field investigations have survived into our own time. Now they are carried out in greater detail than ever before for virtually all presidential appointments. They slow the appointments process, they deter good people from entering public service, they are sometimes misused, and they rarely yield information that affects appointment decisions in any significant way.

It is time to reduce the number of positions for which such investigations are conducted to those with genuine national security impacts. And where such investigations are a reasonable requirement, the form of the investigation should be adapted to the particular character of the position for which it is being conducted. The FBI has better things to do than to conduct elaborate full-field investigations on people who have accepted part-time appointments to federal boards and commissions, people who have no decision-making authority, or people who will deal with policies that have little or no national security implications. The task of recruiting talented public servants will be eased and hastened by the proper utilization of this instrument of limited necessity.

The ethics regulations that have accumulated over the past three decades also require some tough-minded reassessment. So we recommend that:

Congress should undertake a comprehensive review of the ethics requirements currently imposed on political appointees. Its goal should be to strike an appropriate balance between legitimate concerns for the integrity of those who hold these important positions and the need to eliminate unnecessarily intrusive or complex requirements that deter talented Americans from entering public service.

Sometimes political reforms produce unintended consequences that outweigh their benefits and their good intentions. In the aftermath of Watergate, the American people hungered for some assurance that their leaders were not corrupt, that national politics was protected from self-interested schemers. The Ethics in Government Act of 1978 was a logical response to that set of public demands. We have now had more than two decades of experience under that Act, and its requirements have been augmented on several occasions by amendments or by other ethics legislation.

We now have an Office of Government Ethics, designated agency ethics officials and inspectors general in every department and agency, a Merit Systems Protection Board, and a Public Integrity Office in the Justice Department -- all engaged in an effort to make the federal government scandal-proof. Much of the work of these agencies contributes to the establishment and maintenance of high ethical standards for government employees. But it is time to ask if some of this isn't overkill, if the resources and effort committed to ethics regulation do not now exceed the need.

More importantly, we must ask whether the increasingly draconian standards for public disclosure of personal finances, for avoidance of conflicts of interest, and for constraints on post-employment activity by former public servants have produced recruiting and retention burdens that outweigh the potential benefits of those measures.

We believe these questions need answers and that it is an appropriate time for the Congress to conduct a broad review of the impacts of all of our ethics laws and regulatory apparatus to assess their impact not only on the integrity of government officials, but also

on the ability of government to recruit and retain the kind of talented leaders it so urgently needs.

The salaries of presidential appointees also need careful reassessment, especially the procedures we use for setting those salaries. We recommend that:

The Congress should amend the Postal Revenue and Federal Salary Act of 1967 to ensure annual changes in executive-level salaries equal to changes in the Consumer Price Index.

Few endeavors are as politically thorny for a democratic government as setting the salaries of its top leaders. The tendency is to let salaries slide, often through periods in which little or no increase is enacted, then to realize that government salaries have fallen behind and to seek to make a large and politically hazardous catch-up increase.

We believe there has to be a better way to manage this task and we think it is to tie congressional and executive-level salaries to the Consumer Price Index. Those salaries would increase, not in fits and starts, but through regular cost-of-living adjustments. All government pension programs, including Social Security, now function this way and, while less formal in its application, the process of adjusting civil service salaries is similarly related to changes in consumer prices. We see no reason why a system that works reasonably well for the tens of millions of Americans whose incomes are subject to annual cost-of-living adjustments cannot also serve the needs of legislators and presidential appointees.

Government salaries will never be fully competitive with those in the private sector -- or even in other parts of the public sector--from which many presidential appointees are recruited. But we should seek to ensure that government salaries at least keep pace with inflation. Indexing those salaries would serve that purpose and eliminate much of the agony that now accompanies efforts to adjust executive and congressional salaries.

The final two recommendations address our concerns about the number and layers of political appointees.

The Congress should enact legislation requiring each department and agency to recommend a plan for reducing the number and layers of political appointees by one-third. Such reductions, wherever feasible, should limit political appointments requiring Senate confirmation to the assistant secretary level and above in each department and to the top three levels only in independent agencies. Schedule C and other non-confirmed political appointees should be similarly reduced in number.

The Congress should grant the president renewed executive reorganization authority for the limited and specific purpose of de-layering the senior management levels, both career and political, of all executive departments and agencies.

Reducing the number and layers of political appointees is a critical step in any effort to improve the performance of the appointments process. The number of political appointees has grown steadily and dramatically in recent decades. In the Cabinet departments alone, appointees in the top five executive positions grew in number from 196 in 1961 to 774 in 1998.

No one ever argued that the federal government would work better with thousands of political appointees filling its top and middle-management layers. That, however, has been the unintended consequence of years of accumulation of independent and disjointed legislative and administrative decisions.

The growth in the number of political appointees also is a response to failures in the civil service system, especially in the flexibility and responsiveness of the Senior Executive Service. The civil service system and the Senior Executive Service now need broad reform. But too often the executive departments and agencies or their overseers in

Congress have turned to political appointees when they felt hemmed in by the rigidities of an antiquated civil service structure.

Solving this problem is not simple. No two departments are the same. Management patterns and needs vary widely. Each department operates in a unique political milieu. So there is no one-size-fits-all prescription for reducing the number of political appointees.

We believe that the best approach is for the Congress to adopt a formula, or a set of standards, and to delegate to each department and agency -- and to the president -- initial responsibility for meeting those standards or implementing the formula. We further believe that such a formula should have two broad elements:

First, there should be a target for government-wide reductions in the number of managerial layers in each agency and department and a broad goal for overall reduction in the number of presidential appointees.

Second, we believe that the Congress should impose limits on the penetration of political appointees into the management layers of executive departments and agencies. Layering throughout government has become a growing source of management difficulty. The proliferation and ever-deeper penetration of political appointees contribute to this problem. We believe that the establishment of clear lines below which there should be no political appointees is both good management and a genuine source of relief for an overburdened presidential appointments process.

Statement for the Record
by
The Honorable Gary Hart and The Honorable Warren B. Rudman
Co-chairmen, U.S. Commission on National Security/21st Century
Submitted to the
Committee on Governmental Affairs
United States Senate
April 5, 2001

Mr. Chairman:

Thank you for your invitation to provide a statement for the record to your Committee, and to lend our support to your efforts to streamline the presidential appointments process. That process is broken and must be fixed. If we do not fix it, we cannot hope to continue to attract quality private citizens to serve their country when their President calls.

As you know, this Commission's charter mandated the most comprehensive review of the U.S. national security apparatus since the passage of National Security Act of 1947. The fourteen Commissioners believe that the issue of human capital—of which the presidential appointments process is a key component—is so important that it comprises one of only five major sections of their final Phase III Report. The Commission recommends solutions for a range of problems that this nation faces not only with the process of Presidential appointments but also the Civil Service, the Foreign Service, and military personnel in the decades ahead. One of the Commissioners' most basic tenets is that the national security apparatus cannot be fundamentally reformed unless personnel issues are faced and deficiencies remedied.

In other words, it is the Commission's view that fixing the process of Presidential appointments—as well as the problems that confront the Civil Service, the Foreign Service, and military personnel—are *preconditions* for fixing virtually everything else that needs repair within the national security policy apparatus.

With respect to the issue of presidential appointees, the Commission recommends an urgent streamlining of the process by which we attract senior government officials. The ordeal that presidential nominees are subjected to is now so great as to make it prohibitive for many individuals of talent and experience to accept a call to public service.

The confirmation process is characterized by vast amounts of paperwork and many delays. These delays are now so extended that a President's term could be *one-sixth over* before he is able to place his entire team in office.

Conflict of interest and financial disclosure requirements have become major obstacles to the recruitment of honest men and women to public service.

Post-employment restrictions confront potential appointees with the prospect of having to forsake not only income but work itself in the very fields in which they have demonstrated talent and found success. Unless we want to limit the pool of senior officials to those on the verge of retirement from professional life, we simply must do something about this now.

Meanwhile, a pervasive atmosphere of distrust and cynicism about government service is reinforced by the encrustation of complex rules based on the assumption that all officials, and especially those with experience in or contact with the private sector, are criminals waiting to be unmasked.

The Commission, therefore, recommends the following:

That the President act to shorten and make more efficient the Presidential appointee process by confirming the national security team first, standardizing paperwork requirements, and reducing the number of nominees subject to full FBI background checks.

That the President reduce the number of Senate-confirmed and non-career SES positions by 25 percent to reduce the layering of senior positions in departments that has developed over time.

That the President and Congressional leaders instruct their top aides to report as soon as possible on specific steps to revise government ethics laws and regulations. This should entail a comprehensive review of regulations that might exceed statutory requirements, and making blind trusts, discretionary waivers, and recusals more easily available as alternatives to complete divestiture of financial and business holdings of concern.

These recommendations are the unanimous views of fourteen Commissioners: seven Democrats and seven Republicans. With only one exception, each of the Commissioners has been an elected official or faced Senate confirmation, sometimes multiple times. This Commission's recommendations, therefore, are based on practical experience and personal time in the political trenches. When we say the presidential appointee process is broken, it is not a theoretical or academic statement, but the consensus view of those with years of experience with the process. We trust that the Committee will put this experience to best use.

Mr. Chairman, we are most grateful for the opportunity to present the Commission's views on this important subject. As a final matter, we request that the portion of the Commission's final report relating to reform of the presidential appointments process be included in our statement.

THE PRESIDENTIAL APPOINTMENTS PROCESS[1]

A concerted campaign to improve the attractiveness of service to the nation is the first step in ensuring that talented people continue to serve in government. However, fundamental changes are also needed to personnel management systems throughout the national security agencies of government. Not least among the institutions needing reform is the Presidential appointments system.

The problem with government personnel starts at the top. Unlike many other countries, the United States staffs the high levels of its national government with many outside, non-career personnel. The most senior of these are Presidential appointees whose positions require Senate confirmation. While career personnel provide much-needed expertise, continuity, and professionalism, Presidential appointees are a source of many valuable qualities as well—fresh ideas, experience outside government, specialized expertise, management skills, and often an impressive personal dynamism. They also ensure political accountability in policy execution, by transmitting the President's policies to the departments and agencies of government. Indeed, the tradition of public-spirited citizens coming in and out of government is an old and honorable one, serving the country well from the days of George Washington. This infusion of outside skills is truly indispensable today, when the private sector is the source of so much of the country's managerial and technological innovation.

What a tragedy, then, that the system for recruiting such outside talent has broken down. According to a recent study, "the Founders' model of presidential service is near the breaking point" and "the presidential appointments process now verges on complete collapse."[2] The ordeal to which outside nominees are subjected is so great—above and beyond whatever financial or career sacrifice is involved—as to make it prohibitive for many individuals of talent and experience to accept public service. To take a vivid recent example: "The Clinton Administration . . . had great difficulty filling key Energy Department positions overseeing the disposal of nuclear waste because most experts in the field came directly or indirectly from the nuclear industry and were thus rejected for their perceived conflicts of interest."[3] The problem takes several forms.

First, there are extraordinary—and lengthening—delays in the vetting and confirmation process. On average, the process for those appointees who required Senate confirmation has lengthened from about two and one-half months in the early 1960s to an extraordinary eight and one-half months in 1996—suggesting that many sub-cabinet positions in the new administration will be fortunate to be in place by the fall of 2001.[4] As Norman Ornstein and Thomas Donilon point out: "The lag in getting people into office seriously impedes good governance. A new president's first year—clearly the most important year for accomplishments and the most vulnerable to mistakes—is now routinely impaired by the lack of supporting staff. For executive agencies, leaderless periods mean decisions not taken, initiatives not launched, and accountability

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[1] This excerpt corresponds to pages 90 to 95 of *Road Map for National Security: Imperative for Change*, the Final Phase III Report of the U.S. Commission on National Security/21st Century, March 15, 2001.
[2] Paul C. Light and Virginia L. Thomas, *The Merit and Reputation of an Administration: Presidential Appointees on the Appointments Process* (Washington, DC: The Brookings Institution and The Heritage Foundation, April 28, 2000), p. 3.
[3] Norman Ornstein and Thomas Donilon, "The Confirmation Clog," *Foreign Affairs,* November/December 2000, p. 91.
[4] Defense Science Board, *Final Report of the Defense Science Board Task Force on Human Resources Strategy* (Washington, DC: Office of the Secretary of Defense, February 2000), p. 41.

not upheld."[5] The result is a gross distortion of the Constitutional process; the American people exert themselves to elect a President and yet he is impeded from even beginning to carry out his mandate until one-sixth of his term has elapsed.

Second, the ethics rules—conflict of interest and financial disclosure requirements—have proliferated beyond all proportion to the point where they are not only a source of excessive delay but a prohibitive obstacle to the recruitment of honest men and women to public service. Stacks of different background forms covering much of the same information must be completed for the White House, the Senate, and the FBI (in addition to the financial disclosure forms for the Office of Government Ethics). These disclosure requirements put appointees through weeks of effort and often significant expense. The Defense Department and Senate Armed Services Committee routinely force nominees to divest completely their holdings related to the defense industry instead of exploring other options such as blind trusts, discretionary waivers, and recusals.[6] This impedes recruiting high-level appointees whose knowledge of that industry should be regarded as a valuable asset to the office, not reason for disqualification.

The complexity of the ethics rules is not only a barrier and a time-consuming burden before confirmation; it is a source of traps for unwary but honest officials after confirmation. This is despite the fact that the U.S. federal government is remarkable for the rarity of real corruption in high office compared to many other advanced societies. Yet we proliferate "scandals" because of appearances of improprieties, or inadvertent breaches of highly technical provisions. Worse, these rules are increasingly matters of *criminal* rather than administrative remedies. It appears to us that those who have written these conflict of interest regulations themselves have little conflict of experience in such matters.

Third, and closely related, are *the post-employment restrictions that a new recruit knows he or she must endure*, particularly appointees subject to Senate confirmation. We will simply cease to attract talented outsiders who have a track record of success if the price for a few years of government service is to forsake not only income but work in the very fields in which they had demonstrated talent and found success. The recent trend has been to *add* to the restrictions. However, we applaud the recent revocation of Executive Order 12834 as an important step in removing some unnecessary restrictions.[7]

A fourth dimension of the problem is the proliferation of Presidential-appointee positions. In the last 30 years, the number of Senate-confirmable Presidential-appointee positions throughout the federal government has quadrupled, from 196 to 786. Within the Defense Department, the figure has risen from 31 to 45 during the same period.[8] The growing number of appointees contributes directly to the backlog that slows the confirmation process. It also makes public service in many of these positions less attractive; as the Defense Science Board noted in the case of the Defense Department, "an assistant secretary post may be less attractive buried

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[5]Ornstein and Donilon, p. 89.
[6] Defense Science Board, p. D-6.
[7] The recently-rescinded Executive Order 12834, signed by President Clinton on January 20, 1993, his first day in office, extended to five years the previous one-year ban on an ex-official's appearance before his or her former agency. This restriction was placed on the most senior presidential appointees. All former employees face certain limitations, but Senate-confirmable employees paid at the EL-V or EL-IV level (and non-career SES appointees whose salaries fall within this range) face additional regulations potentially very harmful to their post-service careers. Under Executive Order 12834, they could not lobby their former agency for five years, while other appointees are restricted only for one year. See Defense Science Board, p. D-7 and the relevant section of the U.S. Code, 18 USC §207.
[8] Defense Science Board, pp. 42-43.

several layers below the secretary than as a number two or three job."[9] Moreover, Presidential appointments can hardly serve as a transmission belt of Presidential authority if multiple layers of political appointees diffuse accountability and make departments and agencies more cumbersome and less responsive. And it runs glaringly counter to the trend in today's private sector toward flatter and leaner management structures.

Finally, the appointments process feeds the pervasive atmosphere of distrust and cynicism about government service. The encrustation of complex rules is based on the presumption that all officials, and especially those with experience in or contact with the private sector, are criminals waiting to be unmasked. Congress and the media relish accusations or suspicions, whether substantiated or not. Yet the U.S. government will not be able to function effectively unless public service is restored to a place of honor and prestige, especially for private citizens who have achieved success in their chosen fields.

We need to rebuild the present system nearly from the ground up, and the beginning of a new administration is the ideal time to start. Our recommendations support those made in the Defense Science Board's Human Resource Study, in the joint survey undertaken by the Brookings Institution and the Heritage Foundation, and by Norman Ornstein and Thomas Donilon. We therefore recommend the following:

40: The Executive and Legislative Branches should cooperate to revise the current Presidential appointee process by reducing the impediments that have made high-level public service undesirable to many distinguished Americans. Specifically, they should reduce the number of Senate confirmed and non-career SES positions by 25 percent; shorten the appointment process; and moderate draconian ethics regulations.

Reducing non-career positions would, as the Defense Science Board has noted, "allow more upward career mobility for Senior Executive Service employees and provide greater continuity and corporate memory in conducting the day-to-day business affairs of the Defense Department during the transition between administrations."[10] Recommendation 43 below to create a National Security Service Corps should help ensure that career employees develop the qualifications to be eligible to hold senior positions throughout the government.

The aim of reducing the number of Presidential appointees is not to weaken Presidential political authority over the bureaucracy, but to eliminate the excessive layering that clogs the government's functioning in addition to slowing the appointment process. That said, an exact balance between political and career appointees cannot be specified in the abstract. Both groups include skilled and talented people. But Presidents should be held to a qualitative standard—that political appointees, whether for Ambassadors or for policymaking positions in Washington, should be chosen for the real talents they will bring and not the campaign contributions they brought. [See recommendation 23]

To streamline and shorten the current appointment process, the President and leaders of the new Congress should meet as soon as possible to agree on the following measures.

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[9] *Ibid.*, p. 43.
[10] *Ibid.*, p. 44.

CONFIRM THE NATIONAL SECURITY TEAM FIRST. By tradition, the Senate Foreign Relations, Armed Services, and Intelligence committees hold hearings before inauguration on the nominees for Secretaries of State and Defense and the Director of Central Intelligence, and vote on inauguration day. This practice should continue. Future Presidents should also present to the Senate no later than inauguration day his nominees for the top ten positions at State and at Defense and the top three posts at CIA. Leaders of the relevant committees should agree to move the full slate of appointments to the full Senate within 30 days of receiving the nomination (barring some serious legitimate concern about an individual nominee).[11]

REDUCE AND STANDARDIZE PAPERWORK REQUIREMENTS. The "Transition to Governing Project" jointly undertaken by the American Enterprise Institute and the Brookings Institution is developing software that will enable appointees to collect information once and direct it to the necessary forms. The new President should direct all relevant agencies and authorities to accept these computerized forms and to streamline the paperwork requirements for future appointees.[12]

REDUCE THE NUMBER OF NOMINEES SUBJECT TO FULL FBI BACKGROUND CHECKS. Full field investigations should be required only for national security or other sensitive top-level posts. Most other appointees need only abbreviated background checks, and part-time or lesser posts need only simple identification checks.[13] The risks to the Republic of such an approach are minor and manageable, and are far outweighed by the benefit that would accrue in saved resources and expedited vetting.

LIMIT ACCESS TO FULL FBI FILES. Distribution of raw FBI files should be severely restricted to the chairman and ranking minority member of the confirming Senate committee.[14] Nothing deters the recruitment of senior people more than the fear that their private lives will be shredded by the leakage of such material to the national media.

To significantly revise current conflict-of-interest and ethics regulations, the President and Congressional leaders should meet quickly and instruct their top aides to make recommendations within 90 days of January 20, 2001. This Commission endorses retention of basic laws and regulations that prevent bribery and corrupt practices as well as the restrictions in the U.S. Code that ban former officials from lobbying their former agencies for one year. We also endorse lifetime prohibitions against acting as a representative of a foreign government and against making a formal appearance in reference to a "particular matter" in which he or she participated personally and substantially, or a matter under his or her official responsibilities. However, the Commission recommends two important actions:

Conduct a comprehensive review of the regulations and statutory framework covering Presidential appointments to ensure that regulations do not exceed statutory requirements.

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[11] Ornstein and Donilon, p. 97. We also advocate accelerating the appointment process for the 80 key science and technology personnel in government. See Section II above, and *Science and Technology in the National Interest: The Presidential Appointments Process* (Washington, DC: National Academies of Science, June 30, 2000). The 80 positions of which we speak are listed on p. 8.

[12] Ornstein and Donilon, p. 94.

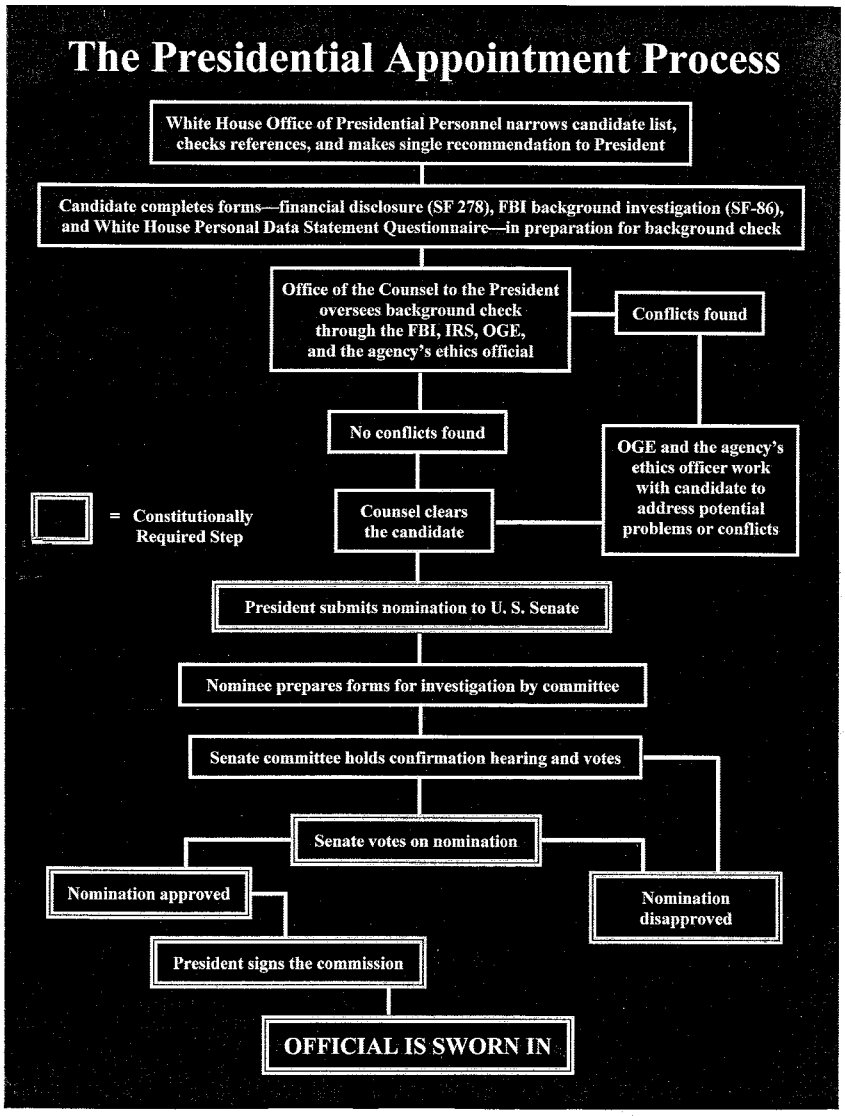
[13] *Ibid.*, p. 95.

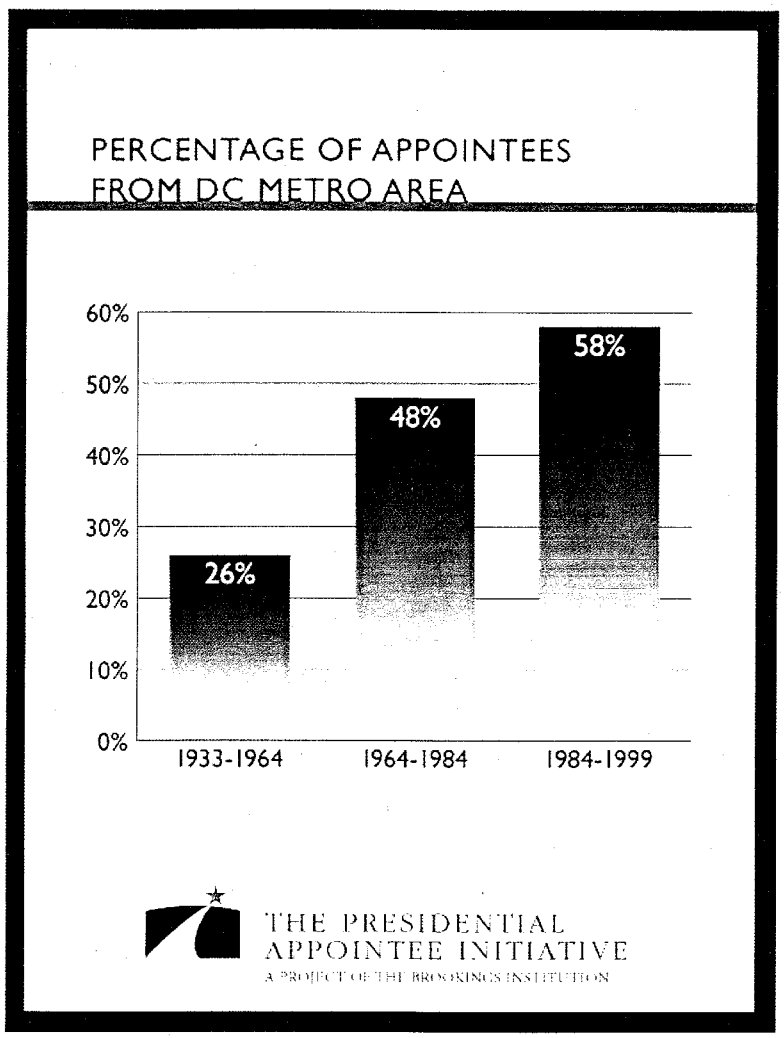
[14] Former FBI (and CIA) Director William Webster has noted that these files are "often freighted with hearsay, rumor, innuendo, and unsubstantial allegations." Quoted in *ibid.*, p. 95.

Make blind trusts, discretionary waivers, and recusals more easily available as alternatives to complete divestiture of financial and business holdings of concern.

The conflict of interest regime *should also be decriminalized.* Technical or inadvertent misstatements on complex disclosure forms, or innocent contacts with the private sector, should not be presumptively criminal. The Office of Government Ethics should be enabled and encouraged to enforce the disclosure and post-employment statutes as civil or administrative matters; to decide questions expeditiously; and to see its job as clearing the innocent, as well as pursuing wrongdoers.

These recommendations can be accomplished through Executive Branch action, such as that which rescinded Executive Order 12834. Other recommendations, however, will require Congressional concurrence and action. We therefore urge the new President to take the initiative immediately with Congress to agree on future statutory reforms.


The Presidential Appointment Process
White House Office of Presidential Personnel narrows candidate list, checks references, and makes single recommendation to President
Candidate completes forms—financial disclosure (SF 278), FBI background investigation (SF-86), and White House Personal Data Statement Questionnaire—in preparation for background check
Office of the Counsel to the President oversees background check through the FBI, IRS, OGE, and the agency's ethics official
Conflicts found
No conflicts found
OGE and the agency's ethics officer work with candidate to address potential problems or conflicts
= Constitutionally Required Step
Counsel clears the candidate
President submits nomination to U. S. Senate
Nominee prepares forms for investigation by committee
Senate committee holds confirmation hearing and votes
Senate votes on nomination
Nomination approved
Nomination disapproved
President signs the commission
OFFICIAL IS SWORN IN


PERCENTAGE OF APPOINTEES
FROM DC METRO AREA
60%
50%
40%
30%
20%
10%
0%
26%
48%
58%
1933-1964
1964-1984
1984-1999
THE PRESIDENTIAL
APPOINTEE INITIATIVE
A PROJECT OF THE BROOKINGS INSTITUTION

THE WALL STREET JOURNAL WEDNESDAY, APRIL 4, 2001

The Glacial Pace of Presidential Appointments

By PAUL C. LIGHT

Having endured the 35-day Florida impasse and a 40-day truncated transition, the nation may now have to wait another six months to know the true quality of the Bush administration. That is the approximate time it will take to swear in the rest of the administration's appointees.

The delay is not in the Oval Office, where the president and his director of presidential personnel, Clay Johnson, have set records in picking candidates. By the end of last week, according to Mr. Johnson, the president had selected candidates for roughly half of the nearly 500 cabinet and subcabinet posts subject to Senate confirmation, and was well on his way to choosing the 2,500 additional appointees who serve at the president's pleasure.

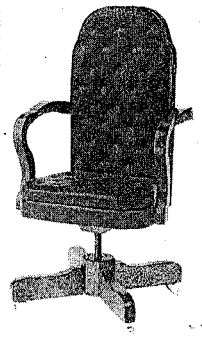
But no matter how fast Mr. Bush picks his candidates, today's presidential-appointments process can accommodate only 20 to 30 nominees a week. Clogged with bureaucratic sediment and filled with distrust, the appointments pipeline involves a succession of twists and turns that leaves nominees exhausted, embarrassed and confused.

Imagine the worst possible process for building an administration. It would begin with 60 pages of forms, most of which must be filled out with a typewriter. It would continue with a Federal Bureau of Investigation background check that can take six weeks or more. It would feature a financial disclosure process that requires a top-to-bottom scrubbing for any possible conflict of interest. It would end with a Senate confirmation process that introduces an entirely new set of forms and hearings and schedules. It would, as former White House counsel C. Boyden Gray once remarked, assume that all appointees are innocent until nominated.

Unfortunately, this abusive process isn't imaginary. It is the status quo, and it has clearly worsened over the past four decades. According to surveys of past presidential appointees conducted by the Brookings Institution's Presidential Appointee Initiative, the delays have grown with each passing administration.

Roughly 30% of the appointees who served between 1984 and 1999 said the nomination and confirmation process had taken more than six months, compared with just 15% of the appointees who served between 1964 and 1984. Whereas the Kennedy administration was fully in place by the middle of April after inauguration, and the Reagan administration by the middle of June, the first Bush administration was not fully confirmed until early October, and the Clinton administration not until mid-October.

Much of this delay comes from the sheer number of jobs to be filled. Convinced that more leaders equal greater accountability, every Congress and president since the 1960s has added Senate-confirmed positions. Kennedy nominated just 15 undersecretaries in 1961; Mr. Bush will appoint almost 50. Kennedy nominated 87 assistant secretaries; Mr. Bush will appoint more than 220.



Still empty

Presidents have also added layers of nonconfirmed positions. Despite its promise to flatten government, the Clinton administration added 16 new layers to the top of the federal hierarchy, including ridiculously overblown titles such as assistant chief of staff to the secretary, deputy to the deputy secretary, principal assistant deputy undersecretary, and associate principal deputy assistant secretary. Because every appointment, major and minor, carries some potential for political disaster, all must go through the same background checks and White House review. But because the process can only handle 20 to 30 names a week, delays are inevitable.

Numbers aren't the only problem. The forms themselves take forever to complete, and have become a sort of bureaucratic torture. Designed to ferret out communists during the McCarthy era, the forms cover every possible embarrassment and are needlessly complex. The financial disclosure form includes 11 pages of instructions, while the national security form contains ridiculously outdated questions. Does the Federal Bureau of Investigation still need to know the dates and places of birth of all relatives, including in-laws? Does it still need to ask for the dates and purposes of all foreign trips over the past 15 years, including short trips to Mexico and Canada? And where, pray tell, is the national security risk in having a traffic fine over $150?

Add them all up, and most Bush appointees will answer 230 questions, many of which ask for the same information, with just enough variation to require an entirely new answer. It is little wonder that half of the Reagan, Bush I, and Clinton nominees interviewed by the Presidential Appointee Initiative said they sought outside help to fill out the forms, or that one-sixth spent money out of their own pocket to pay for legal or financial advice.

The delays don't end once nominees leave the executive branch. The Senate introduces new roadblocks, including personal holds, threatened filibusters, scheduling conflicts, and frequent recesses. If the Bush administration doesn't get its cabinet and subcabinet confirmed by late October when the Senate adjourns, it may have to wait until mid-January to start again. Under the best of circumstances, the Senate moves at subglacial speed, and now is anything but the best of circumstances. With so much at stake in the 2002 elections, and so many Senate Democrats angling for the 2004 presidential nomination, the upper chamber will be empty early and often over the next two years.

This process would make perfect sense if there were some value in discouraging talented Americans from accepting the call to service. Luckily, the Senate Governmental Affairs Committee believes otherwise, and has scheduled hearings this week to consider a range of reforms that would streamline the process and flatten the political hierarchy. Although action isn't likely to come in time to rescue the first class of Bush appointees, the Senate has a unique opportunity to help future presidents. Unless something is done soon to cut the delays, future administrations may find themselves leaving office before they finish arriving.

Mr. Light is vice president and director of governmental studies at the Brookings Institution and senior adviser to the Presidential Appointee Initiative, a project funded by the Pew Charitable Trusts.

THE WASHINGTON POST TUESDAY, APRIL 3, 2001 A21

Richard Cohen

What Price Service?

I have spoken with several senators in the past week. These conversations were mostly on what is called "background," meaning I could use the information but not attribute it to anyone in particular. So I will not reveal whose views I am reflecting when I say: Charles Lewis, drop dead.

Lewis is the executive director of something called the Center for Public Integrity, which is one of those watchdog groups that ensures that no one in Washington will have the least bit of fun. It was, in fact, Lewis to whom the New York Times turned when it needed a scold to comment on the fact that some high-level Bush administration officials are losing millions in the stock market.

I am referring to Secretary of State Colin Powell, Commerce Secretary Donald Evans, Office of Management and Budget Director Mitchell Daniels and Defense Secretary Donald Rumsfeld, among others. They are selling any investments that might, in some way that Charles Lewis would be glad to explain, pose a conflict of interest.

Powell, for instance, is disposing of 31 stocks, many of them high tech, whose prices are way down. The others are in the same jam. Only Treasury Secretary Paul O'Neill, the former CEO of Alcoa, is lucking out. His Alcoa holdings have increased in value by $43 million since Election Day—an ominous indication that nothing increases the value of a company like O'Neill's leaving it. I'm sure this is only a coincidence.

All these Bush administration officials are millionaires many times over, and none of them is about to become poor. The fact remains though, that for whatever reason—maybe even patriotism—they are losing vast amounts of money so they may serve in government. On the face of it, this is so uncharacteristic of American businessmen that it suggests a nearly fatal, but probably treatable, lack of greed. Lewis, however, demurs.

"Pardon me if I don't get out a handkerchief," he said. "It is a great honor and privilege to serve at the highest levels of government, and it is a free country. These guys don't have to do it."

Yes. And on account of Lewis and others like him, it would be no surprise if, increasingly, more and more talented people choose not to. I mean, why do it? You throw away a fortune, accept a salary that's about what you made 30 years ago, have to spend weeks filling out forms for the FBI and take the chance that a mistake that once would have been buried in an annual report is now going to make Page One of The Washington Post.

Ask yourself, would you lead such a life? Consider Steve Case, the CEO of Everything (AOL-Time Warner), who took in $71.2 million last year. He gets to use a company plane, a company car, a company this and a company that. If he decides to pause in Vegas while on his way to L.A., that's his business—as long as he reports it properly. This is the updated version of the American dream.

Case is an awfully smart guy. The government could use people like him. But would he consider it? One look at the forms, the restraints—the scowling, judgmental face of Charles Lewis—might prompt him to wonder if it's worth it all. With the "honor" and the "privilege" can come so much pain.

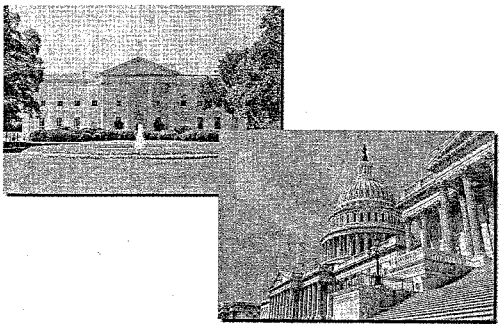
My doctor tells me Washington is much more corrupt than it used to be. My dentist concurs. Don't even ask about my accountant. Given the chance, I rebut these assertions. Washington is so clean it's boring. The rogues are gone, and politics has become a sort of priesthood. You can do a little good but for a lot of sacrifice.

I blame all this on Charles Lewis and his gang of virgins. They have drained the fun out of politics. Those senators I spoke with (see above) all work incredible hours, usually weekends as well. They are not corrupt, and they are not buffoons, and their egos, while healthy, are not much different from your average CEO's—many of whom make much more money failing than any government official can by succeeding.

So shut up, Charles Lewis. If Colin Powell is willing to lose millions of dollars by going back into government, at least thank him for the hit he's going to take and say we're grateful. The same holds for the others—even Rumsfeld, with whom I almost always disagree. We who would not part with a dime salute them.

The Presidential Appointment Process

Reports of Commissions that Studied the Staffing of Presidential Administrations: A Summary of Their Conclusions and Recommendations for Reform



Committee on Governmental Affairs
United States Senate
Washington, D.C.

Fred Thompson
Chairman

Joseph I. Lieberman
Ranking Member

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JOYCE A. RECHTSCHAFFEN, *Democratic Staff Director and Counsel*
DARLA D. CASSELL, *Chief Clerk*

Introduction

When our form of government was designed more than two hundred years ago, the Founding Fathers realized that the work of elected officials would need to be supplemented by non-elected public servants. Worries developed over time about the threat to democracy posed by individuals who might put their self interest above that of the country and the American people. Since these high-ranking officials would not be elected, what would prevent them from abusing their significant power? As a solution, the Presidential appointment process was developed. The appointment process has evolved, but the basic premise remains the same: for certain influential positions, the White House nominates a candidate who is then confirmed by the Senate. Even though the appointees themselves are not elected, the public can hold the President and the Congress responsible for the appointees' actions while serving the public interest. Thus, it is incumbent on the President and the Congress to ensure that appointees meet exacting standards.

On the surface, the Presidential appointment process appears to be simple and straightforward. A candidate is selected, then nominated, and finally confirmed by the Senate. However, some nominees have complained that the system is mired in bureaucracy, politics, burdensome and often unnecessary paperwork, and confusing ethics laws and policies. Knowledgeable observers worry that some of the best, most-qualified people are turning down the opportunity to serve the public because of privacy concerns, severe post-employment restrictions, and the low public image of government officials.

As early as 1937, recommendations were made to improve the appointment process. President Franklin Roosevelt received recommendations from the Brownlow Committee, which he formed to recommend ways to improve the management of the Executive Branch. Since 1985, nearly a dozen other major studies have examined the way a Presidential administration is staffed. These reports recommend a number of different solutions, but generally follow a central theme. First, a number of the reports make the case that the myriad of paperwork required by various offices needs to be condensed into standardized forms. Second, many of the commissions come to the conclusion that background investigations and financial disclosure regulations must be streamlined. Finally, many of the reports reflect the belief that the complicated, and sometimes conflicting, ethics regulations that set conflict-of-interest policies need to be reexamined and streamlined.

The Committee on Governmental Affairs has taken an active role in evaluating the current state of the Presidential appointment process. As part of this, we introduced an amendment to the Presidential Transition Act, which required a report from the Office of Government Ethics on the current state of the financial disclosure process – a key element of the presidential appointment process – and to make recommendations for reforming it. The Committee made clear that the Office of Government Ethics should ensure that its recommendations are consistent with the need to avoid conflicts of interest on the part of appointees. The Committee notes that merely undertaking this study has brought about efforts to reduce apparently duplicative or unnecessary steps in the appointment process.

While the Committee continues to examine the Presidential appointment process, we know it's important to take note of the numerous exhaustive studies that have preceded and laid the groundwork for our efforts. The following compilation summarizes the findings of these studies, detailing the recommendations put forth by each group. It is worth noting that many of the problems first identified in

President Roosevelt's 1937 Brownlow Commission report continue to exist today. Each successive study has reached the consensus that reform is necessary and changes in the process are achievable.

The Committee will seriously consider the many recommendations made to reform the Presidential appointment process contained in the report of the Office of Government Ethics, the Presidential Appointee Initiative, and other initiatives. The Committee will consider implementing those recommendations that can improve the process, maintain the highest integrity of the public service, and respect the advise and consent process set forth in the Constitution.

Fred Thompson
Chairman

Joseph I. Lieberman
Ranking Member

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II. **National Academy of Public Administration - 1985**
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III. **National Commission on the Public Service ("Volcker Commission") - 1989**
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The National Commission on the Public Service, chaired by Paul Volcker, was established in 1987 as a private, non-profit organization to analyze the "quiet crisis" in the public service and make recommendations for improvements to the President and Congress. The Volcker Commission recommended reducing the overall number of presidential appointees, as well as actively recruiting applicants (based on pre-established job descriptions) early in an administration. The Commission also suggested streamlining the nomination process, in terms of financial disclosure and conflict-of-interest divestment. Increasing pay, adding post-employment severance pay, and giving the cabinet heads more control over nominees were also Commission recommendations.

IV. **The President's Commission on Federal Ethics Law Reform ("Wilkey Commission") - 1989**
To Serve with Honor: Report and Recommendations to the President
President's Bush's first Executive Order established the Wilkey Commission to evaluate existing ethics rules with twin objectives: "to obtain the best public servants, and to obtain the best from our public servants." The Wilkey Commission proposed a number of changes to ethics laws and procedures aimed at simplifying the appointment process. These included standardized financial disclosure forms; greater cooperation between the Office of Government Ethics, the White House, and the Department of Justice; tighter conflict-of-interest prohibitions; and tax relief legislation for divestment.

V. **President's Commission on the Federal Appointment Process - 1990**
Report on the Federal Appointment Process
Members of the Commission, composed of ethics officials of the three branches of Government, studied ways to simplify the Presidential appointment process by reducing the number and complexity of forms to be completed by potential appointees. Among the Commissions recommendations were early identification of nominees; standardized forms for FBI investigations, Senate Committee hearings, and financial disclosure requirements; and full-time guidance from the White House during the nomination process.

VI. **National Academy of Sciences - 1992**
Science and Technology in American Government
Although primarily a study on science and technology positions in the federal government, the Academy also recommended reducing the number of Senate-confirmed appointments; easing financial disclosure, conflict-of-interest disclosure, and post-employment restrictions; standardizing forms; and giving cabinet heads more control over the presidential appointment process.

VII. **American Bar Association, Committee on Government Standards - 1993**
Keeping Faith: Government Ethics & Government Ethics Regulation
The Committee on Government Standards suggested a number of changes to refine and improve post-employment restrictions and financial disclosure requirements in order to foster a more ethical system for federal officers and employees. It also proposed detailed changes to existing law and procedures to improve the nomination process.

VIII. **20th Century Task Force on the Presidential Appointment Process- 1996**
Obstacle Course
In 1995, the Twentieth Century Fund gathered a group of distinguished and knowledgeable Americans to consider possible reforms in the process of selection, clearance, and Senate confirmation of presidential appointees. The Task Force report concluded that changes in the Presidential appointment process were necessary to prevent a decline in American leadership. Its recommendations included early selection of nominees, who should be guided by full-time White House personnel; standardized, streamlined forms; decreased financial disclosure; reducing the number of appointees, and increased Office of Government Ethics involvement.

IX. **Heritage Foundation - 2000**
Keys to a Successful Presidency and Roundtable Discussion
Among the many suggestions for improving the Presidential appointment process, participants agreed on the need for standardized forms (to be available on the Internet); streamlined financial disclosure requirements; early selections of nominees and a White House office to guide them through the process; faster background investigations; and more White House control over the choice of nominees.

X. **Hart-Rudman Commission - 2001**
Road Map for National Security: Imperative for Change
In its efforts to outline a future strategy for the federal government, the Commission proposed that the overall number of appointees be decreased; forms should be standardized within and between government branches; the Office of Government Ethics should become more involved in the process; early selections of candidates should be the norm; and the financial, FBI background, and conflict-of-interest aspects of the nominee procedure should be streamlined and made consistent.

I. The President's Committee on Administrative Management ("Brownlow Committee")
Administrative Management in the Government of the United States
1937

Members of the Brownlow Committee

Louis Brownlow *Chairman, Presidential Management Expert*	**Charles E. Merriam** *Advisor, Franklin D. Roosevelt's "Brain Trust"*	**Luther Culick** *Director, Institute of Public Administration*	**Joseph P. Harris** *Director of Research*

The Committee was established by President Roosevelt early in his second term to recommend to him ways to improve the management of the Executive Branch, with particular emphasis on strengthening the hand of the President. The Committee's report centered on proposals to reorganize the Executive Branch. However, it offered several recommendations that have some relevance to Presidential appointees:

Recommendations

- Extend the merit (civil service) system to all permanent Executive Branch positions, except a very small number of high level policy-making positions.
- Reduce the number of Presidential appointees to department secretaries and others who report directly to the President or who are required by the Constitution to be Presidential appointees. (According to the report, 40,000 positions were subject to Presidential appointment at that time.)
- Increase the pay of top Executive Branch officials.

II. *Leadership in Jeopardy: The Fraying of the Presidential Appointments System*
National Academy of Public Administration's Presidential Appointee Project
1985

Members of the Presidential Appointee Project

Paul C. Light *Director of Academy Studies*	**John W. Macy** *former Chairman, U.S. Civil Service*	**Frank C. Carlucci** *former Deputy Secretary of Defense*
Carol C. Laise *former Director General, U.S. Foreign Service*	**Philip Klutznick** *former Secretary of Commerce*	**Fredrick C. Mosher** *Emeritus Professor, University of Georgia*
J. Jackson Walter *former Director, Office of Government Ethics*	**G. Calvin MacKenzie** *Project Director*	**Christopher Bayard** *Assistant to the Project Director*
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Carl Brauer *Research Associate*	**Virginia Crowe** *Research Associate*	**Christopher J. Deering** *Research Associate*
Michael G. Hansen *Research Associate*	**Hugh Heclo** *Research Associate*	**Jeremy F. Plant** *Project Consultant*
Celinda C. Lake *Project Consultant*	**Robert N. Roberts** *Project Consultant*	**Lynn Bylan** *Project Secretary*

The Academy established the Presidential Appointee Project in 1984 to conduct research on the operations of the appointment process and the backgrounds and work experiences of presidential appointees. To explore past and current White House procedures for recruiting and selecting presidential appointees, personal interviews were conducted with most of the individuals who served as senior presidential personnel aides in the past quarter century. To examine the background of presidential appointees, the project staff identified a target group of past and present officials whose characteristics and experiences were representative of those who hold the most important leadership positions in the executive branch. The appointee population analyzed included 1287 presidential appointees who held a total of 1528 presidential appointments. The Academy conducted extensive biographical research and developed a 12-page questionnaire in order to survey the entire target population, resulting in a number of substantive recommendations.

Recommendations

- Planning for the staffing of a new administration should begin no later than the month in which the major party candidates are nominated.
- Personnel information resources should be expanded. The Office of Management and Budget should be responsible establishing and updating briefing papers, including job descriptions, for the new administration.
- FBI investigations should be streamlined and more flexible.
- The Senate and the Office of Government Ethics should simplify and clarify the financial disclosure forms, and should require less detail for income and holdings.
- The President should recommend legislation permitting presidential appointees to delay the impact of the capital gains taxes they incur in divesting assets to comply with conflict-of-interest laws and

the mandates of Senate committees.

- A legislative ban should be placed on the solicitation or discussion on future employment in the private sector by any nominee pending his or her appointment. All appointees with genuine financial need should be granted up to 3 months of severance pay for transition out of the federal government.
- No Senator should be allowed to place a hold on a nomination for more than 5 working days.
- A special unit should be established within the Presidential Personnel Office to assist new appointees in handling personal and official difficulties. Appointees should be provided with briefing papers outlining the process of clearances and reviews, and should have orientation programs.
- Appointees' working environments - including pay, compensation, organizational culture, and promotions - need to be re-evaluated to adequately compensate them for their work.

III. *Leadership For America: Rebuilding The Public Service*
National Commission on the Public Service ("Volcker Commission")
1989

Members of the Volcker Commission

Paul A. Volcker (Chair)
Former Fed Chairman

Anne Armstrong
Former Counselor to Presidents Nixon and Ford

Derek Bok
President of Harvard

John Brademas
President of NYU; former U.S. Rep.

James E. Burke
Chairman and CEO, Johnson& Johnson

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Dr. Robert A. Charpie
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Chairman and CEO of General Foods

Gerald R. Ford
Former President

Douglas A. Fraser
Former President of the United Auto Workers

John W. Gardner
Former HEW Secretary; founder of Common Cause

General Andrew J. Goodpaster
Former NATO Commander

Walter A. Haas, Jr.
Honorary chairman of Levi Strauss&Co.

Rev. Theodore M. Hesburgh
President Emeritus of Notre Dame

Vernon E. Jordan, Jr.
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Donald Kennedy
President of Stanford

Leonard H. Marks
Former Director of USIA

Charles M.C. Mathias, Jr.
Lawyer; former Senator

Robert S. McNamara
Former Defense Secretary

GG Michelson
Senior V.P. for R.H. Macy&Co.

Walter F. Mondale
Lawyer; former Vice President and Senator

Edmund S. Muskie
Lawyer; former Senator

Nancy M. Neuman
President, League of Women Voters

Paul H. O'Neill
Then Chairman and CEO of ALCOA; now Treasury Secretary

Norman J. Ornstein
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Lawyer; former Attorney General and HEW Secretary

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Alexander B. Trowbridge
President, National Association of Manufacturers; former Commerce Secretary

Carolyn Warner
Lecturer and educational leader

L. Bruce Laingen
Executive Director

Paul C. Light
Senior Advisor

The National Commission on the Public Service (popularly known as the "Volcker Commission," named for its chairman, Paul Volcker) was established in 1987 as a private, non-profit organization to analyze the "quiet crisis" in the public service and make recommendations for improvements to the President and Congress. Much of its work focused on career federal employees, but the Commission also made a number of recommendations that are relevant to Presidential appointees.

Recommendations

- Reduce the total number of Presidential appointees, both those that require Senate confirmation and other non-career positions. While noting that reductions would have to be based on position-by-position assessments, the Commission suggested that a reduction from the then-current 3,000 to 2,000 was "a reasonable target."
- Develop "qualification statements" for all Presidential appointee positions and make appointments "based on those merits." Also, the Office of Presidential Personnel should actively recruit appointees and not limit itself to unsolicited resumes or to applicants who were politically active in the Presidential campaign.
- Streamline the financial disclosure process. The Commission specifically endorsed prior recommendations by NAPA and the Harvard Public/Private Careers Project to compress current income and property reporting categories. It also endorsed a recommendation by the Administrative Conference for enactment of legislation to ease tax penalties for divestiture.
- Grant political appointees 3 months severance pay and full benefits at the end of their public service.
- Increase the pay of all public officials, including political appointees. In order to "restor[e] the depleted purchasing power" of top officials in all three branches, the Commission recommended an immediate 25% raise and the indexing of future pay raises.
- Provide orientations for all political appointees.
- Give cabinet secretaries and agency heads more influence over the selection of their subordinate political appointees.
- The President should more often consider career officials for sub-cabinet appointments.
- Reduce the 25% limit on the number of non-career Senior Executive Service positions in any agency.

IV. The President's Commission on Federal Ethics Law Reform ("Wilkey Commission")
To Serve with Honor: Report and Recommendations to the President
1989

Members of the President's Commission on Federal Ethics Law Reform

Malcolm Richard Wilkey (Chair)
Judge, U.S. Court of Appeals, D.C. Circuit Court

Griffin B. Bell
Former U.S. Attorney General

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Lloyd N. Cutler
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Former Senator from New Mexico

R. James Woolsey
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Amy L. Schwartz
Former State Department Lawyer

President's Bush's first Executive Order established the Wilkey Commission to evaluate existing ethics rules with twin objectives: "to obtain the best public servants, and to obtain the best from our public servants." The study began with the assumption that all public officials want to follow ethical rules, and that "they will do so if the laws are clearly delineated, equitable, uniform across the board, and justly administered." After examining existing regulations, members of the Commission found that several ethics laws needed to be changed in order to comply with these desired characteristics. Thus, the Wilkey Commission proposed a number of changes to ethics laws and regulations.

Recommendations

- The Office of Government Ethics, in collaboration with the Department of Justice, should issue interpretive regulations relating to financial conflicts of interest, and legislation should be enacted giving the Office of Government Ethics authority to issue rules providing for general waivers.
- Legislation should be enacted to grant tax relief to persons who are required to divest assets in order to avoid conflicts of interest.
- Federal employees should be prohibited from receiving honoraria; criminal prohibitions against supplementing government salaries should apply to all three branches; senior employees should be covered by a uniform percentage cap (subject to Presidential exemption) on outside earned income.
- A 1-2 year post-employment ban should be placed on high-level employees, to prevent the disclosure of non-public information and undue influence.
- Public disclosure reporting systems should be standardized, and categories of reporting should be broadened and generalized.
- A coordinating committee, composed of ethics officials of the three branches of Government, should study ways to simplify the Presidential appointment process by reducing the number and complexity of forms to be completed by potential employees.
- The administrative debarment procedures for former government employees who violate the post-employment restrictions should be strengthened.

V. President's Commission on the Federal Appointment Process
Report on the Federal Appointment Process
1990

Members of the President's Commission on the Federal Appointment Process

Thomas J. Murrin (Chair)
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C. Abbott Saffold
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Subcommittee Chairman, and Assistant Secretary of Education

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Calvin Mackenzie, Colby College
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John C. Danforth, U.S. Senator
William S. Sessions, FBI Director
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The President's Commission on the Federal Appointment Process was established by President Bush's Executive Order 12719. The Commission served as a coordinating committee composed of ethics officials of the three branches of Government. Members of the Commission studied ways to simplify the Presidential appointment process by reducing the number and complexity of forms to be completed by potential appointees. The Commission began its study by noting that long delays in the nomination, confirmation, and appointment processes hindered the effective administration of a new President's goals. These difficulties also prevented the public from holding government officials accountable through their elected representatives. After researching the problem, the Commission offered a number of recommendations.

Recommendations

- The Senate should adopt one basic form for all committees, with the committees reserving the right to include addenda customized to suit their particular requirements.
- Each Senate committee should reconsider the need for appointees to submit net worth statements.
- The executive branch and the Senate should agree on what forms to require, and then distribute the bulk of the forms to the nominee at one time.
- The FBI should provide nominees awaiting Senate confirmation with their FBI files within days of their requests.
- The appointing authority should encourage nominees to submit previously filed SF-86 forms along with completed new forms to assist the FBI in expediting their investigations.
- The FBI should enunciate a clear, consistent policy on which forms it will accept.
- Questions regarding the mental health background of candidates for nomination should minimize any unnecessary intrusion into their medical and psychological histories.
- Appointees for positions requiring Senate confirmation should be nominated as soon as possible, and their average length of service should be increased.
- The Executive Clerk to the President and the departments should maintain and update job descriptions for Presidential appointments requiring Senate confirmation. These job descriptions should be public information.
- White House staff should retain appropriate personnel to guide prospective nominees through the appointment process.
- The national political committees (or campaign staffs) should establish personnel offices for their presidential candidates immediately after their nominating conventions to identify prospective appointees beneath the cabinet rank.
- Positions on boards requiring Senate confirmation should be kept to a minimum.
- The Office of Government Ethics should be more involved in the appointment process for positions requiring Senate confirmation.

VI. National Academy of Sciences
Science and Technology in American Government
1992

Members of the National Academy of Sciences Commission on Science and Technology in Government

Kenneth W. Dam (Chair)
Vice President, Law and External Relations, IBM

William T. Coleman, Jr.
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John M. Deutch
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Foreign Secretary, NAS and the Institute of Medicine, and Professor of Medicine, Duke University

Michael McGeary (Study Director)

James Pfiffner (Consultant)
Professor of Government and Politics, George Mason University

Elizabeth Blount (Project Assistant)

This report is drawn from a study of the federal government's capacity to recruit highly qualified individuals for the top science- and technology-related leadership positions in the executive branch. The studied was conducted by former political appointees and experts in the political appointment process. This panel was asked to study the problems encountered by administrations in attracting and keeping talented individuals in science and technology-related positions. After examining a set of 78 presidentially appointed, Senate confirmed positions at the subcabinet level, the panel reached a number of conclusions and made recommendations to improve the government hiring and retention of high-skilled workers.

Recommendations

- Post-employment restrictions should be eased to make positions more enticing.
- Ethics laws should be streamlined and clarified on a continuing basis.
- Conflict-of-interest laws are too stringent, and should be eased, with recusal and full disclosure being the primary remedy in most cases.
- The appointment process should be streamlined and accelerated, with reduced paperwork and background investigations.
- Presidents should rely more heavily on cabinet secretaries and agency heads for recruitment of candidates for subcabinet positions.
- There should be a separate office designated specifically as an science and technology advisor in the Office of Presidential Personnel.
- Reduce the number of presidentially appointed, Senate confirmed positions.
- Review the overall quality of life situation for presidential appointees, and make their compensation more attractive.

VII. American Bar Association
Government Standards Committee
Keeping Faith: Government Ethics & Government Ethics Regulation
1993

Members of the Committee on Government Standards

Professor Cynthia Farina
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former Counsel to the President of the United States

Honorable Erwin N. Griswold
former Solicitor General, Jones, Day, Reavis & Pogue

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Jerome G. Lee, Esq.
Morgan & Finnegan, President of the American Intellectual Property Law Association

Honorable James C. Miller
Director OMB (Reagan)

Alan B. Morrison, Esq.
Co-Director of Common Cause

Steven R. Ross, Esq.
Akin, Gump, Strauss, Hauer & Feld, former House Counsel

Honorable John H. Shenefield
Assistant Attorney General, Antitrust Division, Department of Justice

Honorable R. Gaull Silberman
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Judge Walter Stapleton
3rd U.S. Circuit Court of Appeals

Thomas M. Susman, Esq.
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Catherine Walker, Esq.
Senior Vice President and General Counsel for Westin Hotels

W. Lawrence Wallace, Esq.
Assistant Attorney General for Administration (Reagan)

Honorable William H. Webster
FBI Director (Reagan)

The Committee on Government Standards had as its goal to develop a clear, comprehensive, and uncomplicated framework for assessing appropriate conduct for federal employees. The Committee made a number of recommendations to reform the nation's ethics laws. Although not singling out political appointees, many of the Committee's recommendations apply to Presidential appointments.

Recommendations

- Expand the tax relief enacted by the Ethics Reform Act of 1989 for divestitures required for ethics purposes, which allowed the rollover of income gains on certain required divestitures. Specifically, the report recommended: (1) extend the rollover option to all federal employees who divest in order to avoid or remedy a conflict of interest; (2) liberalize the types of "neutral" investments into which gains can be rolled over; and (3) enact a "reverse rollover" when an individual disposes of "neutral" investments that were previously acquired as a result of divestiture.
- Reduce the multiple categories of value by which items must be reported on financial disclosure

forms to just two: $1,000 to $50,000 and over $50,000. (The report described the current multiple categories of value as "one of the most intrusive and burdensome, and at the same time least ethically meaningful, aspects" of the financial disclosure rules.)

- Make the reporting requirements for income, liabilities, etc., of an employee's immediate family members identical to reporting requirements for the employee. Also, eliminate the requirement to specify which family member has an asset or liability.
- Modify the current blanket exception from reporting for mortgages on personal residences. Instead, require reporting of any mortgage known by the employee to be held by someone other than a commercial lending institution.
- Eliminate duplicate reporting by reviewing current reporting categories and identifying those that can be eliminated or consolidated.
- Work toward greater standardization of the variety of forms used for public and intra-agency filings. (The report expressed "particular concern" over the fact that nominees for positions requiring Senate confirmation must fill out one form for the Office of Government Ethics and another form for the Senate.)
- Rewrite the rules on outside activities and receipt of outside income by federal employees to tie them more closely to avoiding ethics concerns or other problems.
- Repeal the 15% cap on outside earned income by senior officials, except for Members of Congress and senior legislative staff. (The report reasoned that outside income restrictions for the other two branches could be imposed administratively.)
- Ease regulatory restrictions on teaching by federal employees.
- Modify restrictions against service by federal employees on corporate boards. Broaden the restrictions against service on the boards of for-profit entities, and ease restrictions against service on boards of non-profits.
- Congress should re-examine and narrow restrictions against federal employee involvement in professional organizations and pro bono activities.
- Amend section 207 of title 18 to broaden the prohibition against post-employment involvement in "particular matters" that an official or employee participated in during federal service.
- Strike a balance between the one-year "no-contact" ban in section 207 of title 18 and the five-year ban in President Clinton's Executive Order 12834. (The report suggested that one year was too brief while five years was too long. President Clinton rescinded this Executive Order shortly before he left office.)
- Eliminate special exceptions to section 207's one-year no-contact ban involving clients such as non-profit organizations and state and local governments.
- Eliminate provisions in section 207 that impose more stringent post-employment restrictions involving certain activities, such as trade or treaty negotiations.

VIII. 20th Century Task Force on the Presidential Appointment Process
Report: Obstacle Course
1996

Members of the Task Force

John C. Culver (Co-Chair)
former U.S. Senator

Charles M.C. Mathias (Co-Chair)
former U.S. Senator

John Brademas
former U.S. Congressman

Suzanne Braum Levine
Editor, Columbia Journalism Review

Arthur B. Culvahouse, Jr.
former Counsel to Reagan

Lloyd N. Cutler
former Counsel to Presidents Carter and Clinton

Amy Gutmann
Dean of the Faculty, Princeton University

Charles V. Hamilton
Professor of Government, Columbia University

Constance Horner
OPM Director for Reagan, Director of the Presidential Personnel Office for Bush

Thomas J. Kean
President, Drew University; former Governor of New Jersey

Arnie Miller
former Director of the Presidential Personnel Office for Carter

John D. Podesta
former White House Staff Secretary for Clinton

Theodore C. Sorensen
former Special Counsel to President John Kennedy

Michael I. Sovern
President Emeritus and Chancellor, Columbia University

Richard J. Tofel
Dow Jones & Co.

Paul A. Volcker
Former Chairman of the Board of Governors, Federal Reserve Board

John C. Whitehead
Former Deputy Secretary of State

G. Calvin Mackenzie,
Task Force Executive Director, Colby College

David A. Smith
Task Force Consultant; Fellow, Twentieth Century Fund

The Twentieth Century Fund (now the Century Foundation) is a non-profit, nonpartisan organization that sponsors and supervises analyses of economic policy, foreign affairs, and domestic political issues. In 1995, the Twentieth Century Fund gathered a group of distinguished and knowledgeable Americans to consider possible reforms in the process of selection, clearance, and Senate confirmation of presidential appointees. Its goal was to "assess whether the current system, on balance, is beneficial or detrimental to good government." In 1996, the task force released an evaluation of the appointment process, concluding that "steps must be taken to prevent a decline in the quality of American leadership and to restore integrity to the appointment system." The Task Force made a number of recommendations to reform the appointment process:

Recommendations

- Presidential nominees are frequently caught in the middle of political disputes in which individual senators place a hold on a set of nominations in order to gain concessions from the President or other Senators. The Task Force recommended modification of this practice to ensure that holds not be used as a political tool. Confirmation debates on executive branch appointments, according to the Task Force, should be shielded from filibusters and hearings should be waived for lower-level, non-controversial appointments.
- To address problems generated by public exposure of nominees' personal lives, the Task Force concluded that sensitive issues should be discussed in closed executive sessions, protecting the privacy of the individual and the integrity of the confirmation process.
- The Task Force recommended reducing the number of Presidential appointments by

approximately a third of the current total and eliminating Senate confirmation for many lower-ranking officials.

- Presidential candidates should begin planning the staffing of their administrations prior to the election. Following the election, additional, temporary staff should manage the appointment process.
- The Task Force suggested establishing a small coordinating office to expedite nominees' background checks and assist them in the confirmation process.
- FBI full-field investigations should be reduced or eliminated for some appointments; financial disclosure requirements should be simplified; and a single financial disclosure form and set of questions should be agreed upon.
- Because current legal requirements are complex and difficult to implement, a regulatory process managed by the Office of Government Ethics should replace criminal statutes in gauging post-employment restrictions on former presidential appointees.
- The Task Force also called for greater civility from all parties that comprise the modern nomination, confirmation, and appointment system. Many nominees in recent years have been subjected to damaging treatment by politicians, the media, and the public. When the system becomes hostile, the entire political system is discredited in the public mind.

Dissent

Constance Horner, former Director of the U.S. Office of Personnel Management for President Ronald Reagan and former Director of the Presidential Personnel Office for President George Bush, issued a dissent to the Task Force's report. In that dissent, she wrote:

> *I do not agree with the Report's premise that there is or should be an inviolable 'zone of privacy' for nominees, such that some areas of inquiry are ruled out-of-bounds in the nomination and confirmation process. From time to time, participants in the process have abused and maligned potential appointees. However, responsible inquiries into character have also identified serious evidence of unfitness to serve.*

Ms. Horner also added:

> *On another subject, many of the Report's recommendations propose to shift some power over appointments from the Congress to the President. These recommendations are, in my view, sound on the merits. However, it is worth noting that support for such a shift among bodies such as those advising on this Report strengthened just as the Republican party gained control of the Congress for the first time in forty years. Thus, if a recommendation for a shift of power between the branches is not hospitably received by the new Congress – which knows the institutional influence of its predecessors – it should come as no surprise.*

IX. Heritage Foundation
Keys to a Successful Presidency and Roundtable Discussion Transcripts
2000

Presenters and Members of the Roundtable Discussion

Honorable Edwin Meese III
Ronald Reagan Fellow in Public Policy, The Heritage Foundation

E. Pendleton James
Director of Presidential Personnel (Reagan)

Chase Untermeyer
Director of Presidential Personnel (Bush)

Veronica Biggens
Director of Presidential Personnel (Clinton)

James King
Director of Presidential Personnel (Carter) and Director of OPM (Clinton)

James Pfiffner
Professor of Government and Public Policy, George Mason University

Paul Light
Vice President and Director of Government Studies for the Brookings Institute

As a part of its Mandate for Leadership Project, the Heritage Foundation has published *Keys to a Successful Presidency*, a strategy for succeeding in the White House. One of the nine programs is entitled "Staffing a New Administration" and addresses the task of filling presidential appointments. This chapter draws on the knowledge of past Directors of the Presidential Personnel Office, as well as experts on the Presidential appointment and Senate confirmation process. In a roundtable discussion (which was used in writing the book chapter) the participants listed above recommended changes to the Presidential appointment and Senate confirmation process.[1]

Recommendations

- The Cabinets have too much control over Presidential appointees; the White House needs to regain control (particularly early in the process).
- The White House should establish an office to guide nominees through the appointment process.
- A nation-wide talent bank should be established to help accelerate the nomination process.
- There are too many Presidential appointees (particularly those that require Senate confirmation). Each new administration should begin with a "zero-based personnel" policy, and hire based on the core needs of the administration (found within updated job descriptions).
- There should be a media relations office within the White House to guide the media through the appointment process.
- There are too many forms. These forms should be standardized and put on the Internet.
- Background checks are too extensive, and drive people away from accepting nominations.
- Financial detail is too intensive; financial forms and requirements need to be streamlined.

[1]Because this panel was composed of a range of people, recommendations may not necessarily agree.

X. U.S. Commission on National Security in the 21st Century
(The "Hart-Rudman Commission")
Road Map for National Security: Imperative for Change
2001

Members of the Commission

Gary Hart
Former Senator from Colorado

Warren B. Rudman
Former Senator from New Hampshire

Anne Armstrong
Counsel to the Nixon and Ford Administrations, U.S. Ambassador to the U.K.

Norman R. Augustine
Former Chairman and CEO of Lockheed Martin

John Dancy
Former NBC White House and diplomatic Correspondent

John R. Galvin
Retired General and Former NATO Commander

Leslie H. Gelb
President of the Council on Foreign Relations

Newt Gingrich
Former Speaker of the House and Representative from Georgia

Lee H. Hamilton
Former Representative from Indiana

Lionel H. Olmer
Former Under Secretary of Commerce

Donald B. Rice
President and CEO, UroGensys, Inc.

James Schlesinger
Former Secretary of Defense and Energy, Former Director of the CIA

Harry D. Train
Retired Admiral, Former Supreme Allied Commander Atlantic

Andrew Young
Former Mayor of Atlanta, Ambassador to the United Nations

Phase III of the U.S. Commission on National Security in the 21st Century (the "Hart-Rudman Commission"), discusses ways to reform government structures and processes to enable the U.S. government to implement a strategy for the next 25 years. A major section of that report dealt with human capital requirements for the future, in which ideas for reforming the presidential appointment process were outlined.

Recommendations

- The Executive and Legislative Branches should cooperate to shorten the Presidential appointment process.
- The number of Senate confirmed and non-career Senior Executive Service positions be reduced by 25 percent.
- Congress should confirm the National Security Team immediately after the Inauguration.
- Forms should be reduced and standardized to the greatest extent possible.
- Fewer appointees should be subject to full FBI background investigations.
- Only the Chairman and Ranking Member of the confirming Committee should have access to raw FBI files.
- The President and Congressional leaders should revise the conflict-of-interest and ethics regulations by making blind trusts, discretionary waivers, and recusal more easily available as alternatives to complete divestiture of financial and business holdings of concern.
- The conflict-of-interest laws should be decriminalized.

Comparison Chart:
Recommendations for Reform

	Standardized Forms	Forms on the Internet	Job Descriptions	Executive/Senate Cooperation	More White House Control	More Cabinet Control	Less Financial Disclosure	Streamlined Financial Info	Too Many Confirmed Appointees	Guidance Office	Early selection of candidates	Nation-wide Talent Bank	Media Relations Office	Lengthen appointee tenure	Minimize Confirmed Boards	Minimize Holds	Increase OGE involvement	Revise Conflict-of-Interest	Faster Bkgrd. Investigations	Ease Post-Employ. Restrictions	More Post-Empoy. Restrictions	Improve Working Environment
Brownlow Committee - Report of the President's Committee - 1937									X													X
National Academy of Public Administration - Leadership in Jeopardy - 1985	X		X				X	X		X	X					X			X	X		X
National Commission on the Public Service - Rebuilding the Public Service - 1989			X			X	X	X	X	X				X						X		X
Wilkey Commission - To Serve with Honor - 1989	X						X	X									X	X			X	
President's Commission on the Federal Appointment Process - 1990	X		X	X			X	X		X	X			X	X		X		X			
National Academy of Science - Science and Technology in American Government - 1992	X					X	X	X	X								X	X	X	X		X
American Bar Association - Keeping Faith - 1993	X						X	X									X	X			X	X
20th Century Task Force - Obstacle Course - 1996	X							X	X	X	X					X	X		X			
Heritage Foundation - Keys to a Successful Presidency and Roundtable Discussion - 2000	X	X	X		X		X		X	X	X	X	X						X			
Hart-Rudman Commission - Road Map for National Security - 2001	X			X				X	X		X						X	X	X			

United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

Director

01 APR -3 PM 12:26

April 4, 2001

The Honorable Fred Thompson
Chairman, Committee on
Governmental Affairs
United States Senate
Washington, DC 20510

The Honorable Dan Burton
Chairman, Committee on
Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairmen:

The Presidential Transition Act of 2000, Public Law 106-293, included a provision directing the Office of Government Ethics (OGE) to study the financial disclosure process for Presidential nominees required to file reports under section 101(b) of the Ethics in Government Act of 1978 (5 U.S.C. App. '§ 101(b)). It also directed OGE to submit by mid-April 2001, a report to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives making recommendations on improvements to this process. I am pleased to say that we have completed this report and are transmitting it to you today. If you or your staff have any questions about this report, please do not hesitate to contact me or my staff at 202-208-8022.

Sincerely,

Amy L. Comstock

Amy L. Comstock

Enclosure

cc(w/encl.):

The Honorable Joseph I. Lieberman
Ranking Member, Committee on
Governmental Affairs
United States Senate
Washington, DC 20510

The Honorable Henry A. Waxman
Ranking Member, Committee on
Government Reform
U.S. House of Representatives
Washington, DC 20515

Office of Government Ethics

Report on Improvements to the Financial Disclosure Process for Presidential Nominees

to the
Committee on Governmental Affairs of the Senate
and the Committee on Government Reform of the
House of Representatives

April 2001

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Executive Summary

The nomination and confirmation process has grown increasingly complex over the years so that today it is viewed by many as being unnecessarily complicated and unduly burdensome for persons being considered for Presidential appointments. Various commissions and studies in the past have made recommendations for simplifying and rationalizing this process. In 2000, with the approach of another Presidential transition, attention was once again turned to this process. Under the Presidential Transition Act of 2000, Congress directed the Office of Government Ethics (OGE) to study the process and propose ways to: (1) streamline, standardize, and coordinate the financial disclosure process for Presidential nominees under the Ethics in Government Act of 1978; (2) avoid duplication of effort and reduce the burden of financial disclosure filings; and (3) address other matters OGE deemed appropriate, without making any proposal that would have the effect of lessening substantive compliance with any conflict of interest requirement.

OGE obtained the opinions of interested parties first by reviewing their studies of the process. We also reviewed the questionnaires used by confirming committees of the 106th Congress and the White House, as well as the forms and instructions used by all three branches for public financial disclosure required by the Ethics in Government Act. We sought and obtained comments about the process through a notice in the Federal Register. Finally, we discussed possible proposals with executive branch ethics officials, and spoke with individuals who have been or are currently involved in the process.

Public financial disclosure by high-level Government employees was introduced into law to provide a tool for identifying and resolving potential conflicts of interest and to increase public confidence in the Government. It is fundamental to the executive branch ethics program. The current public financial disclosure system, however, requires reporting more information than is useful or necessary to achieve its fundamental goals. Some of the detail regarding assets, transactions and other reportable items is more intrusive and burdensome than it need be. Such unnecessary detail could be eliminated without "lessening substantive compliance with any conflict of interest requirement." Eliminating such nonessential detail would benefit both Presidential nominees and the approximately 20,000 Government employees who are subject to public reporting.

To simplify financial disclosure and mitigate the burden, OGE is recommending changes to the Ethics in Government Act for the executive branch to: (1) reduce the number of valuation categories; (2) shorten certain reporting time-periods; (3) limit the scope of reporting by raising certain dollar-thresholds; (4) reduce details that are unnecessary for conflicts analysis; and (5) eliminate redundant reporting.

In addition to the form used for public financial disclosure in the executive branch (the SF 278), there are several other forms requiring financial and other information that must be filed by potential nominees. These include the White House Personal Data Statement, the Questionnaire for National Security Positions (SF 86), and Senate confirming committee questionnaires. Our comparison of the SF 278, SF 86, and committee forms identified overlap and inconsistency. We

developed charts from which the parties responsible for these forms can note the overlap and can then balance the burdens that the questions on these forms create against the needs to obtain the information they seek.

OGE also has addressed the suggestion that other ethics program related statutes be revised, including criminal conflict of interest statutes. For example, OGE is exploring an expansion of the existing tax code provision that deals with taxes resulting from the divestiture of an asset for conflict of interest purposes. This would involve an amendment to the tax code to allow for a Certificate of Divestiture program for the sale of many stock options. Current law only applies when a sale results in capital gains. With regard to the criminal conflict of interest statutes, we have already been in contact with the Department of Justice to begin exploring the revision of the conflict laws.

OGE is ready to work with both the executive and legislative branches to make the appointment process smoother and less burdensome for all parties.

Introduction.

Just over ten years ago, the nomination and confirmation process generated such concern that former President Bush established the President's Commission on the Federal Appointment Process. The Commission was established under the Ethics Reform Act of 1989 and Executive Order 12719 to study ways to simplify the Presidential appointment process by reducing the number and complexity of forms to be completed by potential appointees.

That effort resulted in some improvements. Today, however, the nomination and confirmation process is viewed by some as even more protracted, complicated, and burdensome than it was ten years ago. In 2000, with an upcoming Presidential transition, attention once again turned to this process. As one group looking at the appointment process found:

> Those who survive the appointments process often enter office frustrated and fatigued, in part because they get little or no help, and in part because the process has increasingly become a source of confusion and embarrassment.[1]

The Presidential Transition Act of 2000 (Transition Act), Public Law 106-293, included a provision directing the Office of Government Ethics (OGE) to study the financial disclosure process for Presidential nominees required to file reports under section 101(b) of the Ethics in Government Act of 1978 (5 U.S.C. App. § 101(b)). It also directed OGE to submit by mid-April 2001, a report to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives making recommendations on improvements to this process.

Section 3(b)(1) of the Transition Act states that the report is to include recommendations and legislative proposals on --

> (A) streamlining, standardizing, and coordinating the financial disclosure process and the requirements of financial disclosure reports under the Ethics in Government Act of 1978 (5 U.S.C. App.) for Presidential nominees;
>
> (B) avoiding duplication of effort and reducing the burden of filing with respect to financial disclosure of information to the White House Office, the Office of Government Ethics, and the Senate; and
>
> (C) any other relevant matter the Office of Government Ethics determines appropriate.

---

[1]Paul C. Light and Virginia L. Thomas, The Merit and Reputation of an Administration: Presidential Appointees on the Appointments Process, The Presidential Appointee Initiative, Washington, DC: April 28, 2000, page 3.

The Transition Act placed one limitation on the recommendations to be submitted. Any recommendations made in the report "shall not (if implemented) have the effect of lessening substantive compliance with any conflict of interest requirement." This report is in response to the directive of the Transition Act.

The nomination and confirmation process referenced in the Presidential Transition Act encompasses the activities of many executive branch agencies, including OGE. In general, the first Government contact for an individual who may be considered for nomination will be the White House. The White House provides potential nominees with the forms to complete, including the Public Financial Disclosure Form (Standard Form 278), and the Questionnaire for National Security Positions (SF 86), that furnishes information for the background investigation. The White House then requests the Federal Bureau of Investigation (FBI) (or State Department or Defense Department) to perform a background investigation, the Internal Revenue Service (IRS) to perform a "tax check," and OGE, in conjunction with the employing agency, to perform a conflicts of interest analysis, based upon a review and analysis of the SF 278. Using this information, a final determination on a nomination is made. Once a nominee's name is formally sent to the Senate, the committee or committees that will hold confirmation hearings communicate directly with the nominee about the information that the committee requires.

In this report, OGE occasionally refers to procedures or systems that are not within the jurisdiction of OGE but are administered by another part of the Government. We have discussed this study with each of those other entities, and recommend that these discussions continue. But, we wish to emphasize that any significant improvements to the nomination and confirmation process will require actions by OGE as well as by others.

Because of the many Government entities involved in the nomination and confirmation process, OGE made an extensive effort to obtain the views of the many effected entities. In developing this report, OGE obtained written input and met with many of the executive branch ethics officials who also work with the financial disclosure system on a day to day basis. OGE also:

--obtained the views of those non-Governmental organizations (NGOs) we knew to be interested in transition and presidential appointment issues;

--obtained and reviewed the questionnaires from each confirming committee and from the White House;

--obtained and reviewed the forms and instructions of the House, Senate, and judicial branch public financial disclosure systems based upon the Ethics in Government Act;

--placed a notice in the Federal Register seeking comment from agencies and the public; and

--spoke with a number of individuals who have been or currently are involved in the clearance process for Presidential appointments.

A detailed listing of the outreach efforts that were made in preparing this report can be found in Appendix A and the selected studies that we reviewed can be found at Appendix B.

Report Organization

This report is divided into three sections. Part I contains OGE's recommendations to streamline the requirements of the public financial disclosure system under Title I of the Ethics in Government Act, which is reflected in the current SF 278.

Part II addresses the multiple financial information requests involved in the nomination and confirmation process which may unduly complicate or delay the process or otherwise serve as unnecessary impediments to service in a PAS position. Included is a discussion of the overlapping questions found on the SF 278, the SF 86 (Questionnaire for National Security Positions) and its supplemental questions, and each Senate confirming committee's questionnaire.

Part III of the report addresses related ethics program issues that can affect service in the executive branch at all levels. This includes potential changes to the tax code for gain resulting from the divestiture of an asset by an executive branch employee for conflict of interest purposes.

At the end of the report, there is a conclusion that summarizes the actions OGE will undertake independently, as well as OGE's commitments to work with other executive branch agencies and the Senate, to bring about the improvements we are recommending.

Part I. Executive Branch Public Financial Disclosure Requirements.

This part discusses proposed improvements to the public financial disclosure reporting system. In preparing this report, we undertook a complete review of both the legal requirements of the Ethics in Government Act and our own practices in administering the public reporting system. We found that many elements are working well and are fulfilling the fundamental purposes of the public reporting system. We have not discussed those elements of the system that we believe should remain unchanged. Rather, our discussion focuses on those areas where we believe change is appropriate.

We wish to note that our recommendations for changes to the Ethics in Government Act are for the executive branch only. While executive branch employees are subject to substantial criminal and civil conflict of interest statutes, officers and employees of other branches are not. Thus, we take no position as to whether the changes we recommend would adequately meet the public policy needs for public disclosure in the other two branches.

Public financial disclosure by certain high level political appointees, as well as certain senior career employees of the executive branch, was first introduced as a statutory requirement in 1978 with the passage of the Ethics in Government Act, Public Law 95-521. At that time, public financial disclosure was intended to --

--increase public confidence in Government;

--demonstrate the high level of integrity of the vast majority of Government officials;

--deter conflicts of interest from arising because official activities would be subject to public scrutiny;

--deter persons whose personal finances would not bear up to public scrutiny from entering public service; and

--better enable the public to judge the performance of public officials in light of the official's outside financial interests.[2]

OGE believes that all of these goals remain valid today. The public financial disclosure system is a fundamental element of the executive branch ethics program. The information that it requires regarding assets, income, compensation arrangements, outside positions, clients, and other financial matters relates directly to conduct requirements and it is essential to maintaining the integrity of Government operations and programs. Moreover, making this information publicly available ensures outside scrutiny and contributes to public confidence in Government.

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[2]Senate Report No. 95-170, at 21-22, *reprinted in* 1978 U.S.C.C.A.N. 4237-4238.

Based upon more than 20 years of experience administering this statutory system, however, we believe that the current public financial disclosure system requires the reporting of more information than is necessary or useful for the purposes of conflict of interest analysis or maintaining public confidence in Government.[3] Some of the specific detail regarding assets, transactions and other reportable items is intrusive or burdensome to the filer and could be eliminated without "lessening substantive compliance with any conflict of interest requirement." Eliminating such unnecessary detail would relieve the burden that falls not only on Presidential nominees but also on approximately 20,000 executive branch employees who are subject to public reporting.

We also believe that a reporting system should be designed so that it is practical for the vast majority of filers. For example, it is neither necessary nor desirable to require every filer to provide details for every asset that is reported, whether or not that asset presents a potential conflict. Even the existing reporting system does not require the reporting of so much detailed information that ethics officials never need to obtain additional clarifying information. Ethics officials as well as OGE currently request additional information from a filer that is relevant to the resolution of a potential conflict, and it is the filer's obligation to provide it.

Furthermore, the Government's interest in public financial disclosure must always be balanced against the privacy interest of filers. We need to take a careful look at the sometimes competing interests that are at stake in an environment in which a financial disclosure report that has been posted on the Internet is subject to global dissemination. The citizen's interest in public access, the filer's interest in privacy, and the Government's interest in being able to attract the most qualified persons to enter Government service must all be carefully considered in light of the realities of the information age. Eliminating unnecessary detail will lessen the intrusiveness of this system, while providing ethics officials and the public with sufficient information to judge the actions of the individual filer.

In this part of the report, we first discuss OGE's own practices and interpretations that we have reviewed and determined should be revised to lessen any unnecessary burdens on filers and reviewers. These are changes that do not require any legislative action, but were prompted by the review undertaken in preparing this report.

---

[3]The types of financial information requested -- assets, sources of income, liabilities, positions held outside the Government, continuing arrangements with former employers or agreements with future employers, gifts, transactions, and client information -- all have some useful relationship to a current conflict of interest or ethics statute or a conduct regulation. Those statutes can and do take into consideration the financial interests of spouses and children, so reporting requirements extend to those interests as well. It is not the general subject of the information requested, but rather the level of detail required about that subject, that is burdensome.

A. Non-legislative Improvements to the Public Reporting System

As part of OGE's review of Title I of the Ethics in Government Act, we considered whether the burdens of public filing could be reduced merely by our making procedural or interpretative changes to the public reporting system for nominees. We concluded at the outset that we could have an immediate impact by consolidating the various levels of review of a nominee financial disclosure report within OGE. This streamlining ensures that a nominee will not be unnecessarily contacted several times for additional information by OGE. Consolidating requests for additional information can aid in reducing the frustration level of a nominee who may view the reporting system as unduly complicated.

We also analyzed whether certain of our interpretations of the Ethics in Government Act should be revisited. We looked particularly at cases where filers have been required to report the holdings of: (1) investment partnerships where they serve as limited partner; (2) trusts where they serve as trustee; (3) estates where they serve as executor; and (4) other persons for whom they have a power of attorney. We determined that some flexibility was warranted where filers were unable, without extraordinary effort, to ascertain the value and income of the subholdings of limited partnerships (i.e. where one limited partnership invests in another limited partnership). Those values are not necessary for conflicts of interest analysis and obtaining them can sometimes impose a heavy burden on filers. In addition, upon reevaluation, we have decided that filers generally should not be required to disclose the assets of a person for whom they have a power of attorney, nor the assets of an estate for which the filer serves as an executor.[4]

We are in the process of consulting with the Office of Legal Counsel at the Department of Justice about the applicability of conflict of interests prohibitions to an employee serving as a trustee for a non-family trust. The resolution of this issue will help determine whether any appropriate changes can be made to the reporting requirements for holdings in trusts in such cases.

These changes reflect the recognition of OGE's ongoing and continuous responsibility to review its own systems and interpretations to ensure that our responsibilities are being performed as efficiently and practically as possible. We are pleased that these changes, with the exception of the trust question, have already been implemented.

In addition, there is another possible change that involves the procedures of confirming committees. There are a number of boards, commissions, and committees whose members must be appointed by the President and confirmed by the Senate. If these individuals are not paid (or not highly paid) or are not expected to serve more than 60 days, they are not required to file a SF 278. However, a number of Senate committees ask them to complete a SF 278. OGE reviews this report

---

[4]Although generally the assets of other persons or estates do not have to be disclosed, in certain cases an employee may have a financial interest in such assets. This might occur, for example, when an executor's fee is calculated as a percentage of the estate's holdings. In such cases, reporting of the assets will continue to be required.

and provides its conflicts analysis to assist the committees, although we do not treat the form as public.

A few Senate committees require the less complex OGE Form 450 Confidential Financial Disclosure Report from individuals who will serve in part-time positions not otherwise covered by public reporting requirements. This form provides enough information to make conflict determinations for these nominees. We recommend that all the committees request only an OGE Form 450 from individuals who are nominated to a part-time position on a board, commission, or committee and who would not otherwise be required to file a public report. This action would require no legislation to accomplish and would remove what has been identified by some groups as a disincentive to service in these positions. We will be approaching each committee shortly with this suggestion.

B. Recommended Changes to the Ethics in Government Act[5]

This section addresses improvements that would require legislative action to amend the Ethics in Government Act. OGE determined that the public financial disclosure system could be improved substantially by amending the law upon which it is based. Specifically, we propose that the Ethics in Government Act be amended to: reduce the number of valuation categories throughout; shorten certain reporting time-periods; limit the scope of reporting by raising certain dollar-thresholds; reduce descriptive details that are unnecessary for conflicts analysis; and eliminate redundant reporting. It is important to note that we believe these recommendations are consistent with the mandate in the Transition Act not to lessen substantive compliance with any conflict of interest requirement. For reference purposes we have attached as Appendix C a copy of the current SF 278 as well as a "revised model" SF 278 that illustrates all the changes proposed in this report.

These recommendations are closely inter-related and inter-dependent and we present them as a single, complete proposal. In other words, in the effort to reduce redundancy and excessive reporting, we have ensured that all aspects of the proposed reporting requirements are coordinated. Therefore, we must stress that if any portion of these recommended changes is not adopted, OGE will need to review the whole proposal to ensure that information necessary for conflicts review and ethics program compliance has not been inadvertently lost.

1. Reduce the number of valuation categories throughout.

a) Reduce the current eleven categories of asset value to three.

For executive branch employees, a financial conflict exists if he or she (or other persons or entities with whom they have a specified affiliation) has a financial interest in a matter in which they

[5]These recommendations encompass the entire system of new entrant, annual and termination public financial disclosure filings for officers and employees throughout the executive branch, not just nominees.

would participate as part of their job (18 U.S.C. § 208). The magnitude of the financial interest is not relevant for conflicts determinations, unless a waiver of the conflict or an exemption from the recusal requirement is being considered. To determine the application of this basic financial conflict statute, an ethics official reviewing a financial disclosure report has little need to know the value of an asset that creates a potential conflict for an employee. One could, therefore, make a legal argument that the value of an asset offers little to a conflicts analysis. Nonetheless, given the underlying justifications cited earlier for having a "public" financial disclosure form, we believe that some general sense of the substantiality of an asset is useful. Rather than the current eleven categories of value for asset disclosures, however, we propose three -- $1,001 - $15,000; $15,001-$100,000; and over $100,000.

The first category ($1,001 - 15,000) encompasses the current proposed dollar threshold for one of the regulatory exemptions issued by OGE under 18 U.S.C. § 208, concerning certain publicly traded securities.[6] Simply recognizing that an asset has a value below that amount will assist an ethics official who reviews a financial disclosure report, and it should also reinforce the significance of that amount for the filer when he or she examines personal assets in order to prepare a disclosure report.

The uppermost category of asset value that we are proposing (over $100,000) represents what we believe would be considered a significant asset by most filers and the public. We do not believe that further detail above that amount is necessary, either for the public or for a conflict of interest analysis. If members of the public are informed that a filer holds an asset which they consider substantial (over $100,000), it is not necessary, we believe, for them also to know the extent to which that asset's value exceeds $100,000. Further, from the perspective of the nominee, significant personal privacy will be restored if the requirement to disclose these details of one's wealth (or lack thereof) is eliminated.

b) Reduce the current eleven categories of income amount to three.

Information indicating the amount of income from investments is normally of limited use in conflicts analysis. Certainly the degree of detail required by the current statute, with its eleven categories, is not needed. Likewise, for earned income, over-specificity regarding the amount (which must currently be disclosed as an exact figure) is unnecessary. In order to preserve some general public information about both investment and earned income, however, while also protecting the nominee's privacy, we propose three categories of income -- $501-$20,000; $20,001-$100,000; and over $100,000. (See our separate recommendation, discussed below, for eliminating the requirement to report exact amount of income earned.)

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[6]See the proposed amendment to 5 C.F.R. § 2640.202(a)(2), at 65 Federal Register 53945 (September 6, 2000).

c) Reduce the current eleven categories of value for liabilities to three.

We believe that three categories ($20,001-$100,000; $100,001-$1,000,000; and over $1,000,000) provide sufficient information about liabilities for all purposes of public financial disclosure. The current eleven are overly detailed for purposes of conflicts analysis, in our view.

2. Shorten certain reporting time-periods.

a) Reduce the covered reporting period for disclosing outside positions held.

At present, the financial disclosure statute requires that positions held outside the U.S. Government be reported if held during the current year or the preceding two calendar years. We propose reducing that coverage period to the current year or the preceding one calendar year. First, this will bring uniformity and significantly reduce confusion for filers, reviewers, and the public, as virtually all other required financial disclosure data concern the current year and the preceding one calendar year. Second, the standards of ethical conduct for executive branch employees focus on appearances of impartiality primarily during the one-year period after leaving an outside position (5 C.F.R. § 2635.502). In the usual situation, there is no conflict of interest or suitability justification requiring public disclosure of outside positions held prior to that time.

b) Reduce the covered reporting period for disclosing clients and other sources of individual compensation involving personal services.

For reasons similar to those stated in the preceding paragraph, we believe that the reporting period for disclosing certain clients and other sources of individual compensation involving personal services should encompass only the current year and the preceding one calendar year, rather than the presently required current and preceding two calendar years.

3. Limit the scope of reporting by raising certain dollar-thresholds.

a) Do not require disclosure of any income amounts (whether earned or from investments) at or below $500.

The current threshold for reporting earned and investment income was fixed at $200 in 1989 (except for a spouse's earned income, where the threshold is $1000).[7] That is even lower than the current threshold for gift disclosure. We recommend raising the threshold to $500. This change should significantly reduce the burden on filers of examining their finances for small investment earnings, small payments for services, and other relatively insignificant financial dealings.

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[7]For ease of reporting, we recommend that a single threshold be applied to both the filer and spouse (at the amount proposed herein).

b) Do not require disclosure of deposit accounts with a financial institution and Government securities, when valued at or below $100,000.

Deposit accounts in financial institutions that are valued at or below the FDIC-insured $100,000 amount raise virtually no conflicts concerns for any employees. At this level, the purpose of reporting deposit accounts is primarily to provide the public with a sense of the individual's financial situation and lack of conflicts, not because they present any conflicts issues.

Government securities create conflicts for only a few executive branch officials, who are generally prohibited from holding them at all. Further, Government securities are designated as "permitted properties" for reinvestment when employees avail themselves of the capital gains tax deferral opportunity (by seeking a Certificate of Divestiture) in conjunction with the sale of assets when required for conflicts purposes (5 C.F.R. § 2634.1001 et seq.). Accordingly, we recommend that such investments be reported only if valued over $100,000, and even then, primarily to provide the public with a sense of the individual's financial situation and lack of conflicts, not because they present any conflicts issues.

c) Do not require disclosure of liabilities valued at or below $20,000.

Since 1978, a liability must be disclosed if its value exceeds $10,000, a figure established in 1978. In today's dollars, that amount would be $27,436. We propose $20,000 as an adequate threshold for conflicts analysis, which also will effectively eliminate the unnecessary reporting of most consumer and credit card debt. As discussed earlier, liabilities would be reported in three categories, with the uppermost being "over $1,000,000."

d) Redefine reportable clients and other sources of individual compensation involving personal services, by limiting to persons or entities for whom the filer has provided services worth more than $25,000.

The current $5,000 threshold was set by statute in 1978. In today's dollars that is $13,718. We believe that amount is still somewhat low as a measure of identifying major clients that must be publicly reported. Therefore, we propose a $25,000 threshold. We would make it clear that public reporting of the name of a client where the client had a reasonable expectation of confidentiality would not be required.

Disclosure of these major clients and sources of earned income for personal services provides helpful information in applying executive branch ethics rules on impartiality, where official participation in matters may be perceived as improper. Raising the threshold to $25,000 provides a clearer focus on the most significant clients and sources.

4. Reduce descriptive details that are unnecessary for conflicts analysis.

a) Eliminate the current requirement to identify income as "interest," "dividends," "rents and royalties," "capital gains" or "other," and substitute three basic types: "investment income," "earned income" and "honoraria."

For an initial conflicts analysis, a reviewing ethics official only needs to know whether the type of income is investment or earned. The more detailed characterization of income types serves little purpose.

With regard to earned income, it is the income source that serves a vital conflicts purpose, not the details as to specific type, such as salary, fees, commissions, or wages. The simple characterization as "earned income" is sufficient for most conflicts review purposes.

In contrast to earned income, the reporting of investment income has limited value, as it rarely provides any insights regarding current conflicts that are not already apparent from other data on the report. Nonetheless, we recommend retaining the basic reporting requirement for investment income, because it can provide information about assets that were sold between reporting periods, raise questions about unusual amounts of income generated from a particular asset, and give some sense of the major sources of income for the reporting official. Characterization as "investment income" is, however, a sufficient description of the income type.

b) Eliminate any requirement to report exact amounts of income, except for honoraria.

With one exception, we perceive no compelling reason to require public reporting of exact amounts for any income, particularly for nominees. The actual amount of income received from either an investment or from employment is of limited utility in a conflicts analysis. This is particularly so for investment income, as noted above.

For earned income, the one exception to eliminating disclosure of exact amounts is honoraria received during Government service, because of the sensitive nature of those payments. While exact amounts of honoraria are not necessary for conflicts purposes, we believe this to be an area where the public interest is paramount. On its face, honoraria may suggest subjectively determined large payments for brief appearances and speeches, sometimes involving unusual travel opportunities. Given that appearance, requiring the exact amount of honoraria payments received during Government service remains appropriate. We recommend, therefore, that all income except such honoraria be reported by categories of amount, rather than exact amounts. (See our separate recommendation, discussed above, for reducing the existing eleven categories of amount, which are currently used for most reportable investment income, to four.)

The requirement to publicly disclose the exact amount of earned income is not necessary, and eliminating it (except for certain honoraria) will ease the burden on a large percentage of the more

than 20,000 annual filers in the executive branch for whom no potential issues will arise concerning earned income. Nonetheless, many non-career employees, for example, are restricted by statute[8] and executive order as to the amount of annual outside earned income they may receive during their appointments. Additional information beyond categories of amount may be necessary in those instances, so that ethics officials can identify potential income limitation problems and counsel the employee, or highlight the issue for a nominee. The ethics official can, in those limited cases, ask the filer for additional information.

c) Eliminate reporting of dates and amounts for transactions involving the purchase, sale or exchange of real property, stocks, bonds, commodity futures or other securities.

In our outreach to ethics officials on this topic, almost all agreed that information regarding the value of an asset transaction (purchase, sale or exchange) or the date on which it occurred is not necessary for conflicts analysis and is rarely, if ever, used. Reporting the asset's mere existence in connection with a transaction during the reporting period provides sufficient information to conduct almost all conflicts analyses. As previously noted, if there is any reason that an ethics official might need more information to resolve a potential conflict, the filer can be asked to provide it.

d) Eliminate the requirement to provide an itinerary in connection with the reporting of travel reimbursements.

The current requirement to provide an itinerary when reporting travel reimbursements is generally not useful to an ethics official; it is the source and value of that travel reimbursement that is significant for conflicts analysis, not the details of the travel arrangements.

e) Eliminate the reporting of dates for agreements and arrangements involving future employment, leaves of absence, or continuation of employee benefits (except for the date of a formal agreement for future employment).

We believe that the current requirement for dates, other than those involving formal agreements for future employment, are unnecessary for most conflicts analyses. The rare situation where a date might be needed should not dictate the rule, especially when that information can be sought by an ethics reviewer from the filer on an individual basis, if in a given case it is deemed necessary.

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[8]See 5 U.S.C. App. § 501(a). The triggering amount is currently $21,765, which changes as the executive level pay scale is adjusted.

5. Eliminate redundant reporting.

a) Eliminate the requirement to report separate sources of individual compensation involving personal services, if already reported elsewhere on the financial disclosure report as a source of earned income.

Information about employers or business firms of the nominee during the current or preceding calendar year will have already been reported elsewhere on the financial disclosure report, both as a source of earned income and as a position held. There is no reason to require filers to separately report those sources again. This section of the financial disclosure report should be reserved for a listing of major clients. That information will not ordinarily appear elsewhere on the report. (As indicated above, we are also recommending that the threshold value be raised from the current $5,000 to $25,000).

b) Eliminate the requirement to report separate transactions involving the purchase, sale or exchange of real property, stocks, bonds, commodity futures or other securities, if already disclosed elsewhere on the financial disclosure report.

We believe that the purchase, sale or exchange of real property, stocks, bonds, commodity futures and other securities need not be separately reported if the asset that was the subject of the transaction is already listed as a current asset or income source elsewhere on the financial disclosure report. Only those assets not already disclosed on the report because they were disposed of during the reporting period need to be reported.

Part II. Eliminating the Duplication of Required Financial Information.

The Senate Governmental Affairs Committee stated in its report on the Transition Act that a system of duplicative requests for financial information from potential Presidential appointees has developed. There are at least four forms or questionnaires requiring information that must be filed by each potential nominee. These are the White House Personal Data Statement (PDS), the Questionnaire for National Security Positions (SF 86) with supplemental questions, the SF 278, and a separate background questionnaire required by the appropriate Senate committee. The requested financial information has often overlapped. Not surprisingly, given the different objectives of the entities seeking information, the information sought has been inconsistent in the details required, time frames and family or household members covered, and reporting thresholds. This part of the report discusses the overlap and inconsistency among the several forms requiring financial information that must be filed by each potential nominee.

OGE reviewed and compared the financial information required by each Senate committee questionnaire in use at the end of the 106th Congress, the SF 86 with the current supplemental questions, and the SF 278.[9] We charted the financial information required by each questionnaire and form in a manner that would allow for comparisons. We include as Appendix D samples of these charts for the SF 278, the SF 86 with supplemental questions, and the questionnaire for the Senate Governmental Affairs Committee. We identified extensive overlap and inconsistency among the forms. For example, the information requested by all for just one subject -- sources of earned income -- varied by time frames covered (ranging from "since last Federal tax return" to "since age 21") and by reporting thresholds established (ranging from "any compensation" to amounts "over $1,000"). The forms and questionnaire also varied as to whose information (spouse, children and/or members of the nominee's household) was covered by the request.

The following chart shows these variations for earned income only and for information from the nominee only (no family or household member's information):

[9]The White House has recently made interim revisions of the PDS taking into account other information nominees are required to provide. Because a new Congress was also seated during the middle of our study, it is possible that each Senate confirming committee of the 107th Congress may have changed its questionnaire. Therefore, we have treated the Senate questionnaires as historical documents to be used for illustrative purposes.

Overlap and Inconsistency in Time Frame and Reporting Threshold Requirements for Sources of Earned Income

Forms/Questionnaires	Time Frame and Reporting Threshold Requirements
SF 278	For current and previous CY sources and actual amount of income over $200
SF 86	No information regarding amounts of earned income although names of positions held and past employers are requested
Senate Committees 106th Congress: Agriculture	For current and preceding CY, sources and amount of $200 or more.
Armed Services	For past 10 years, details of any compensation from foreign government or foreign government-controlled entity.
Banking	For past 3 years, sources and amounts over $500 or more or all schedules from taxes for these years itemizing each source.
Commerce	For past 3 years, sources and amounts over $250.
Energy	For past 10 years, details of any compensation from foreign government or foreign government-controlled entity.
Environment	None.
Finance	Since last Federal tax return, sources and amounts over $1000.
Foreign Relations	For past 5 years, an explanation of any compensation from foreign government or interest.
Governmental Affairs	For past 3 years, sources and amounts over $100.
Health, Ed, & Labor	For past 3 years sources and amounts over $500 or copies of U.S. income tax returns for these years.
Indian Affairs	None.
Judiciary	For current and preceding CY, sources and amounts over $500 or more or a copy of the SF 278.
Rules	None.
Intelligence	For past 10 years, details of any compensation from foreign government or foreign government-controlled entity and for the past 5 years, sources and amounts over $200 or copies of income taxes for these years.
Small Business	For past 5 years, sources and amounts of all earned income (no threshold) or copies of income tax returns for these years.
Veterans Affairs	For past 3 years, sources and amounts over $500.

There may be historical reasons for such variation and overlap in the financial questions and in the forms themselves. For example, many of the financial questions on the committee questionnaires may have been included initially when committees were evaluating financial conflicts of interest without the input from OGE's review of the nominee's SF 278. However, we suggest that the wide variations in amounts of earned income, as reflected on this chart, (i.e., "all sources," "sources over $100," "sources over $200," "sources over $250," "sources over $500," or "sources over $1000) could be resolved by establishing a single threshold amount without sacrificing the original purposes for gathering this information.

We recognize that it is certainly within the prerogative and the responsibility of a confirming committee to ask for whatever information it believes is necessary to fulfill its role in the nomination and confirmation process. Nevertheless, to the extent that some of the financial information currently being requested is already provided on the public financial disclosure report, we believe that it might be advantageous for the confirming committees to review their current practices with an eye toward harmonizing these various systems. While having one set of questions on a single form may not meet divergent needs and objectives for gathering information, discussions involving the Senate, the White House and this Office could result in significant streamlining of the reporting requirements for nominees. The White House has indicated to OGE its interest in participating in such discussions, and we encourage the Senate Governmental Affairs Committee and the Senate leadership to engage the participation of the confirming committees, as well.

With regard to the financial questions on these forms, it may be that the Senate confirming committees will determine that the financial information that is required to be reported publicly by the Ethics in Government Act is sufficient to meet their individual needs for financial information on nominees including a net worth statement. Alternatively, if a separate document from the nominee addressing financial information is needed, we hope that any such requests follow the requirements of the public reporting system so that the same information can be imported from one document to another.

With regard to the financial information requested on the SF 86, we must defer to those who are responsible for conducting background investigations as to the information that is needed to decide suitability questions and who may have access to sensitive national security information. We have noted, however, that one series of questions on the SF 86 may need reevaluation in light of current investment vehicles. For example, one of the questions on the SF 86 asks whether the individual has any "foreign property, business connections or financial interests?" If the answer is affirmative, then the individual must describe further details of the financial interest. This question appears to be over-broad to the extent that it could be interpreted to require the listing of any mutual fund that holds a foreign property or interest. A complete listing of such interests would not only require a burdensome search but also might obscure the information that is intended to be gleaned

from the answer. We understand that OPM is reviewing the SF 86 and we have offered to work with them during this review.[10]

[10]A recent practical aid to nominees in providing this information is that both standard forms, the SF 278 and SF 86, can now be completed electronically. In addition the Government Paperwork Elimination Act requires OGE to have electronic filing of the SF 278 in place by October 2003. At the present time, OGE is gathering and evaluating information on available Web-based technology, including the use of digital signature technology, that would allow potential nominees to electronically enter, update, sign, and transmit their public financial disclosure (SF 278) information over a secure Internet connection to OGE for review and approval. This is similar to a system which we understand is currently under development by the Office of Personnel Management's Investigations Service (OPM-IS) to facilitate the collection and processing of detailed personal information on the standardized form SF 86. Data transmitted to OPM would reside in a central database, with access provided to the applicant, the Government agency, or investigative service provider as defined by role-based access privileges.

Part III. Other Statutory Considerations.

This part of the report addresses possible amendments to existing law that would result in substantial benefits for the executive branch ethics program. One immediate area for legislative action would be an expansion of the existing tax code provision that deals with gain resulting from the divestiture of an asset by an executive branch employee for conflict of interest purposes. This reform would not only improve the appointments process but also would benefit the executive branch ethics program as a whole. It also contains our response to calls for various changes to the criminal conflict of interest statutes.

A. Expansion of Certificates of Divestiture Program

Currently, OGE is authorized by 26 U.S.C. § 1043 to issue "Certificates of Divestiture" to any executive branch employee (other than a special Government employee) if it determines that the divestiture of specific property is reasonably necessary to comply with conflict of interest statutes or regulations, or if requested by a congressional committee as a condition of confirmation. These certificates allow an employee who sells property to defer any capital gain realized as a result of the sale if non-conflicting property is purchased with the proceeds. The basis of the new property is adjusted so that when it is sold, any tax on capital gains will be due at that time. This authority was given to OGE under the Ethics Reform Act of 1989.

Arrangements for compensation in the private sector have changed significantly since 1989. The vast majority of Presidential nominees are selected from the private sector. Often these nominees hold stock options which they have received in lieu of other forms of compensation during their private sector employment and which they must, for conflicts reasons, divest when they enter Government service. Generally, these options must be held for at least one year or their sale results in being taxed at the ordinary income rate rather than a lower capital gain rate. OGE is currently discussing with the Department of the Treasury possible expansion of OGE's Certificate of Divestiture authority to address this substantial cost of entering Government service.

B. Revision of the Criminal Conflict of Interest Statutes

The Office has an ongoing responsibility to assist the Department of Justice in evaluating the effectiveness of the conflict of interest laws and to recommend appropriate amendments. (5 U.S.C. App. § 402(b)(1)). A number of the outside studies we read suggested that the criminal conflict of interest statutes be revised or decriminalized.[11] OGE agrees that the conflicts laws may be complex. Nevertheless, they provide essential safeguards for the integrity of Government operations and

[11]These statutes cover officers and employees of all three branches and address representations of private parties before the Government; participating in Government matters affecting one's own financial interest; supplementation of Government salary by outside parties; and post employment.

programs. It may be that these laws, however, can be simplified without sacrificing the protection that they provide for a fair and impartial Government process. The revision of these laws is no easy task and we are not prepared to make detailed recommendations for changes at this time. We have already been in contact with the Department of Justice to begin exploring revisions of the conflict laws.

Conclusion.

There are number of steps that can be taken now to move forward in addressing many of the issues discussed in this report. Some of those steps can be taken by OGE alone, but most require the participation of, or actions by, others. To summarize, OGE will --

--draft language that would amend the Ethics in Government Act to streamline the reporting requirements for the executive branch in the manner described by Part I of this report;

--continue to serve as a resource to the White House in its review of the PDS;

--work with OPM on its review of the SF 86;

--continue to work with the Department of Justice regarding the issue of the assets a legal trustee must report on a financial disclosure form;

--work with the Department of Justice in any review of criminal conflict statutes; and

--continue working with the Department of Treasury on expanding legislatively OGE's Certificate of Divestiture authority.

In reaching out to Senate confirming committees, OGE will --

--approach each confirming committee with the comparison charts that we have created and offer to serve as a resource to the committee in its review of its questionnaire; and

--approach each Senate committee which, as a practice, requires nominees to part time boards, commissions and committees to complete an SF 278 to seek their acceptance of an OGE Form 450.

OGE is optimistic that through these collective efforts, improvements can be made to the nomination and confirmation process that will reduce burdens to public service without lessening the public trust goals that were the original purpose behind the Ethics in Government Act.

Appendix A

Outreach

OGE's goal was to ensure that a broad range of views were heard and significant input received regarding the issues in this report. In preparing this report, OGE conducted:

Outreach to the following organizations:

American Enterprise Institute
American Society for Public Administration
The Brookings Institution
The Center for the Study of the Presidency
The Council for Excellence in Government
The Heritage Foundation
National Academy of Public Administration
White House 2001 Project

Meetings with:

Department of the Treasury
Federal Bureau of Investigation
National Academy of Sciences
Office of the Presidential Transition, 2001
Representatives of the Executive Branch Departments and major agencies
Senate Governmental Affairs Committee, Majority and Minority Staff
White House Staff, Bush Administration
White House Staff, Clinton Administration

Additional Outreach:

Federal Register, Volume 65, Number 251, Friday, December 29, 2000 - Asking for comments on study.

January 4, 2001 letter to all executive branch ethics officials seeking input and recommendations for the Presidential Transition Act report.

Appendix B

Non-Governmental Organizations Studies Reviewed

American Bar Association Committee on Governmental Standards. "Keeping Faith: Government Ethics & Government Ethics Regulations." Administrative Law Review, Volume 45, No. 3, Summer 1993.

Council for Excellence in Government and The Presidential Appointee Initiative. A Survivor's Guide for Presidential Nominees. The Presidential Appointee Initiative, a Project of the Brookings Institution funded by the Pew Charitable Trusts. Washington, DC: November 2000.

Donilon, Thomas and Norman Ornstein. "The Confirmation Clog." Foreign Affairs, November/December 2000.

Hess, Stephen. First Impressions: Presidents, Appointments, and the Transition. The Presidential Appointee Initiative, a Project of the Brookings Institution funded by The Pew Charitable Trusts. Washington, DC: September 2000.

Light, Paul C. and Virginia L. Thomas. The Merit and Reputation of an Administration: Presidential Appointees on the Appointments Process. The Brookings Institution and The Heritage Foundation funded by the Pew Charitable Trusts. Washington, DC: April 2000.

Light, Paul C. and Virginia L. Thomas. Posts of Honor: How America's Corporate and Civic Leaders View Presidential Appointments. The Presidential Appointee Initiative, a Project of The Brookings Institution funded by The Pew Charitable Trusts. Washington, DC: January 2001.

National Academy of Public Administration. The Presidential Appointee's Handbook. Second Edition. National Academy of Public Administration. Washington, DC: 1988.

National Academy of Science, National Academy of Engineering, and Institute of Medicine. Science and Technology in the National Interest: The Presidential Appointment Process. Washington, DC: National Academy Press, 2000.

The Presidential Appointee Initiative. Staffing a New Administration: A Guide to Personnel Appointments in a Presidential Transition. The nonpartisan Presidential Appointee Initiative, a Project of the Brookings Institution funded by The Pew Charitable Trusts. Washington, DC: November 2000.

President's Commission on the Federal Appointment Process. The Report of the President's Commission on the Federal Appointment Process. Washington, DC: December 1990.

Transition to Governing Project. The Lengthening Appointment Process and Proposals for Reform. American Enterprise Institute in conjunction with the Brookings Institution and the Hoover Institution, funded by The Pew Charitable Trusts.

Transition to Governing Project. "Presidential Transitions: 'What We Did' The 1980 and 1988 Transitions, Panel 1." American Enterprise Institute in conjunction with Brookings Institution and the Hoover Institution, funded by the Pew Charitable Trusts. October 30, 2000.

Trattner, John H. "Presidential Appointments." The 1997 Prune Book: Making the Right Appointments to Manage Washington's Toughest Jobs. Council for Excellence in Government. Washington, DC: 1997.

Trattner, John H. The 2000 Prune Book: How to Succeed in Washington's Top Jobs. Council for Excellence in Government. Washington, DC: Brookings Institution Press, 2000.

Appendix C

Current SF 278 and "Revised Model"

The current SF 278 and the "revised model."

Current SF 278

SF 278 (Rev. [illegible]/2000)
5 C.F.R. Part [illegible]
U.S. Office of Government Ethics

Reporting Individual's Name

SCHEDULE A

Page Number 2 of

Assets and Income — BLOCK A

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income.

For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse).

None ☐

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

	Assets and Income	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples	Central Airlines Common				x												x						x										
	Doe Jones & Smith, Hometown, State			x																												Law Partnership Income $1-40(Feb)	
	Kempstone Equity Fund					x								x										x									
	IRA: Heartland 500 Index Fund							x						x											x								
1																																	
2																																	
3																																	
4																																	
5																																	
6																																	

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot Be Used.

SF 278 (Rev. 0[illegible]
5 C.F.R. Part 26[illegible]
U.S. Office of Government Ethics

Do not complete Schedule B if you are a new en[illegible]nt, nominee, or Vice Presidential or Presidential Candidate

Reporting Individual's Name

SCHEDULE B

Page Number of

Part I: Transactions

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss.

Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

None ☐

	Identification of Assets	Transaction Type (x): Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	Amount of Transaction (x): $1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
Example	Central Airlines Common	x			2/1/99			x									
1																	
2																	
3																	
4																	
5																	

* This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260, and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. **Exclude** anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See instructions for other exclusions.

None ☐

	Source (Name and Address)	Brief Description	Value
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/99 (personal activity unrelated to duty)	$500
	Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	$300
1			
2			
3			
4			
5			

Prior Editions Cannot Be Used.

SF 278 (R. [illegible])
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name

SCHEDULE C

Page Number
of

Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at **any time** during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None ☐

	Creditors *(Name and Address)*	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (x): $10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			x								
	John Jones, 123 J St., Washington, DC	Promissory note	1999	10%	on demand					x						
1																
2																
3																
4																
5																

*This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None ☐

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1			
2			
3			
4			
5			
6			

Prior Editions Cannot Be Used.

SF 278 (Rev. 9/[illegible])
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name	SCHEDULE D	Page Number of

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization (*Name and Address*)	Type of Organization	Position Held	From (*Mo., Yr.*)	To (*Mo., Yr.*)
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1					
2					
3					
4					
5					
6					

Part II: Compensation in Excess of $5,000 Paid by One Source

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

None ☐

	Source (*Name and Address*)	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1		
2		
3		
4		
5		
6		

Prior Editions Cannot Be Used.

"Revised Model" SF 278

Reporting Individual's Name	Schedule A	Page Number

Assets and Income	Asset Value at close of reporting period			Type						Amount of Income			
For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $500 in income during the reporting period. For yourself, and your spouse, also report the source of earned income exceeding $500 (other than from the U.S. Government). For honoraria earned prior to Government service report source as earned income -- do not report exact amount. For honoraria earned during Government service, report source, exact amount, and date. None ☐	$1,001-$15,000	$15,001 - $100,000	over $100,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Investment Income	Earned Income	Honoraria	$501 - $20,000	$20,001 - $100,000	over $100,000	If Honoraria, exact amount, and date (mo/yr)
1													
2													
3													
4													
5													

Reporting Individual's Name	Schedule B	Page Number

Part I: Transactions

Report any real property, stocks, bonds, commodity futures, or other securities not already listed on Schedule A, which were valued at over $1000 at any time during the reporting period but which you no longer hold.

None ☐

Do not complete if you are a nominee or a new entrant.

1	
2	
3	
4	
5	

*

Part II: Gifts, Reimbursements, and Travel Expenses

For you, and your spouse, and dependent children, report the source, a brief description, and the value of: (1) gifts (such and tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260, and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as a personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. **Exclude** anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See instructions for other exclusions.

None ☐

	Source (Name and Address)	Brief Description	Estimated Value
1			
2			
3			
4			
5			

Reporting Individual's Name	Schedule C	Page Number

Part I: Liabilities

None ☐

Report Liabilities over $20,000 owed to any one creditor at **any time** during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliance; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

	Creditor's Name	Type of Liability	Date Incurred	Interest Rate	$20,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000
1							
2							
3							
4							
5							

Part II: Agreements or Arrangements

None ☐

Report your agreements or arrangements for (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

	Status and Terms of any Agreement or Arrangement	Parties
1		
2		
3		
4		
5		
6		

Reporting Individual's Name	Schedule D	Page Number

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization of educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
1					
2					
3					
4					
5					
6					

Part II: Compensation in Excess of $25,000 Paid by one Source

Report sources of more than $25,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $25,000. You need not report the U.S. Government as a source.

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

None ☐

	Source (Name and Address)	Brief Description of Duties
1		
2		
3		
4		
5		
6		

Appendix D

Comparison Charts

Samples of the comparison charts for the SF 278, the SF 86 with supplemental questions, and the questionnaire for the Senate Governmental Affairs Committee.

	Assets	Investment Income	Earned Income	Other Non-Investment Income	Honoraria
SF - 278	• Each asset held for investment or production of income, currently valued >$1,000, for nominee, S, and DC, with description and category of value (10 value ranges for nominee, 7 for S and DC)	• For current and preceding CY, > $200, for nominee, S, and DC, with source, type, and amount (9 value ranges for nominee, 8 for S and DC)	• For current and preceding CY, > $200 for nominee, with source and actual amount; for S, >$1,000, with source only; for DC/D, nothing	• For current and preceding CY, > $200 for nominee, with source and actual amount; for S, >$1,000, with source only; for DC/D, nothing	• For current and preceding CY, > $200, for nominee and S, with source, date, and actual amount; for DC/D, nothing
SF- 86	• Any foreign property or financial interests, with dates, name of firm or government, and explanation				

Notes: 1. All data is for filer (nominee) only, unless otherwise indicated.
2. S=spouse; DC=dependent children; D=dependents

Page 2	Liabilities	Agreements/ Arrangements with Employers	Outside Positions and Employment (excluding political)	Bankruptcy	Financial Judgments
SF - 278	• Liabilities owed to any one creditor if > $10,000 at any time during current or preceding CY (for revolving charge accounts, only if currently > $10,000), for nominee, S and DC, with name and address of creditor, type of liability, date incurred, interest rate, term, and category of value (10 value ranges for nominee, 7 for S and DC)	• For nominee, continuing participation in employee benefit plans, continued payments from former employer, leaves of absence, and future employment agreements, with status, terms, parties, and date (current at the time of filing)	• For nominee, any positions with outside entities during current or preceding 2 CYs, with name, address, and description of organization, position held, and dates (includes officer, director, trustee, partner, proprietor, representative, employee, consultant)		
SF- 86	• Any debts delinquent over 180 days in last 7 years and any debts delinquent over 90 days currently, with amount, type, name and address of creditor, date incurred and satisfied		• All employment (including full and part time, military, self, other paid work, and unemployment) for last 10 years (and all Federal civilian service at any time), with name and address of employer or verifying person and supervisor, dates, position held, type code (9 choices), and for military include service branch/duty stations • Foreign employment or consultancy at any time, with dates, name of firm or government, and explanation • Separately list all military or merchant marine service, with branch code (7 choices) dates, service number, officer or enlisted status, active status, state if National Guard, country if not US, and date/type of discharge if not honorable • Indicate whether ever served as officer in an organization dedicated to violent overthrow of US	• For last 7 years, petitions under any chapter of bankruptcy code	• For last 7 years, wages garnished, property repossessed, liens against property, or unpaid judgments

Page 3	Net Worth Statement	Tax Returns	Trusts	Gifts	Powers of Attorney
SF - 278			• Identify any "excepted" trusts or "qualified" trusts with asset value >$1,000 or investment income >$200, for nominee, S, and DC		
SF- 86					

Page 4	Business Relationships/Financial Transactions	Clients	Miscellaneous
SF - 278		• Names/addresses of clients and customers, with description of services rendered, for compensation >$5,000 from any single source to nominee or business affiliate, for nominee's personal services during current CY or either of 2 preceding CYs	
SF- 86	• Any foreign business connections, with dates, name of firm or government, and explanation		

	Assets	Investment Income	Earned Income	Other Non-Investment Income	Honoraria
SF-86 Supplemental Information*	• All interests in real property (other than personal residence), with nature of interest, type of property, address				

* See SF-86 summary for the required basic information on that form.

Page 2	Liabilities	Agreements/Arrangements with Employers	Outside Positions and Employment (excluding political)	Bankruptcy	Financial Judgments
SF-86 Supplemental Information	• State whether college financial aid obligations have been satisfied • Required SF-86 information on delinquent debts must cover past 15 years (but not before 18th birthday)		• Required SF-86 information on employment must cover past 15 years (but not before 18th birthday), and include complete addresses. For Government and large employers, indicate department, bureau, division, section. Include volunteer work and internships. Provide complete address and phone for persons verifying self/ unemployment. • For military reserves and national guard, list organization, location, name and phone for immediate officer • For any office ever held in an organization that restricts membership (sex, race, color, religion, origin, age, handicap), provide name, address, and dates • All corporations, firms, partnerships, other business enterprises, nonprofits, other institutions where affiliated in past 5 years as officer, owner, director, trustee, or partner; and organizations with which affiliated prior to past 5 years that might present potential conflict or appearance thereof	• Required SF-86 bankruptcy information must cover past 15 years (but not before 18th birthday)	• Give full details of any collection procedure instituted by Federal, state or local authorities • For required SF-86 information on garnishment, repossessed property, liens, and unpaid judgments, cover past 15 years (but not before 18th birthday)

SF-86
Supplemental
Information

Page 4	Business Relationships/Financial Transactions	Clients	Miscellaneous
SF-86 Supplemental Information		• All corporations, firms, partnerships, business enterprises, nonprofits, other institutions where affiliated in past 5 years as advisor, attorney, or consultant; and organizations with which affiliated prior to past 5 years that might present potential conflict or appearance thereof (for an attorney's clients, only list major clients and those that might present potential conflict or appearance thereof)	

	Assets	Investment Income	Earned Income	Other Non-Investment Income	Honoraria
Questionnaire of Senate Committee on Governmental Affairs (106th Congress)	• Any investments which could involve potential conflicts of interest • As current net worth, identity and value of all assets >$1,000, held directly or indirectly by nominee, S, or D • Identity and nature of any interests in an option, mineral lease, copyright, or patent held directly or indirectly during past 12 months by nominee, S, or D, with dates of any divestment • Sources, amounts, and dates for anticipated receipts of future benefits (deferred income, stock options, executory contracts, all others) from current or previous business relationships, for nominee, S, and D (including professional services, firm memberships, employers, clients, customers)	• Sources and amounts >$100 received by nominee, S, or D during each of last 3 years	• Sources and amounts >$100 received by nominee, S, or D during each of last 3 years	• Sources and amounts >$100 received by nominee, S, or D during each of last 3 years	• Sources and amounts >$100 received by nominee, S, or D during each of last 3 years

Notes: 1. All data is for filer (nominee) only, unless otherwise indicated.
2. S=spouse; DC=dependent children; D=dependents

Page 2	Liabilities	Agreements/Arrangements with Employers	Outside Positions and Employment (excluding political)	Bankruptcy	Financial Judgments
Questionnaire of Senate Committee on Governmental Affairs (106th Congress)	• Any liabilities which could involve potential conflicts of interest • As current net worth, identity of each liability owed (direct, indirect or by guarantee)>$1,000, by nominee, S, or D, with nature, amount, creditor, terms; and all other direct or indirect liabilities >$1,000 owed during last 12 months, for nominee, S, or D, with nature, amount, creditor, terms, collateral, current status	• Indicate whether will sever all connections with present employers, business firms, business associations or business organizations • Explain any plans, commitments or agreements for outside employment (with or without compensation) during Government service • Indicate any plans, commitments or agreements, after Government service, to resume employment or affiliation or practice with previous employer, business firm, association or organization • Indicate any commitment to nominee for employment in any capacity after Government service • Describe all financial arrangements, deferred compensation agreements, other continuing dealings with business associates, clients, customers	• All jobs since college, with title/job description, name of employer, location, and dates • All part-time service or positions with Government (Federal, state, or local), including advisory, consultative, honorary, or other • All positions with business enterprises, educational or other institutions (includes officer, director, trustee, partner, proprietor, agent, representative, or consultant) • All offices held in organizations (professional, business, fraternal, scholarly, civic, public, charitable, other)		• Indicate whether any tax liens (Federal, state, or local) have been filed against nominee, S, or D, or against property owned by them (including property owned jointly or in partnership)

Page 3	Net Worth Statement	Tax Returns	Trusts	Gifts	Powers of Attorney
Questionnaire of Senate Committee on Governmental Affairs (106th Congress)	• See assets and liabilities, above	• Copy of Federal income tax returns for past 3 years, for nominee, S, and D • Indicate whether all Federal income tax returns have been filed, for past 10 years, for nominee, S, and D • Indicate whether taxes have always been paid on time, for nominee, S, and D • Indicate whether Federal, state, and local taxes are current at nomination, for nominee, S, and D	• Terms of any beneficial and blind trusts for nominee, S, or D as beneficiary (with name of trustee and copy of agreement for blind trusts) • Provide copy of any trust agreements established to resolve potential conflict of interest	• Sources and amounts >$100 received by nominee, S, or D during each of last 3 years	• Description of any fiduciary or power of attorney held by nominee, S, or D

Page 4	Business Relationships/Financial Transactions	Clients	Miscellaneous
Questionnaire of Senate Committee on Governmental Affairs (106th Congress)	• Describe any business relationship, dealing or financial transaction during last 10 years (for nominee, on behalf of a client, or acting as agent) that could constitute/result in possible conflict of interest • Identity, date, and amount of all direct or indirect investment transactions during last 12 months for nominee, S, and D		• Any relationships or obligations (other than liabilities and investments) which could involve potential conflicts of interest

THE WHITE HOUSE 2001 PROJECT
NOMINATION FORMS ONLINE
REPORT NO. 15

IN FULL VIEW
THE INQUIRY OF PRESIDENTIAL NOMINEES

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THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL
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Released 29 March 2001

Undertaken by presidency scholars and funded by the Pew Charitable Trusts, the White House 2001 Project's Nomination Forms Online program provides technical assistance to presidential nominees. See http://whitehouse2001.org for more information.

EXECUTIVE SUMMARY

This report produced by the White House 2001 Project covers two topics – the reduction of burdens on presidential nominees presented by the questions they must answer (inquiry) and three other general problems with scale, length, and indeterminacy.

RESCUING NOMINEES FROM INQUIRY

Recommendation 1. Coordinating Electronic Inquiry 10
The Federal Government should investigate the feasibility of the White House Counsel requesting collection and collation of government data on nominees in the early stages of the nominations process.

Recommendation 2. Improving Redundancy in the Executive 11
The Congress should require the Executive to develop a plan for improving redundancy in Executive branch forms by taking the most general information required by any agency and requiring that level of information for all.

Recommendation 3. Eliminate the Net Worth Statement in the Senate 12
The Senate committees should agree to eliminate the use of Net Worth Statements in favor of requiring nominees to submit their SF-278 reports.

Recommendation 4. Build a Model Questionnaire 12
The Senate Committee on Governmental Affairs should develop a model Senate committee questionnaire based on advice prepared by the White House 2001 Project's Nomination Forms Online Program.

Recommendation 5. White House Personal Data Statement 13
By improving redundancy on its own Personal Data Statement, the White House could substantially improve redundancy in over all inquiry of nominees.

ADDRESSING THE MESS BEYOND INQUIRY

Recommendation 6. Evaluate Information Technology Needs 14
The White House should receive funding to conduct a thorough study of its information management requirements in conjunction with a prominent School of Information Science or professional association to identify the potential for information science applications in managing the scale of presidential personnel operations.

Recommendation 7. Request an FBI Menu 15
The White House could request that the FBI develop a menu system of intrusive investigations which could appear on the Counsel's memo requesting a background investigation.

Recommendation 8. Develop a Practical Guide to Responsibilities 15
The White House Office of Presidential Personnel and the Office of Personnel Management could identify the practical security requirements of the top 300 presidential appointments.

Recommendation 9. Study Holds 15
The Senate Committee on Rules could conduct a study in conjunction with the Congressional Reference Service on distribution and use of Senatorial holds.

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THE WHITE HOUSE 2001 PROJECT
NOMINATION FORMS ONLINE
REPORT NO. 15

IN FULL VIEW
THE INQUIRY OF PRESIDENTIAL NOMINEES

Terry Sullivan, *The University of North Carolina at Chapel Hill*
& the James A. Baker III Institute for Public Policy

THE APPOINTMENTS MESS

Though he had chaos in mind, the Irish poet W. B. Yeats surely presaged the inquisition of presidential appointees when he penned the phrase "fabulous formless darkness." Over the past thirty years, confirming the President's nominees has become an increasingly convoluted fen of Executive and Senate forms, strategic entanglements, and "gotcha politics." Any number of presidential commissions, private forums, and policy think tanks have set their sites on fixing the appointments mess. They all agree that the process has discouraged and demoralized many of those who would serve in government. A recent survey of former appointees from the last three administrations released by another of these policy groups, the Brookings Institution's Presidential Appointees Initiative [PAI], funded by the Pew Charitable Trusts, simply added more evidence to the growing consensus that those who have been through the process "were so unhappy with the nomination and confirmation process that they called it embarrassing, and two-fifths said it was confusing…."[1] As others have, the PAI study concluded that

> …the Founders' model of presidential service is near the breaking point. Not only is the path into presidential service getting longer and more tortuous, it leads to ever-more stressful jobs. Those who survive the appointments process often enter office frustrated and fatigued….[2]

THE PROBLEMS WITH APPOINTMENTS

These studies agree that the process seems broken in a number of ways, including:

1. *The Overwhelming Scale of Recruitment.* The presidential personnel operation cannot accommodate the scale of operations necessary to locate the qualified nominees the government needs. For example, the Texas Governor's personnel system accommodated around 2,500 individuals. The Presidential personnel operation in the Clinton White House kept tabs on some 195,000 names or roughly 80 times more. Yet

---

[1] Paul C. Light and Virginia Thomas, April 2000, *The Merit and Reputation of an Administration: Presidential Appointees on the Appointments Process*, Washington: Presidential Appointees Initiative, page 10.

In a separate survey of those who had not held presidential appointments (although almost half of those surveyed had been asked), these "neophytes" responded to the same question with 81% saying they thought filling out the various forms would "not be difficult" [Paul C. Light and Virginia Thomas, January 2001, *Posts of Honor: How America's Corporate and Civic Leaders View Presidential Appointments*, Washington: Presidential Appointees Initiative, page 18.] The authors concluded that detailed familiarity with the forms and their contents greatly altered for the negative the opinions of those who brave the process.

[2] *Ibid.*, page 1.

the Bush White House operation is only twice the size of Governor Bush's Texas operation. The issue of scale devolves into two related issues: the growing number of nominated positions in government and the shrunken numbers of personnel staff that must recruit for these positions.

2. *The Immense Complexity of Vetting Nominees.* Appointees find the inquiries they must face intrusive and burdensome. Both the Century Fund's Task Force and the Presidential Appointees Initiative reports called for finding ways to restrain the intrusiveness of nominee inquiries and diminish the burdens of form filings. Some have suggested the need for a common inquiry or questionnaire shared by all of the Executive agencies and the Senate.
3. *The Unnecessary Length of the Vetting Process.* Primarily associated with the national security background investigations, vetting periods have lengthened as the FBI sorts nominees through its "one size investigates all" process, providing the same level of scrutiny for the National Security Advisor as provided the Commissioner of the Bureau of Labor Statistics.
4. *The Increasingly Indeterminate Confirmation Process.* Individual senatorial agendas have begun to play a more prominent role in making the appointments process more indeterminate. No longer can competent, well qualified nominees count on moving through the confirmation process with certainty. Instead, good candidates suffer delays in confirmation as Senators vie for strategic positions on unrelated legislation or separate appointments. One detailed study covering appointments from 1885 through 1999 concludes that "political conflict induced by divided government and polarization clearly leads to a more drawn out confirmation process. The ease with which… dilatory tactics can be employed is likely to give the opposition much more leverage over the process than they would have in a more majoritarian body."[3]

INTRACTABLE INQUIRY

While some of these difficulties have straightforward solutions — e.g., to reduce the length of the vetting process, the White House need only request more customized FBI investigations[4] — the morass of complex inquiry engulfing nominees presents a seemingly intractable problem. With one important qualification, this report develops a detailed picture of that inquiry process.[5] It describes its variety, identifying the general areas of scrutiny, specific questions and their variants, and the array of relationships between these questions. The analysis demonstrates the degree of commonality in areas of scrutiny and across forms, using repetitiveness as a measure of the burdens placed (unnecessarily) on those who would serve the administration. It compiles comparisons among the Senate committees of jurisdiction in order to assess the potential for a single Senate form. It also assesses three potential approaches to reducing the burdens on nominees without necessarily lessening its intrusiveness, concluding that two of these strategies seem most effective.

One example epitomizes the inquiry jumble — the case of real estate ownership. The Clinton White House has wanted to know what real estate the nominee now owns or the properties now owned by the nominee's spouse. It also had wanted a list of properties the nominee and spouse have owned in the past six years but don't own now. The FBI wanted to know only about properties that the nominee currently owns or has an *interest in.* Presumably, the

[3] See Nolan McCarty and Rose Razaghian, 1999, "Advice and Consent: Senate Responses to Executive Branch Nominations, 1885-1996," *American Journal of Political Science,* 43,4(October): 1122-43. McCarty and Razaghian clearly demonstrate that over time, the process has suffered from corrosive partisanship and Senate leadership disarray.

[4] The FBI can develop a menu of security investigations ranging from most to least intrusive. The White House simply modifies its standard memo from the Counsel requesting an investigation to accommodate the menu.

[5] For this report, the analysis focuses on the relationship between the Senate Committees and the Executive Branch questionnaires, concentrating on the committee inquiries. Later research will develop a common analysis for the two institutional approaches. In addition, the analysis outlined here uses the Clinton White House Personal Data Statement, used from the Reagan through the Clinton years. Currently, the George W. Bush White House is revising the Personal Data Statement that they used during the truncated transition and which originated in the Ford Administration.

properties the nominee might have an interest in include more than those the nominee owns outright. They dropped the spouse and dropped the past six years. The US Office of Government Ethics then wanted a report on those properties the nominee has sold or bought. Elsewhere, the nominee would list real estate assets currently held and any others that had made at least $200 in income. Drop the past six years, in favor of the last two.[6] Skip the properties the nominee owns but did not buy recently. Return the nominee's spouse to the mix of reporting on ownership. And then, add to the ownership report any dependent children the nominee may have who own property in their names. Then set the values of the transactions within one of 15 ranges.

After answering these three, what else could a nominee face? Well, the Senate committee wanted to return to the White House question of ownership by dropping the spouse, by dropping the dependent children. It uses the FBI's timeframe, so drop the past six years, then drop the two years. It ignores sales and acquisitions. It ignores information on the value ranges of properties. On the other hand, the Senate committee required the nominee to post a specific value for each of the properties reported.

All in all then, nominees must muster information on real estate property over four forms in three different time periods, designating three separate classes of owners, sorting on at least two separate types of transactions and in some cases indicating values across 15 distinct categories. The nominee simply finds this cacophony of requirements intractable.

SUMMARY OF FINDINGS

This study focuses on the nature of inquiry and therefore its main findings also focus on that subject. They are:

Recommendation 1. Coordinating Electronic Inquiry 10
The Federal Government should investigate the feasibility of the White House Counsel requesting collection and collation of government data on nominees in the early stages of the nominations process.

Recommendation 2. Improving Redundancy in the Executive 11
The Congress should require the Executive to develop a plan for improving redundancy in Executive branch forms by taking the most general information required by any agency and requiring that level of information for all.

Recommendation 3. Eliminate the Net Worth Statement in the Senate 12
The Senate committees should agree to eliminate the use of Net Worth Statements in favor of requiring nominees to submit their SF-278 reports.

Recommendation 4. Build a Model Questionnaire 12
The Senate Committee on Governmental Affairs should develop a model Senate committee questionnaire based on advice prepared by the White House 2001 Project's Nomination Forms Online Program.

Recommendation 5. White House Personal Data Statement 13
By improving redundancy on its own Personal Data Statement, the White House could substantially improve redundancy in over all inquiry of nominees.

[6] Submitting their forms at the administration's beginning (say on January 4, 2001), nominees only report properties owned as of that moment and transactions on the second question that have occurred only in the past two calendar years: 1999 and 2000. See Instructions to SF-278.

THE NATURE OF INQUIRY

The presidential appointments process involves three distinct operations with three generally different sets of inquiries:

1. *Assets*. Conducted by the White House Office of Presidential Personnel, this process identifies and then recruits potential nominees. It develops information about potential nominees and their assets as presidential appointees.
2. *Liabilities*. Coordinated by the White House Counsel's Office, this process scrutinizes potential nominees and their potential liabilities to the administration.
3. *Commitments*. While some elements of a nominee's liabilities also appear in this process, conducted by the Senate committee of jurisdiction, it predominantly probes the nominee's commitments to what might be thought of as the congressional "oversight" functions. These questions establish a relationship between the nominee, as a would-be confirmed appointee, and the committee as the grantor of that confirmation seeking some assurances.

This section describes the nature of inquiry in each of these segments of the process. Each description covers the following topics:

- The array of topics covered by inquiry. These differ across the three operations.
- The degree of repetitiveness in inquiry and hence the need for rationalization.

A NOTE ON INTRUSIVENESS

In addition to the burdens of repetitive inquiry, nominees also complain about what they perceive as the unnecessarily intrusive nature of inquiry. They argue that in providing information they build up data that plays no significant role in determining their qualifications. Or they perpetuate incorrect theories about political liabilities or control of conflict of interest.

One simple example of the latter complaint will suffice for now. While securing information on their property holdings, the government asks nominees to not only reveal the value of these properties but also to report those values with unnecessary precision. On the SF-278, the US Office of Government Ethics requires nominees to report the value of their assets in one of fifteen detailed categories. Table 1 summarizes these reporting requirements. The use of these narrowly defined categories (indeed the categories derive from statutory language), draws a distinction between properties worth $99,999 on the one hand and $100,010 on the other, as if the movement from the previous category to the next reflects some definable increase in apparent conflicts of interest. This approach to conflicts clearly reflects an assumption that disclosure of these specific values will dissuade potential nominees from developing conflicts of interest. On its face, this regulatory assumption seems flawed.[7]

The disclosure of these specific amounts rests on what some might call the "principal/agent" theory of control implicit in representative democracy. In that theory, an elected representative (an agent) avoids conflicts of interests by anticipating the adverse reaction of an aroused and informed public (the principal) who must in turn judge and vote on the representative's qualifications. The requirements for disclosing such minutia, therefore, act as a deterrent to potentially undesirable behavior. Presidential nominees, on the other hand, face a different situation because their

[7] 5 U.S.C., appendix§ 102(a)(1)-(3).

relationship to the potential acts of conflict differs from that of a representative. Nominees come into government from the private world where they may not have lived their lives in anticipation of governing. Hence, they cannot set their behavior in response to future restrictions they could not properly anticipate. They enter public service, therefore, with likely conflicts of interests inadvertently acquired. Since they could not properly anticipate these conflicts, the mechanism for control cannot rest on the deterrence provided by detailed responses. Hence the control technique underlying the reporting criteria plays no effective role in regulation. Instead, the government must find a *resolution* for conflicts of interest rather than a deterrent. For the purposes of remedies, then, detailed figures provide no particular guidance because they do not necessarily provide any useful information about the nature of potential resolutions.

Table 1. Asset Values Found on SF-278 Financial Disclosure Statement (rev 4/2000)

Place a value on assets owned by spouse or dependent children up to "over $1,000,000." For assets owned by the nominee, place value on asset up through "over $50,000,000."	• $1,001 - $15,000 • $15,001 - $50,000 • $50,001 - $100,000 • $100,001 - $250,000 • $250,001 - $500,000 • $500,001 - $1,000,000 • Over $1,000,000 • $1,000,001 - $5,000,000 • $5,000,001 - $25,000,000 • $25,000,001 - $50,000,000 • Over $50,000,000

MEASURING REPETITIVENESS

Repetition on the other hand poses no simple resolution and, hence, it presents the more difficult challenge to reform. While they complain about several characteristics of the process, nominees regularly and uniformly underscore their frustration with the repetitive nature of questions. Indeed, nominees leave the impression that the forms contain nothing but repetitive inquiries. While *that* degree of repetitiveness does *not* exist, the kinds of questions on which nominees must report repetitive information does pose an undue burden. Take for example the questions asked about ownership of real property in the various financial disclosure sections mentioned earlier. This section describes a simple approach for describing repetitiveness and identifying areas of undue duplication. The analysis assumes that no good purpose results from requiring nominees to vary their responses to similar questions. This section identifies the different levels of "repetitiveness." Then it assesses the distribution of repetitiveness over the different categories of inquiry pursued in the four questionnaires.

Nominees must file four forms.[8] The first originates with the White House. Called the "Personal Data Statement" [PDS], it covers some 43 questions (in some versions, including the "nanny-tax" question) laid out in paragraphs of text. If the White House permits them to go on to the vetting stage, applicants fill out three other forms. The first of these additional questionnaires, the Standard Form (SF) 86 develops information for a national security clearance, commonly called the "FBI background check." The SF-86 contains two forms: the standard questionnaire and a "supplemental questionnaire" which repackages some previous questions from the SF-86 into broader language often similar though not identical to questions asked on the White House PDS. The second additional questionnaire comes from the U.S. Office of Government Ethics [USOGE]. The SF-278 gathers information for financial disclosure. This form also doubles as an annual financial disclosure report for all federal

[8] Actually, appointees must fill out several additional forms granting permissions for various background and IRS checks but for purposes of analysis these do not represent much of a burden on nominees and no one considers them noxious.

employees above the rank of GS-15.[9] For most nominees, the third additional form comes from the Senate committee of jurisdiction.[10] Having returned each of these four forms, some nominees will receive a fifth questionnaire, another from the Senate committee of jurisdiction, asking for responses to more specific questions. These additional questions typically refer to specific issues before the nominee's agency.

To assess repetitiveness, the analysis distinguishes between questions on the basis of how much common information they require. Those questions which inquire into the same subject without varying the information constitute "identical" questions (e.g., "last name").[11] Call these questions "redundant." Those questions which request the same subject but which vary information along at least one dimension constitute "similar" questions (e.g., the real property questions in the previous example). Call these questions "repetitive." And those which seek different information from other questions constitute "non-repetitive" questions (e. g., the "nanny-tax" question asked only on the White House PDS). Call these questions "unique."

Table 2. Distribution of Repetitiveness

Type of Questions	Number	Percent
Identical across forms (redundant)	18	8
Similar (repetitive)	99	42
Non-Repetitive (unique)	116	50
Totals	233	

Table 2 distributes questions asked of nominees into the three repetitiveness categories. Among the four questionnaires, including a representative Senate committee questionnaire,[12] nominees must respond to approximately 233 inquiries. Nominees must answer 116 unique questions (those without an analog) on the four forms. They answer approximately another 100 repetitive questions (those with analogs). And they regularly repeat the answers to about 20 identical or redundant questions. Thus, by these estimates, nearly half of the questions nominees must answer have some analog elsewhere while the other half have no analog anywhere.

THE DISTRIBUTION OF REPETITIVENESS

Table 3 summarizes the distribution of questions across seven topics used to organize the White House Personal Data Statement.[13] These topics cover personal and family information, profession and education, tax and financial information, domestic help, public activities, legal proceedings, and miscellaneous information. Based on

[9] Below the rank of GS-15, federal employees report on a simplified financial disclosure form, the SF-450.

[10] Many Senate committees will ask the nominee to fill out a standard questionnaire for the committee and then based on answers to that questionnaire and with the help of policy experts in the General Accounting Office will require answers to a second more tailored questionnaire covering specific policy questions before the agency involved. In addition, appointees to positions as an agency Inspector General will fill out the committee questionnaire from the substantive committee and another questionnaire from the Senate Committee on Governmental Affairs, which has joint jurisdiction over Inspectors General for all agencies.

[11] Many of these "identical" questions do not appear on all forms. For example, while the title of the position to which the nominee is appointed appears in identical syntax when it does appear, it does not appear on each of the four forms appointees must fill out. Some institutions apparently have no interest in that particular question. Despite the lack of universal usage, the analysis will consider these questions as similar in form as those (e.g., last name) which do appear in identical form across all four forms.

[12] The analysis uses the Senate Committee on Commerce. It has exactly the median number of inquiries (73) across the 21 questionnaires used by the Senate committees.

[13] The analysis of committee questionnaires uses a slightly different set of topics reflecting the different interests inherent in the "commitment" stage of the appointments process. A later analysis will consider inquiry by employing a universal topic list.

figures reported in Table 3, one quarter of the questions asked nominees cover personal contact information and family background. This large proportion of questions derives primarily from the detailed background information required on the SF-86. Following personal and family information, the bulk of the remaining questions focus on professional and educational achievement or legal entanglements. Since the USOGE form does not cover legal involvement, that this category contains so many questions means that the Personal Data Statement, the FBI background check, and the Senate committee questionnaire place a great deal of emphasis on this topic. Because of its importance in the inquiry process, a special section considers the development of inquiry in this area (see below).

Table 3 also reports the degree to which a topic includes repetitive questions (combining identical and similar questions). Given this summary, one result appears misleading. Personal and Family Background has a repetitiveness rate of 34%, yet this category does not really place that level of burden on nominees that others with similar scores might. Since this topic contains almost all of the identical questions (15 of the 18 asked) found across the four forms and the identical questions tend to focus on basic identification and contact information (e. g., name and phone number). These questions, while repetitive, do not constitute the kind of real burden about which nominees complain. In addition, this category also accounts for the largest number of separate questions (42). As one prescription for reducing repetitiveness in this category, then, reformers could only reduce the amount of contact information required of nominees.[14]

Table 3. Repetitive and Non-Repetitive Questions by Topic

Topic	Unique	Repetitive	Totals	Percent Repetitive
Personal & Family Background	42	22	64	34
Professional & Educational Background	21	39	60	65
Tax & Financial Information	11	21	32	66
Domestic Help Issue	1	0	1	—
Public & Organizational Activities	2	7	9	78
Legal & Administrative Proceedings	9	25	34	74
Miscellaneous	30	3	33	9
Totals	116	117	233	Avg. 50

The greatest proportion of the burden generated by genuinely repetitive questions occurs on three topics: Professional and Educational Background (65% over 60 questions), Tax and Financial Information (66% of 32 questions), and Legal and Administrative Proceedings (74% of 34 questions). Association with employers and potential conflicts of interest constitutes a classic example of repetitiveness among the professional and educational questions. All four institutions involved in vetting nominees have an interest in describing potential conflicts of interest embedded in the nominee's professional relationships. Patterns of repetitiveness in reporting conflicts of interest resemble those patterns found in reporting property (found under the Tax and Financial Information topic): multiple reporting periods, multiple subjects, and multiple types of information.

The level of repetitiveness under the topic of Legal and Administrative Proceedings seems particularly impressive since, as noted earlier, the USOGE does not ask any questions about legal entanglements. The high

[14] For example, the OGE requires very little contact information on the SF-278. Instead, it relies on the agency to maintain contact with the nominee.

proportion of repetitive questions in this topic results almost exclusively from the FBI's tendency to disjoin questions from the PDS into several specialized variations. For example, while the White House asks about arrests, charges, convictions, and litigation all in one question, the FBI asks a series of questions covering separate classes of offenses and case dispositions: felonies, firearms, pending charges on felonies, courts martial, civil investigations, agency procedures, *et cetera*. In addition, the FBI background check changes the time period from that used on the PDS.

Repetitiveness on Senate Committee Questionnaires

Repetitiveness takes on a different meaning when considering Senate committee questionnaires because except for Inspectors General, nominees need not file more than one of these twenty-one separate questionnaires. In this context, then, repetitiveness constitutes a measure of the commonality between questionnaires. Table 4 summarizes comparison between all of the committee questions, some 206, on twelve separate topics [see also the Appendix]. These questions vary from the standard personal questions and legal entanglements to the more specialized questions about commitments unique to Senate committees. The table makes a special effort to summarize commonality across the range of conflict of interest questions posed by the Senate committees.

The table reports on commonality in two ways. First, for each category of questions, it reports the percentage of questionnaires that carry the same question. Call a question "common" when it appears on more than 45% of all Senate questionnaires.[15] As is apparent from the table, questions do repeat across the Senate questionnaires but there is substantial variance in commonality. The average question appears on only 30% of the Senate committee questionnaires. And to some extent, that number overstates the level of commonality itself, because two committees have multiple forms (Agriculture and Commerce) that have a core of questions common the each of the questionnaires.

Table 4. Repetitive and Non-Repetitive Questions by Topic, Senate Committee Forms

	Topic	Unique	Common	Totals	Commonality Percent	Commonality Degree
	Personal Information	1	10	11	91	74
	Professional & Educational Background	16	10	26	38	34
	Qualifications	28	1	29	3	8
Conflict of Interest	*Net Worth*	13	29	42	69	41
	Associations	5	4	9	44	42
	Transactions	16	4	20	20	32
	Advocacy	9	2	11	18	23
	Fiduciaries	2	0	2	0	25
	Taxes	6	4	10	40	33
	Legal Entanglements	4	5	9	56	37
	Unfavorable	2	1	3	33	28
	Commitments	32	2	34	6	11
	Totals	116	90	206		
	Averages	11	6	17	44	30
	Medians	7	4	11	36	32

[15] There is no established definition of "common." Using 45% as an appropriate cutoff derives from the fact that few questions come close to meeting this definition. They either appear on considerably more or considerably fewer questionnaires.

As one might expect, the most common questions on Senate committee questionnaires fall into the personal information category and a net worth statement and most committees carry these questions. While the class of commitment questions appears regularly on committee questions, most questions in this group are not common. As an indication of how the Senate committees differ from the Executive Branch forms, the average Senate question repeats on only 14% of the Executive questionnaires. The principal culprits in this low rate of commonality in the Executive forms derives from the commitment questions, which are themselves not very common on the Senate forms and nonexistent on the Executive, and the popularity of the net worth statements which are supplanted in the Executive by the SF-278 questionnaire.[16]

Second, the table reports the "degree" of commonality across committee questionnaires as a measure of how often each question in the category appears on average. This measure is sensitive to the spread of commonality across the questions. Take for example questions on personal information. Almost every question appears on every questionnaire, except one which appears on very few. So, the degree of commonality on personal information, because it takes into account this variation in appearance, comes in lower that the raw commonality score.

STRATEGIES FOR RESCUING NOMINEES

Ameliorating the current situation rests on both reducing the intrusiveness of inquiry and the burdens that repetitiveness place on nominees. Reducing the intrusiveness of inquiry requires policy decisions made by institutions reluctant to give up their leverage over the process and some changes are possible (see below). By contrast, relieving the burden of unnecessary inquiry requires giving up little in the way of control. Hence, it seems more reasonable to expect that practical reform of the process rests on taking one of three directions: reducing the number of questions asked, reducing the degree of repetitiveness (or increasing redundancy), exercising the strategic imperative of a single institution to unilaterally reduce repetitiveness, or developing a common form and eliminating repetitiveness altogether. This section explores each of these strategies. The following section explores briefly other proposed reforms relevant to the inquiry process.

REDUCING THE NUMBER OF QUESTIONS

Since repetitive questions make up only half of all questions asked of nominees, reform efforts could properly focus on reducing the number of unique questions asked of nominees. This approach most closely resembles an attempt at reforming the level of intrusiveness since, of the 116 questions having no counterpart elsewhere, a bit more than half (60) occur on the FBI background check. More than half of those (40), or a bit more than one-third of the total number of individual questions, fall within the Personal and Family Background topic. These questions establish a host of background characteristics presumably necessary to trace out an individual's identity, including basic descriptors like "height" and "hair color" and "spouse citizenship." The only questions in this group that might seem superfluous require information on the nominee's previous marriages and the descriptions required of adults who reside with the nominee but not part of the immediate family. The difficulty of this reform approach, then, rests on the fact that the questions generated by both the FBI in SF-86 and the USOGE in SF-278 have substantial institutional justifications. In the former, the FBI can rely on expertise about the nature of the investigative process to suggest that it has a need to generate sufficient amounts of data on topics to discover security risks. In the latter, the SF-278 has a substantial statutory basis for its inquiries. Reforms in this area, then, closely resemble other reforms assessed below.

[16] Only three committees require that the nominee submit their SF-278 as part of the confirmation process. Two of these three committees do not require net worth statements.

One reform in this area is possible though. To reduce the number of questions that nominees answer, the federal government could transfer basic background information on a nominee prior to the FBI conducting the background investigation. The administration would request a name search on the nominee from the government's files and then transfer the results to the appropriate forms electronically. The administration could then return these forms, partially completed, to the nominee to check, amend, and to complete. That form completed, the background check would begin in earnest. In addition to effectively reducing the burden on nominees, taking this approach would reduce the amount of time the FBI spends retracing earlier investigations.

Recommendation 1. Coordinating Electronic Inquiry

The Federal Government should investigate the feasibility of the White House Counsel requesting collection and collation of government data on nominees in the early stages of the nominations process.

INCREASING REDUNDANCY

Without reducing the number of issues covered, reform could accommodate nominees by reducing repetitiveness and transforming the similar questions on forms into identical questions on all forms, thereby increasing redundancy. Among the repeated questions, three-quarters have similarities with other questions but require nominees to significantly reshape their earlier answers. The real property questions described earlier constitute a perfect example. Nominees must answer six separate though similar questions. Settling on a single question, using the USOGE approach, for example, would reduce the number of questions on real property by five (of six) and cut the percentage of repetitiveness in the tax and financial topic by 47%, from 66% to 35%, while reducing the number of questions in this category by almost one-half. Table 5 summarizes the results of taking this approach on the most repetitive topics.

Table 5. Results of Reducing Repetitiveness (Increasing Redundancy)

Topic	Unique	Repetitive	Totals	Reformed Percentage	Prior
Personal & Family Background	41	18	59	31	34
Professional & Educational Background	22	14	36	39	65
Tax & Financial Information	11	6	17	35	66
Domestic Help Issue	1	0	1	—	—
Public & Organizational Activities	2	2	4	50	78
Legal & Administrative Proceedings	7	6	13	46	74
Miscellaneous	30	1	31	3	9
Totals	114	47	161	Avg. 29	Avg.50

In order to create such a common question, the four institutions could rely on the broadest range of information required on any dimension involved in a topic. Even that strategy would reduce repetitiveness. For example, on the real property example, all institutions could settle on the longer time periods of the White House, the broader definition of subjects used by the FBI, and the broader notion of ownership inherent in the FBI's term

"interest." In the end, this reform reduces the burden on nominees by affording them a standard format with which to provide information.

Similar reductions in repetitiveness result by reducing the number of different questions requiring information on professional relationships. At least 10 separate questions ask about connections between the nominee and corporations and other institutions. Like those questions on property, these questions differ from one another by varying the time periods or the type of organizations involved, the level of connection to the organization necessary to report, the level of compensation triggering a report, *et cetera.* Reform in this topic could reduce the number of questions from ten to, say, three on conflict of interest.[17] Other changes in this topic would lower the number of questions concerning educational attainment, plans for post government compensation, and foreign representation. Consolidation among these groups would result in a further reduction from eight questions to three. In all, then, reformulation in this topic could lower the level of repetitiveness from 65% to 39%.

Under the last topic with serious repetitiveness, Legal and Administrative Proceedings, reformulation could eliminate all but seven repetitive questions. That would reduce the repetitiveness in the topic from 74% to 46%. Overall, reformulating questions in the Executive Branch forms would reduce repetitiveness from half of all questions to less than one-third. By normal standards, that reduction would constitute an improvement of 42%, a very substantial improvement. In the end, utilizing this reform approach would reduce the level of inquiry from 233 questions to 161, a total reduction in burden by 31%.[18] Table 5 illustrates the results of this approach to reform by increasing redundancy. It lists, by topic, those questions that remain when increasing redundancy without challenging intrusiveness.

Recommendation 2. Improving Redundancy in the Executive

The Congress should require the Executive to develop a plan for improving redundancy in Executive branch forms by taking the most general information required by any agency and requiring that level of information for all.

Improving redundancy in the Senate constitutes a major challenge underlying the previous analysis since very few of the questions appearing on the "representative" Senate form used in it appear on other Senate questionnaires. In short, to accomplish the same level of redundancy for each of the Senate committees of jurisdiction would require substantial alterations on those questionnaires.

Adopting two changes would have a substantial effect on redundancy though. First, the Senate committees can rely on the SF-278 financial disclosure statement as a substitute for the commonly used net worth statement. Eliminating a net worth statement would mean that the Senate would not identify those individuals who had seriously over-extended themselves, creating massive debt say, but who had managed to keep current their payments on these debts. Such an "insolvency strategy," i. e., *maintaining* massive debt, would not appear on the typical financial disclosure statement. It could be derived, though from a close examination of the liabilities section of that statement. In addition, insolvency is a remedial situation and it does not present a direct conflict of interest with carrying out Executive responsibilities in most policy-making assignments. The trade-off between missing some single individual's vulnerability and the costs borne by everyone in developing the net worth statement makes it an easy target of improving the commonality across the process of inquiry.

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[17] The reduced number would include a single question on the SF-86 outlining the nominee's employment history and two separate questions distinguishing between employment related relationships and advisor relationships.

[18] Statistics on change derive from the fact that the scale of 0-100% has a fixed upper and lower bounds. As such, we measure change in terms of the remaining distance. So, a change from 50% to 25% equals a change of 50% as it travels half the distance available between 0 and 50. Similarly a change from 50% to 75% travels half the remaining distance to 100% and so also equals a change of 50%.

Recommendation 3. Eliminate the Net Worth Statement in the Senate

The Senate committees should agree to eliminate the use of Net Worth Statements in favor of requiring nominees to submit their SF-278 reports.

Improving redundancy in the Senate then requires finding a strategy for developing common questions. One such strategy would be to mimic the Executive questionnaires as much as possible. Just as an example, the Senate committees could adopt the White House Personal Data Statement question on real estate holdings. Another strategy would be to prepare a model questionnaire on all of the topics other than commitment. Providing such a model would fall entirely within the jurisdiction of the Senate Committee on Governmental Affairs and certainly call on their unique expertise in the matter.

Recommendation 4. Build a Model Questionnaire

The Senate Committee on Governmental Affairs should develop a model Senate committee questionnaire based on advice prepared by the White House 2001 Project's Nomination Forms Online Program.

TAKING STRATEGIC IMPERATIVES SERIOUSLY

Under one further reform strategy, one of the four institutions would unilaterally surrender control over information. That institution could rely, then, on the information gathered by the others. And it could guarantee a significant reduction in information requirements on nominees and repetitiveness by acting unilaterally.

The White House has the best opportunity to take this reform approach on two accounts. First, since it initiates the process, it can afford to limit its own information requirements by securing the information delivered to the other agencies. Instead of offering its own form, the White House could rely on the fact that it can see how applicants fill out their SF-86 and draft their SF-278 as part of the initial negotiations process conducted pursuant to identifying eventual nominees. Based on those drafts, then, the White House would determine if it would carry through with its intent to nominate thereby triggering the appointment vetting process.

The White House 2001 Project has already prepared an analysis of the Reagan/Bush/Clinton White House Personal Data Statement. That analysis identified four categories of questions ranging from those "Asked nowhere else" to "Identical," those redundant on other forms. In identifying questions for deletion on that form, the analysis assumed that the former category of questions should remain as it represents questions that nowhere else, while the White House should minimize the latter category in favor of obtaining the information through other questionnaires.[19] Two categories remain in between these two extremes. The first group includes questions that ask for more information than that found on the other questionnaires. The analysis presumed that the White House should retain these questions, assuming that the administration preferred more information to less. The other category included questions that obtain "different" information from other questionnaires. Typically, these questions request less information or variants on information found on other forms.

In developing an inventory of questions that could remain on a revised White House Personal Data Statement, the analysis simply dropped those questions that involved information required elsewhere in a more general form (the category "Different information found elsewhere. Could be dropped," see below). It also dropped two questions

[19] The White House should retain some basic identifying information on its form. These would include name, birth date and place, and social security number.

only on the Personal Data Statement about the nominee's spouse, even though these questions about the spouse's employment appear on no other form. The revision that resulted from the application of these rules reduced inquiry in almost every category in the Personal Data Statement, with the exception of the "specialty questions" on domestic help and child support. Since a number of the PDS questions repeat on other forms, this strategy would reduce repetitiveness to around 28%, slightly more than the more complicated strategy outlined earlier. Further reductions of the Personal Data Statement could result by eliminating the "Legal and Administrative Proceedings" class of questions altogether in favor of the FBI's background check.

Recommendation 5. White House Personal Data Statement

By improving redundancy on its own Personal Data Statement, the White House could substantially improve redundancy in over all inquiry of nominees.

A Word About a Common Form

In assessing the inquiry that nominees must face, reforming the process seems clearly overdue. Regardless of one's assessment of the level of or necessity for intrusiveness, surely the government cannot justify the burdensome repetitiveness the system places on nominees so willing to serve. Systems of inquiry similar to that for real property needlessly confuse the nominees and require an undue burden on them. That attempts to change the situation, both inside and outside of government, and across institutions have been uniformly unsuccessful attests to the diligence and entrenchment of the forces of confusion and burden.

Each of the institutions involved in vetting administration nominees plays a role in this unnecessary affliction. Few have any special justification for placing that burden unfairly on the nominee, yet they all stand unyielding in reforming the process. While it seems promising, even the most recent statutory requirements for study and analysis that the Congress has imposed on the President and, in turn, the President has assigned to USOGE, have the familiar ring of past attempts. For this reason, side-stepping reform *per se* and relying on modification and increased redundancy seems the most likely approach to take.

On the other hand, each of the institutions involved in inflicting this unnecessary affliction also have legitimate responsibilities in the appointments process and their different responsibilities generate different requirements. A common form, therefore, seems an unlikely reform proposition. Instead, the Senate and Executive would probably find it more useful to improve redundancy while recognizing their unique responsibilities and requirements. Though less dramatic, improving redundancy constitutes a very real improvement over the current situation. Make no mistake about that. Nominees and those professionals who must assist them in filing forms would welcome a 30% reduction in the number of inquiries they must face, even if the remaining questions ask more of them than any of the previous four questions did alone. To face a single inquiry, however broad, has its advantages.

ADDRESSING THE MESS BEYOND INQUIRY

Of course, improving the questionnaires will not rein in the range of other practices that have made the nomination process so difficult in recent times. The innovative and comprehensive empirical research of Nolan McCarty and Rose Razaghian, quoted earlier, clearly demonstrates that over time, the process has suffered much more from corrosive partisanship and the leadership disarray in the Senate. Obviously, then, a real reform movement must focus on developing a more viable and resilient common ground on presidential appointments – one that moves beyond repairs to redundancy and towards a collective, majoritarian agreement on the proper constitutional balance on nominations and the president's team. This section briefly covers the other three areas of concern: scale, length, and indeterminacy.

MATCHING THE SCALE OF OPERATIONS

In a modern age, dealing with scale has a number of easy options. Electronic support seems key to handling large numbers. The innovative uses of the internet introduced by the current administration constitutes an excellent example of how to proceed. A number of other examples could be found with the simple application of a number of standard "information science" techniques. The White House has a significant stake in thoroughly reviewing its electronic infrastructure with an eye to these improvements.

The application of such standard techniques and the application of other standard personnel management processes probably requires the development of a permanent professional staff, managed by presidential appointees. The Office of Management and Budget presents a perfect example of the marriage of presidential responsibilities and professional expertise. In order to speed the process of acquiring an administration, the White House Office of Presidential Personnel and the Counsel's Office should undergo a thorough overhaul and professionalization in those area of appointee management.

Recommendation 6. Evaluate Information Technology Needs

The White House should receive funding to conduct a thorough study of its information management requirements in conjunction with a prominent School of Information Science or professional association to identify the potential for information science applications in managing the scale of presidential personnel operations.

SHORTENING THE LENGTH OF INQUIRY

Proposals to shorten the length of the inquiry process invariably focus on the FBI national security background check and its widespread and uniform application to the full range of policy-making positions in government. The fact is though that the FBI applies its background checks to presidential appointees as a response to an executive order. Hence, the White House has a substantial responsibility for the lengthy FBI check. To reduce the length of inquiry in this regard, then, has a simple remedy. The White House can develop a more sophisticate sense of when to use the full investigation (required on Schedule I positions, for example) and when to use less. Two initial steps could help in this regard. First, the White House could simply request that the FBI develop for them a menu of investigations from least intrusive and time consuming to most intrusive and thorough. It could also instruct the White House Office of Presidential Personnel to work with the Office of Personnel Management to develop an

assessment of which positions among presidential appointments actually require as part of their daily work routines a specific level of security clearance associated with a specific kind of investigation.

Recommendation 7. Request an FBI Menu

The White House could request that the FBI develop a menu system of intrusive investigations which could appear on the Counsel's memo requesting a background investigation.

Recommendation 8. Develop a Practical Guide to Responsibilities

The White House Office of Presidential Personnel and the Office of Personnel Management could identify the practical security requirements of the top 300 presidential appointments.

STRENGTHENING THE DETERMINACY OF CONFIRMATION

Only the Senate can control itself. The strategic use of "holds" by Senators reaching for bargaining advantages with the administration and with their peers carries a cost to governance that only the Senate itself can control. If only a few Senators actually abuse the system of holds then the Senate as a body suffers from the actions of a few of its members. One useful step in reducing this strategic use of holds, then, would be to identify which Senators use holds.

Recommendation 9. Study Holds

The Senate Committee on Rules could conduct a study in conjunction with the Congressional Reference Service on distribution and use of Senatorial holds.

APPENDIX: COMPARING COMMITTEE INQUIRY — ACROSS EXECUTIVE AND COMMITTEE FORMS

Questions			Executive				U. S. Senate Committee of Jurisdiction																			
	Type	Text	PDS[20]	SF86	SF278	SF450	Agriculture, Deptl	Agriculture, CFTC	Agriculture, FCA	Agriculture, MC	Armed Services	Banking, Housing, ...	Commerce, Boards	Commerce, Deptl	Energy & Nat. Res	Environment & PWs	Finance	Foreign Relations	Governmental Affairs	Health, Ed, Labor...	Indian Affairs	Select on Intelligence	Judiciary - Deptl	Rules	Small Business	Veterans Affairs	Commonality
1	Personal	Name (include any former names used)	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	100
1		Date of birth	■	■			■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	100
1		Place of birth	■	■			■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	100
1		Marital status	■	■			■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	100
1		Name of spouse, include maiden name	■	■			■	■	■	■	■	■			■	■	■	■	■	■	■	■	■	■	■	■	90
1		Names and Ages of Children	■	■							■	■	■	■	■	■	■	■	■	■	■	■		■	■	■	75
1		Address (list current place of residence and office addresses) List all office and home telephone numbers where you may be reached.	■	■	■	■	■	■	■	■	■		■	■		■	■	■	■				■	■		■	70
1		Position to which nominated			■	■					■	■	■	■	■	■		■	■	■	■			■	■	■	65
1		Date of nomination			■	■					■	■	■	■	■	■		■	■	■	■			■	■	■	65
1		Spouse's occupation, employer's name and business address(es)	■	■			■	■	■	■	■							■				■	■				40
1		Social Security Number	■	■																					■		5
2	Background	Education: List each college and graduate or professional school you have attended, including dates of attendance, degrees received and dates degrees were granted.	■	■			■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	100
2		Honors and Awards: List any scholarships, fellowships, honorary degrees and honorary society memberships that you received and believe would be of interest to the Committee.					■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	100
2		Employment record: List (by year) all business or professional corporations, companies, firms or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including farms, with which you were connected as an officer, director, partner, proprietor, or employees since graduation from college; include a title and brief job description.	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■		■	■	■	■	95

[20] This Personal Data Statement represents the Personal Data Statement as used by the GHW Bush and Clinton administrations. The current George Bush Personal Data Statement derives from the Ford administration and is currently under review for modification.

Questions			Executive				U. S. Senate Committee of Jurisdiction																			
Type		Text	PDS[20]	SF86	SF278	SF450	Agriculture, Deptl	Agriculture, CFTC	Agriculture, FCA	Agriculture, MC	Armed Services	Banking, Housing…	Commerce, Boards	Commerce, Deptl	Energy & Nat. Res	Environment & PWs	Finance	Foreign Relations	Governmental Affairs	Health, Ed, Labor…	Indian Affairs	Select on Intelligence	Judiciary - Deptl	Rules	Small Business	Veterans Affairs	Commonality
2		Memberships: List all organizations to which you belong, excluding religious organizations.	■				■	■	■	■	■	■	■	■	■	■	■	■		■	■	■	■	■	■	■	95
2		Published Writings: List the titles, publishers and dates of books, articles, reports or other published materials (including published speeches) you have written. Please include on this list published materials on which you are listed as the principal editor. If would be helpful to the Committee if you could provide one copy of all published material that may not be readily available. Also, to the maximum extent practicable, please supply a copy of all unpublished speeches you make during the ```past five years on issues involving agriculture, nutrition, forestry or commodity futures policy or related matters.	■				■	■	■	■	■	■	■	■	■	■	■	■	■		■	■	■	■		■	90
2		Government Service: State (chronologically) your government service or public offices you have held, including the terms of service grade levels and whether such positions were elected or appointed.		■	■		■	■	■	■	■	■	■	■			■	■	■	■		■	■	■	■	■	85
2		List all offices with a political party which you have held or any public office for which you have been a candidate.		■							■	■	■	■		■		■	■	■		■	■	■	■	■	65
2		Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.		■			■	■	■	■					■			■			■		■	■	■	■	55
2		List all memberships and offices held in and services rendered to all political parties or election committees during the last 5 years.	■								■		■	■		■		■	■	■		■	■			■	50
2		Itemize all political contributions to any individual, campaign organization, political party, political action committee or similar entity of $100 or more for the past 5 years.									■	■	■	■		■		■	■					■	■		45
2		Political affiliations: The statute creating the Commodity Futures Trading Commission requires that no more than three members be from the same political party. List your current political party registration or affiliation.						■	■	■							■										20
2		During the time you were employed in any Federal Government job, did any Federal office (other than your employing Agency) or any person, company or organization pay or reimburse you for any travel or other associated expenses? Describe each occurrence and list the sponsor's name and address, the date of travel and the location, and the amount of expenses reimbursed. List an honoraria or similar payments made in connection with you participation in any events.																							■		5

Questions			Executive				U. S. Senate Committee of Jurisdiction																				
Type		Text	PDS[20]	SF86	SF278	SF450	Agriculture, Dep'd	Agriculture, CFTC	Agriculture, FCA	Agriculture, MC	Armed Services	Banking, Housing…	Commerce, Boards	Commerce, Dep'd	Energy & Nat. Res	Environment & PW's	Finance	Foreign Relations	Governmental Affairs	Health, Ed, Labor…	Indian Affairs	Select on Intelligence	Judiciary - Dep'd	Rules	Small Business	Veterans Affairs	Commonality
2		During the time you were employed in any Federal Government job, did you participate in or attend political activities, such as rallies, meetings, fundraisers or other events with candidates for elective office? Describe each event, including the name of the candidate, other participants and your role in the event.																							■		5
2		If you are presently employed by a Federal Agency, will you continue in any way your involvement with that Agency should be confirmed by the Senate for this position? Please describe your involvement.																							■		5
2		Indicate any specialized intelligence or national security expertise you have acquired having served in the positions described in above two questions.																				■					5
2		Are you now or have you ever been an officer or director of any financial institution or entity?								■																	5
2		Bar associations: List all bar associations, legal or judicial related committees or conferences of which you are or have been a member and give the titles and dates of any office which you have held in such groups.																					■				5
2		Foreign Language Proficiency: List all foreign languages spoken and include a self-assessment of you ability to speak, write and understand each language.																■									5
2		If yes, did you campaign committee or organization timely file all reports required by law or regulation related to campaign contributions and expenditures? If no, please explain.																■									5
2		Is your committee or organization currently in compliance with all financial disclosure and reporting requirements? If no, please explain.																■									5
2		Within the last 10 years, were any formal complaints made or inquiries undertaken regarding your committee's compliance with applicable campaign laws and regulations? Are any complaints or inquiries still pending? If so, please explain.	■	■														■									5
2		Is your campaign committee or organization still active? If so, and if confirmed, what are your plans for the activities of the committee?																■									5
2		List all events you attended at which financial contributors to any political party were entertained or where they were granted access to senior government officials.																							■		5
2		Political affiliations and activities: Also state where you are currently	■																					■			5

Questions			Executive				U. S. Senate Committee of Jurisdiction																				
	Type	Text	PDS[20]	SF86	SF278	SF450	Agriculture, Dept	Agriculture, CFTC	Agriculture, FCA	Agriculture, MC	Armed Services	Banking, Housing,...	Commerce, Boards	Commerce, Dept	Energy & Nat. Res	Environment & PWs	Finance	Foreign Relations	Governmental Affairs	Health, Ed, Labor...	Indian Affairs	Select on Intelligence	Judiciary - Dept	Rules	Small Business	Veterans Affairs	Commonality
		registered to vote and provide your present voting address and the party with which you are associated, if any.																									
2		Do you currently belong, or have you belonged, to any organization which discriminates on the basis of race, sex, or religion— through either formal membership requirements or the practical implementation of member policies? If so, list, with dates of membership.																					■				5
2		What have you done to try to change these policies?																					■				5
3	Qualifications	Qualifications: State fully your qualifications to serve in the position to which you have been named.										■	■	■		■	■	■			■	■		■			45
3		What is the present state of your health?	■	■			■	■	■	■													■				25
3		Selection: a) Do you know why you were chosen for this nomination by the President?											■	■					■								15
3		Prior Confirmation: Have you ever been nominated to or served in a position requiring Senate confirmation?																■					■				10
3		Please describe how your previous professional experience and education qualifies you for the position for which you have been nominated.												■					■								10
3		What skills do you believe you may be lacking which may be necessary to successfully carry out this position? What steps can be taken to obtain those skills?											■	■													10
3		Why do you wish to serve in the position for which you have been nominated?											■	■													10
3		Have you ever been denied any security clearance or access to classified information for any reason? If yes, please explain in detail.		■																		■					5
3		Have you ever been required to take a polygraph examination for any security clearance or access to classified information? If yes, please explain.																				■					5
3		Have you ever refused to submit to a polygraph examination? If yes, please explain.																				■					5
3		Legal career: Describe chronologically your law practice and experience after graduation from law school including whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk																					■				5
3		Legal career: Describe chronologically your law practice and experience after graduation from law school including whether you practiced alone,																					■				5

Questions			Executive				U. S. Senate Committee of Jurisdiction																			
Type		Text	PDS20	SF86	SF278	SF450	Agriculture, Deptl	Agriculture, CFTC	Agriculture, FCA	Agriculture, MC	Armed Services	Banking, Housing,…	Commerce, Boards	Commerce, Deptl	Energy & Nat. Res	Environment & PWs	Finance	Foreign Relations	Governmental Affairs	Health, Ed, Labor…	Indian Affairs	Select on Intelligence	Judiciary - Deptl	Rules	Small Business	Veterans Affairs	Commonality
		and if so, the addresses and dates																								
3		Legal career: Describe chronologically your law practice and experience after graduation from law school including The dates, name, and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each																					■				5
3		What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?																					■				5
3		Describe your typical former clients, and mention the areas, if any, in which you have specialized.																					■				5
3		Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance giving dates																					■				5
3		What percentage of these appearances was in federal courts?																					■				5
3		What percentage of these appearances was in state courts of record?																					■				5
3		What percentage of these appearances was in other courts?																					■				5
3		Also, list all jurisdictions in which you are licensed to practice.																				■					5
3		What percentage of your litigation was civil?																					■				5
3		What percentage of your litigation was criminal?																					■				5
3		State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.																					■				5
3		What percentage of these trials was jury?																					■				5
3		What percentage of these trials was non-jury?																					■				5
3		Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case: a. the date of representation b. the name of the court and the name of the judge or judges before whom the case was litigated																					■				5

Questions		Executive				U. S. Senate Committee of Jurisdiction																				
Type	Text	PDS[20]	SF86	SF278	SF450	Agriculture, Dept'l	Agriculture, CFTC	Agriculture, FCA	Agriculture, MC	Armed Services	Banking, Housing,...	Commerce, Boards	Commerce, Dept'l	Energy & Nat. Res	Environment & PW's	Finance	Foreign Relations	Governmental Affairs	Health, Ed, Labor...	Indian Affairs	Select on Intelligence	Judiciary - Dept'l	Rules	Small Business	Veterans Affairs	Commonality
	c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties																									
3	Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).																					■				5
3	Court admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.																					■				5
3	An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.																					■				5
4	Net Worth Form: Have you ever taken bankruptcy?	■	■			■	■	■	■		■	■	■	■			■		■	■		■	■	■	■	75
4	Total liabilities	■		■	■	■	■	■	■		■	■	■			■		■	■	■		■			■	65
4	Are you defendant in any suits or legal actions?	■	■			■	■	■	■		■	■	■	■	■				■	■		■			■	65
4	Total assets	■		■	■	■	■	■	■		■	■	■					■	■	■		■			■	60
4	Assets: Other assets— itemize					■	■	■	■		■					■			■	■		■			■	50
4	Are any assets pledged?-- add schedule					■	■	■	■		■				■				■	■		■			■	50
4	Assets: Cash on hand and in banks					■	■	■	■		■								■	■		■			■	45
4	Assets: U.S. Government securities— add schedule					■	■	■	■		■								■	■		■			■	45
4	Assets: Listed securities— add schedule					■	■	■	■		■								■	■		■			■	45
4	Assets: Unlisted securities— add schedule					■	■	■	■		■								■	■		■			■	45
4	Assets: Accounts and notes receivable: Due from relatives and friends					■	■	■	■		■								■	■		■			■	45
4	Assets: Accounts and notes receivable: Due from others					■	■	■	■		■								■	■		■			■	45
4	Assets: Real estate owned— add schedule					■	■	■	■		■								■	■		■			■	45
4	Assets: Cash value— life insurance					■	■	■	■		■								■	■		■			■	45
4	Liabilities: Notes payable to banks-- secured					■	■	■	■		■								■	■		■			■	45

Questions			Executive				U. S. Senate Committee of Jurisdiction																			
Type		Text	PDS[20]	SF86	SF278	SF450	Agriculture, Deptl	Agriculture, CFTC	Agriculture, FCA	Agriculture, MC	Armed Services	Banking, Housing…	Commerce, Boards	Commerce, Deptl	Energy & Nat. Res	Environment & PWs	Finance	Foreign Relations	Governmental Affairs	Health, Ed, Labor…	Indian Affairs	Select on Intelligence	Judiciary - Deptl	Rules	Small Business	Veterans Affairs	Commonality
4		Liabilities: Notes payable to banks— unsecured					■	■	■	■		■								■	■		■			■	45
4		Liabilities: Notes payable to relatives					■	■	■	■		■								■	■		■			■	45
4		Liabilities: Notes payable to others					■	■	■	■		■								■	■		■			■	45
4		Liabilities: Accounts and bills due					■	■	■	■		■								■	■		■			■	45
4		Liabilities: Unpaid income tax					■	■	■	■		■								■	■		■			■	45
4		Liabilities: Other unpaid tax and interest					■	■	■	■		■								■	■		■			■	45
4		Liabilities: Real estate mortgages payable— add schedule					■	■	■	■		■								■	■		■			■	45
4		Liabilities: Chattel mortgages and other liens payable					■	■	■	■		■								■	■		■			■	45
4		Liabilities: Other debts— itemize					■	■	■	■		■								■	■		■			■	45
4		Net worth					■	■	■	■		■								■	■		■			■	45
4		Contingent Liabilities: As endorser, comaker or guarantor					■	■	■	■		■								■	■		■			■	45
4		Contingent Liabilities: On leases or contracts					■	■	■	■		■								■	■		■			■	45
4		Contingent Liabilities: Legal claims					■	■	■	■		■								■	■		■			■	45
4		Contingent Liabilities: Other special debt					■	■	■	■		■								■	■		■			■	45
4		Assets: Accounts and notes receivable: Doubtful					■	■	■	■		■								■			■			■	40
4		Assets: Real estate mortgages receivable					■	■	■	■		■								■			■			■	40
4		Assets: Autos and other personal property					■	■	■	■		■								■			■			■	40
4		Total liabilities and net worth					■	■	■	■		■								■			■			■	40
4		Contingent Liabilities: Provision for Federal Income Tax					■	■	■	■		■								■			■			■	40
4		List sources and amounts of all income exceeding $500 received during the last 3 years, including: Sources of Income: Salaries										■								■						■	15
4		Sources of Income: Fees, royalties										■								■						■	15
4		Sources of Income: Dividends										■								■						■	15
4		Sources of Income: Interest										■								■						■	15
4		Sources of Income: Gifts										■								■						■	15
4		Sources of Income: Rents										■								■						■	15
4		Sources of Income: Other										■								■						■	15
4		Sources of Income: Total										■								■						■	15
5	Associations	Have you severed all business connections with your immediate past private sector employers, business firms, business associations or business organizations?					■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■		■	■	■	95
5		List sources, amounts and dates of all anticipated receipts from deferred	■		■	■	■	■	■	■	■	■	■	■	■	■	■		■	■	■		■	■	■	■	90

Questions			Executive				U. S. Senate Committee of Jurisdiction																			
	Type	Text	PDS[20]	SF86	SF278	SF450	Agriculture, Dept	Agriculture, CFTC	Agriculture, FCA	Agriculture, MC	Armed Services	Banking, Housing,...	Commerce, Boards	Commerce, Dept	Energy & Nat. Res	Environment & PWs	Finance	Foreign Relations	Governmental Affairs	Health, Ed, Labor...	Indian Affairs	Select on Intelligence	Judiciary - Dept	Rules	Small Business	Veterans Affairs	Commonality
		income arrangements, stock options, incompleted contracts and other future benefits which you expect to derive from current or previous business relationships, professional services and firm memberships, former employers, clients and customers.																									
5		Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.	■		■	■					■	■	■	■		■	■		■	■	■			■	■	■	65
5		Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers.	■		■	■					■	■	■			■			■	■	■	■		■		■	50
5		Business relationships: List all positions currently held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.									■		■	■				■	■	■							30
5		Attach a copy of your Executive Personnel Financial Disclosure Report (SF-278).													■										■	■	15
5		Provide a list of all other liabilities owed, directly or indirectly, having a value in excess of $1,000 at any time during the last 12 months. Identify the nature of each liability, the amount, and the name of the person owed. Describe the terms of each liability, the security or collateral for each liability, and the current status of debt repayment.			■	■							■	■					■								15
5		Are you or your spouse now in default on any loan, debt or other financial obligation? Have you or your spouse been in default on any loan, debt or other financial obligation in the past five years? If the answer to either question is yes, please provide details.		■														■				■					10
5		If you are a partner in a law firm or other organization, provide the Committee with a list of all clients which you have personally represented, and all clients the firm has represented within the past 5 years and a brief description of the nature of the representation. If you wish the list to be kept confidential so indicate.													■							■					10
6	Transactions	Do you have any plans to resume employment, affiliation or practice with your previous employers, business firm, association or organization after completing government service? (If yes, give details)	■		■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■		■	■	■	95
6		Has anybody made a commitment to employ you or retain your services					■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■		■	■		90

Questions		Executive				U. S. Senate Committee of Jurisdiction																				
Type	Text	PDS[20]	SF86	SF278	SF450	Agriculture, Dept	Agriculture, CFTC	Agriculture, FCA	Agriculture, MC	Armed Services	Banking, Housing…	Commerce, Boards	Commerce, Dept	Energy & Nat. Res	Environment & PWs	Finance	Foreign Relations	Governmental Affairs	Health, Ed, Labor…	Indian Affairs	Select on Intelligence	Judiciary - Dept	Rules	Small Business	Veterans Affairs	Commonality
	in any capacity after you leave government service? (If yes, please specify)																									
6	If confirmed, explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items.					■	■	■	■	■	■	■	■	■	■	■		■	■	■		■	■	■	■	90
6	If confirmed, do you have any plans, commitments, or agreements to pursue outside employment or engage in any business or vocation, with or without compensation, during your service with the government? (If so, explain)					■	■	■	■	■	■	■	■				■	■			■	■	■		■	70
6	Have you ever been discharged from employment for any reason or have you ever resigned after being informed that your employer intended to discharge you?		■			■	■	■	■								■					■				30
6	List sources and amounts of all income (aggregating $200 or more from a single source) you received during the calendar year preceding your nomination and for the current calendar year, including salaries, fees, dividends, interest, gifts, rents, royalties, patents, and honoraria.			■		■	■	■	■												■	■				30
6	List sources and amounts of all items of value in an amount exceeding $250.00 received by you, your spouse, and your dependents during each of the last 3 years. This should include, but not be limited to, salaries, wages, fees, dividends, capital gains or losses, interest gifts, rents, royalties, patents and honoraria. Gifts received from members of your immediate family need not be listed.	■		■	■							■	■				■	■						■		25
6	Identify any investments, obligations, liabilities, or other relationships which involve potential conflicts of interest in the position to which you have been nominated.	■				■	■	■	■					■												25
6	Do you agree to provide to the Committee any written opinions provided by the General Counsel of the agency to which you are nominated and by the Attorney General's office concerning potential conflicts of interest or any legal impediments to your serving in this position?									■		■	■			■		■								25
6	Provide the identity, date, and amount of all transactions, directly or indirectly, in securities, commodities futures, and real estate or other investments, having a value in excess of $1,000, which have taken place within the last 12 months. For purposes of this paragraph, the identity of individuals or charitable organizations need not be reported but should be indicated.	■		■								■	■					■			■					20

Questions			Executive				U. S. Senate Committee of Jurisdiction																			
Type		Text	PDS[20]	SF86	SF278	SF450	Agriculture, Dept	Agriculture, CFTC	Agriculture, FCA	Agriculture, MC	Armed Services	Banking, Housing…	Commerce, Boards	Commerce, Dept	Energy & Nat. Res	Environment & PWs	Finance	Foreign Relations	Governmental Affairs	Health, Ed, Labor…	Indian Affairs	Select on Intelligence	Judiciary - Dept	Rules	Small Business	Veterans Affairs	Commonality
6		Do you, or does any partnership or closely held corporation in which you have an interest, own or operate a farm or ranch? (If yes, please give a brief description including location, size, and type of operation)					■	■	■	■																	20
6		Have you, or any partnership or closely held corporation in which you have an interest, ever participated in Federal commodity price support programs? (If yes, provide all details including amounts of direct government payments and loans received or forfeited by crop and farm etc. during the past five years.)					■	■	■	■																	20
6		Have you, or any partnership or closely held corporation in which you have an interest, ever received a direct or guaranteed loan from or cosigned a note to the Rural Business Service, Rural Housing Service, the Rural Utilities Service, or their predecessor agencies, the Farmers Home Administration, the Rural Development Administration, the Rural Housing and Cooperative Development Service or the Rural Electrification Administration? (If yes, give details of any such loan activity during the past 5 years)					■	■	■	■																	20
6		Have you, or any partnership or closely held corporation in which you have an interest, ever received payments for crop losses from the Federal Crop Insurance program? If yes, give details.					■	■	■	■																	20
6		Have you ever received a government guaranteed student loan? If so, has it been repaid?					■	■	■	■																	20
6		Have you been informed of the conflict of interest laws and regulations applicable to the position to which you have been nominated?													■									■			10
6		Explain how you will comply with conflict of interest laws and regulations applicable to the position for which you have been nominated. Attach a statement from the appropriate agency official indicating what those laws and regulations are and how you will comply with them. For this purpose, you may utilize a statement by the relevant agency Ethics Officer.														■					■						10
6		Do you intend to maintain any financial or managerial relationship with any present or past employer? If so, please describe such relationship in detail.	■		■	■																		■			5
6		List the names of all corporations, companies, firms or other business enterprises, partnerships, nonprofit organizations and educational or	■	■																						■	5

Questions			Executive				U. S. Senate Committee of Jurisdiction																			
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		other institutions: • With which you are now connected as an employee, officer, owner, director, trustee, partner, advisor, attorney or consultant. Any listed relationship or affiliation that you wish to continue during the term of your appointment should be noted with an asterisk. • In which you have any financial interest through the ownership of stocks, stock options, bonds, partnership interests, or other securities. Any listed interest that you wish to retain during you period of Government service should be noted with an asterisk.																									
6		List and describe the nature of your involvement in all private investment firms or entities in which you are an investor, member, or participant. For each such firm or entity, list the dollar amount and percentage of your participation in, and provide the name and business activity of, each portfolio investment held by the firm or entity.																							■		5
7	Advocacy	Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.	■	■	■	■					■	■	■	■	■	■	■	■	■	■	■	■			■	■	75
7		Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.	■								■	■	■	■	■		■	■	■	■	■	■		■	■	■	70
7		Have you or your spouse ever registered under the Foreign Agents Registration Act? If so, please furnish details.	■								■				■			■				■		■			25
7		Have you or your spouse ever represented in any capacity (e.g. employee, attorney, business, or political adviser or consultant), with or without compensation, a foreign government or an entity controlled by a foreign government? If so, please fully describe such relationship.	■	■							■				■			■				■					20
7		If you or your spouse has ever been formally associated with a law, accounting, public relations firm or other service organization, have any of your or your spouse's associates represented, in any capacity, with or without compensation, a foreign government or an entity controlled by a foreign government?		■							■				■							■					15

Questions			Executive				U. S. Senate Committee of Jurisdiction																			
	Type	Text	PDS20	SF86	SF278	SF450	Agriculture, Deptl	Agriculture, CFTC	Agriculture, FCA	Agriculture, MC	Armed Services	Banking, Housing…	Commerce, Boards	Commerce, Deptl	Energy & Nat. Res	Environment & PWs	Finance	Foreign Relations	Governmental Affairs	Health, Ed, Labor…	Indian Affairs	Select on Intelligence	Judiciary - Deptl	Rules	Small Business	Veterans Affairs	Commonality
7		During the past 10 years, have you or your spouse received any compensation from, or been involved in any financial or business transactions with, a foreign government or an entity controlled by a foreign government? If so, please furnish details.	■	■							■				■							■					15
7		Provide the identity of and a description of the nature of any interest in an option, mineral lease, copyright or patent held, directly or indirectly, during the past 12 months and indicate which, if any, have been divested and the date of divestment.											■	■					■								15
7		If you engaged in any lobbying activity, did you or your firm or business timely file all reports required by law or regulation regarding lobbying disclosure? If no, please explain.																■									5
7		Within the past 10 years have you or your firm or business ever been charged with non-compliance with applicable laws or regulations regarding lobbying disclosure? If so, please explain.																■									5
7		Do you intend to place your financial holdings and those of your spouse and dependent members of your immediate household in a blind trust? If yes, please furnish details. If no, describe other arrangements for avoiding any potential conflicts of interest.																				■					5
7		If applicable, attach the last three years of annual financial disclosure forms you have been required to file with your agency, department, or branch of government.																				■					5
8	Fiduciaries	Provide a description of any fiduciary responsibility or power of attorney which you hold for or on behalf of any other person.									■		■	■				■	■			■					30
8		Describe the terms of any beneficial trust or blind trust of which you, your spouse, or your dependents may be a beneficiary. In the case of a blind trust, provide the name of the trustee(s) and a copy of the trust agreement.									■		■	■					■								20
9	Taxes	Have you or your spouse been the subject of any audit or investigation for either federal, state, or local taxes within the past five years? If so, give full details.	■	■			■	■	■	■	■		■	■	■	■		■	■	■	■	■	■	■	■	■	90
9		Were all your taxes (federal, state and local) current (filed and paid) as of the date of your nomination?	■				■	■	■	■	■		■	■	■			■	■				■				55

Questions			Executive				U. S. Senate Committee of Jurisdiction																				
	Type	Text	PDS[20]	SF86	SF278	SF450	Agriculture, Dep'tl	Agriculture, CFTC	Agriculture, FCA	Agriculture, MC	Armed Services	Banking, Housing...	Commerce, Boards	Commerce, Dep'tl	Energy & Nat. Res	Environment & PW's	Finance	Foreign Relations	Governmental Affairs	Health, Ed, Labor...	Indian Affairs	Select on Intelligence	Judiciary - Dep'tl	Rules	Small Business	Veterans Affairs	Commonality
9		Has a tax lien or other collection procedure been instituted against you by federal, state, or local authorities within the last five years? If so, give full details.	■	■			■	■	■	■	■		■	■				■	■				■	■			55
9		Have you filed a Federal income tax return for each of the past ten years? If not, please explain.											■	■	■	■			■		■			■			35
9		Provide the Committee the copies of your Federal income tax return for the past 3 years. These documents will be made available to only Senators and staff persons designated by the Chairman and the Ranking Minority Member. They will not be available for public inspection.											■	■			■	■	■			■		■			35
9		Provide the full details of any civil or criminal proceedings in which you were a defendant or any inquiry or investigation by the Federal, State, or local agency in which you were the subject of the inquiry or investigation.	■	■													■						■	■	■	■	25
9		Have your Federal, State and local taxes always been paid on time? If not, please explain.	■												■				■						■		15
9		List all jurisdictions in which you and your spouse file annual income tax returns.	■	■		■																■					5
9		Have you ever been a party to a lawsuit either as a plaintiff or defendant? If so, please explain the circumstances.																							■		5
9		Are you currently under Federal, State or local investigation of you for a possible violation of a criminal statute? If so, provide details.	■																	■							5
10	Legal Entanglements	Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by a court, administrative agency, professional association, or disciplinary committee? (If so, provide details.)	■	■			■	■	■	■	■	■	■	■	■			■	■	■		■	■	■	■	■	85
10		Have you, or any partnership or closely held corporation in which you have an interest, ever been convicted (including pleas of guilty or nolo contendere) of any criminal violation other than a minor traffic offense?	■	■			■	■	■	■	■	■	■	■	■		■	■	■	■		■				■	75
10		Have you, or any partnership or closely held corporation in which you have an interest, ever been arrested, charged, or held by federal, state, or other law enforcement authorities for violation of any federal, state, county, or municipal law, or ordinance? (If so, provide details.) (Do not include minor traffic violations.)	■	■			■	■	■	■	■	■	■	■	■				■			■				■	60
10		Have you or any business of which you are or were an officer ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.	■	■							■	■	■	■				■	■			■	■			■	45

Questions			Executive				U. S. Senate Committee of Jurisdiction																			
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10		Have you in an official or personal capacity (to your knowledge) ever been under federal, state, or local investigation for a possible violation of either a civil or criminal statute? If so, provide details. Has any organization of which you were an officer, director, or active participant been the subject of such an investigation with respect to activities which (1) were within your responsibility and (2) occurred during your tenure with the organization? If so, give full details.	■				■	■	■	■		■					■	■					■				40
10		Have you in an official or personal capacity been involved in any other legal or administrative matter in which it was alleged that you harmed another person or person's interests (e.g. breach of fiduciary duty, tort action, nuisance, etc.)? If so, please describe the nature of the allegation.					■	■	■	■																20
10		Has any business of which you are or were an officer, director or partner been a party to any administrative agency proceeding or civil litigation relevant to the position to which you have been nominated? If so, provide details. (With respect to a business of which you are or were an officer, you need only consider proceedings and litigation that occurred while you were an officer of that business.)		■														■		■		■					15
10		Have you been interviewed or asked to supply any information in connection with any administrative (including inspector general), Congressional or grand jury investigation within the past 5 years, except routine Congressional testimony? If so, provide details.																■				■			■		15
10		Have you ever been formally charged with any activity related to discrimination on the basis of race, religion, age, sex (including sexual harassment), or disability? If so, please give full details, including the disposition of the charge(s).																								■	5
10		Have you ever been convicted of any offense under Federal, State, county or municipal law, regulation , or ordinance (including traffic violations) involving the use, or being under the influence, of any intoxicating substances? If so please give full details.		■																						■	5
11	Unfavorable Information	Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.											■	■	■	■	■	■	■				■	■	■		50
11		Please advise the Committee of any unfavorable information that may affect your nomination.	■	■			■	■	■	■	■							■									30

Questions			Executive				U. S. Senate Committee of Jurisdiction																				
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11		Is there any additional information which you believe may be pertinent to the Members of the Committee in reaching their decisions, you may include that here.														■											5
12	Commitments	If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?									■	■	■	■	■	■	■	■	■	■	■			■	■	■	70
12		Commitment to testify before Senate Committees: Do you agree, if confirmed, to appear and testify upon request before any duly constituted committee of the Senate?									■		■	■		■	■	■						■	■	■	45
12		Will you ensure that you department/agency complies with deadlines set by congressional committees for information?											■	■			■							■	■	■	30
12		If you have been appointed for an indefinite term are there any known limitations on your willingness or ability to serve for the foreseeable future?													■	■					■					■	20
12		Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures?											■	■													10
12		Will you cooperate in providing the committee with requested witnesses, to include technical experts and career employees with firsthand knowledge of matters of interest to the committee?											■	■													10
12		What goals have you established for your first two years in this position, if confirmed?											■	■													10
12		Please discuss your philosophical views on the role of government. Include a discussion of when you believe the government should involve itself in the private sector, when should society's problems be left to the private sector, and what standards should be used to determine when a government program is no longer necessary.											■	■													10
12		In your own words, please describe the agency's current missions, major programs, and major operational objectives. [Mission]											■	■													10
12		In reference to question number [Question on current mission, major programs, and major operational objectives (click Mission statement)], what forces are likely to result in changes to the mission of this agency over the coming five years.											■	■													10
12		In further reference to question [Question on current mission, major programs, and major operational objectives (click Mission statement)],											■	■													10

Questions			Executive				U. S. Senate Committee of Jurisdiction																			
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		what are the likely outside forces which may prevent the agency from accomplishing its mission? What do you believe to be the top three challenges facing the board/commission and why?																									
12		In further reference to question [Question on current mission, major programs, and major operational objectives (click Mission statement)], what factors in your opinion have kept the board/commission from achieving its mission over the past several years?											■	■													10
12		Who are the stakeholders in the work of this agency? [Stakeholders]											■	■													10
12		What is the proper relationship between your position, if confirmed, and the stakeholders identified in number [Question on stakeholding (click Stakeholders statement)].											■	■													10
12		Please describe your philosophy of supervisor/employee relationships. Generally, what supervisory model do you follow? Have any employee complaints been brought against you?											■	■													10
12		Describe you working relationship, if any, with the Congress. Does your professional experience include working with committees of the Congress? If yes, please describe.											■	■													10
12		Please explain how you will work with this Committee and other stakeholders to ensure that regulations issued by your board/commission comply with the spirit of the laws passed by Congress.											■	■													10
12		In the areas under the board/commission jurisdiction, what legislative action(s) should Congress consider as priorities? Please state your personal views.											■	■													10
12		If you have previously held any Schedule C or other appointive position in the Executive branch, irrespective of whether the position required Congressional confirmation, please state the circumstances of your departure and its timing.														■											5
12		The Chief Financial Officers Act requires all government departments and agencies to develop sound financial management practices similar to those practiced in the private sector. A) What do you believe are your responsibilities, if confirmed, to ensure that your agency has proper management and accounting control?												■													5
12		B) What experience do you have in managing a large organization?												■													5
12		The Government Performance and Results requires all government												■													5

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		departments and agencies to identify measurable performance goals and to report to Congress on their success in achieving these goals. A) Please discuss what you believe to be the benefits of identifying performance goals and reporting your progress in achieving those goals.																								
12		B) What steps should Congress consider taking when an agency fails to achieve its performance goals? Should these steps include the elimination, privatization, downsizing or consolidation of departments and/or programs?												■												5
12		C) What performance goals do you believe should be applicable to your personal performance, if confirmed?												■												5
12		Please explain what you believe to be the proper relationship between yourself, if confirmed, and the Inspector General of your department/agency.												■												5
12		Within your area of control, will you pledge to develop and implement a system that allocates discretionary spending based on national priorities determined in an open fashion on a set of established criteria? If not, please state why. If yes, please state what steps you intend to take and a time frame for their implementation.												■												5
12		Please discuss your views on the appropriate relationship between a voting member of an independent board or commission and the wishes of the president.											■													5
12		Describe in your own words the concept of congressional oversight of U.S. intelligence activities. In particular, characterize what you believe to be the obligations of the Director of Central Intelligence, the Deputy Director of Central Intelligence, the Deputy Director of Central Intelligence for Community Management, and the intelligence committees of the Congress respectively in the oversight process.																				■					5
12		Explain your understanding of the responsibilities of the Deputy Director of Central Intelligence for Community Management.																				■					5
12		Do you believe that a position enjoys greater stature within the intelligence community when it requires Senate confirmation? Please explain.																				■					5
12		Explain your understanding of the responsibilities of the Assistant Director of Central Intelligence for Collection.																				■					5

Questions			Executive				U. S. Senate Committee of Jurisdiction																		
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12		Explain your understandings of the responsibilities of the Assistant Director of Central Intelligence for Analysis and Production.																				■					5
12		Explain your understanding of the responsibilities of the Assistant Director of Central Intelligence for Administration.																				■					5
12		Discuss how you intend to utilize the assistant directors to fulfill your responsibilities should you be confirmed by the United States Senate.																				■					5

ABOUT THE AUTHOR

Professor Terry Sullivan is Associate Director of the White House 2001 Project. He is currently assigned as Edwards Chair of Democracy and Public Policy at the James A. Baker III Institute for Public Policy of Rice University. He is a permanent member of the political science faculty at the University of North Carolina at Chapel Hill. He has two scholarly specialties: congressional rules and presidential leadership. His has written two books focus on congressional decision-making: *Procedural Structure: Success and Influence in Congress* and *Congress: Structure and Policy*. On the subject of presidential leadership, Professor Sullivan has written a number of articles including: "The *Bank Account Presidency*: the Temporal Path of Presidential Influence" and "Bargaining with the President: A Simple Game." His current book project focuses on presidential bargaining called *Making A Difference: LBJ, Presidential Bargaining, and Leadership*.

Professor Sullivan has served as an American Political Science Congressional Fellow. He is a Lilly Endowment Teaching Fellow, a past Carl Albert Fellow, and a Post-Doctoral Fellow in Political Economy at the Carnegie-Mellon Graduate School of Industrial Administration. He is past President of the Presidency Research Group, a worldwide association of scholars focused on the American Presidency. Currently, Professor Sullivan is Features Editor of *Presidential Studies Quarterly*.

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ABOUT THE WHITE HOUSE 2001 PROJECT

http://whitehouse2001.org

Presidency scholars lead a two-part project designed to provide incoming White House staff members with information on operating key White House offices and to help presidential nominees fill out the tidal wave of forms they face in the appointments process. Funded by The Pew Charitable Trusts, a foundation known for the stature of its programs and the nonpartisan nature of its organization, the White House 2001 Project works with two broad, Pew initiatives: The Transition to Governing Project of the American Enterprise Institute and the Presidential Appointee Initiative of the Brookings Institution. White House 2001 was designed and developed by the board and members of the Presidency Research Group, the worldwide professional organization of scholars focused on the American presidency and a section of the American Political Science Association.

THE WHITE HOUSE INTERVIEW PROGRAM

Unlike corporations both large and small, a White House begins without a record compiled by its previous occupants. The goal of the White House Interview Program is to smooth the path to power by furnishing incoming staff with substantive information about the operation of seven White House offices critical to an effective beginning: Chief of Staff, Staff Secretary, Press Office, Office of Communications, Office of the Counsel to the President, Office of Management and Administration, and the Office of Presidential Personnel. Through interviews with current and former White House staff members from the last six administrations, the White House Interview Program provides new staff with detailed information about how their White House offices function, the organization of their units, and the roles played by the heads of each office.

In addition to this institutional memory, the White House Interview Program provides a support package of important tools previous staff have identified as invaluable. These tools include a "rolodex" of contact information about the people who previously served in their posts with current addresses and phone numbers. The White House Interview Program also provides the first ever detailed organization charts of White House offices approximately every six months through the Carter administration. The scholars associated with the project, researching and writing about the White House staff, are nationally recognized for their work on the presidency. They are: Professors Peri Arnold, MaryAnne Borrelli, John Burke, George Edwards, Karen Hult, Nancy Kassop, John Kessel, Martha Joynt Kumar, Bradley Patterson, James Pfiffner, Terry Sullivan, Kathryn Dunn Tenpas, Charles Walcott, Shirley Anne Warshaw, and Stephen Wayne.

NOMINATION FORMS ONLINE

In order to address the volume of information required from appointees and the problem of the plethora of forms to be filled out by nominees, the *Nomination Forms Online* program provides a software package that nominees can use to complete the myriad of forms required by the White House, the FBI, the US Office of Government Ethics, and, where appropriate, the Senate committee of jurisdiction. The software uses innovative programming techniques so that the software distributes repetitive information across the several forms nominees must complete. The software allows the nominee to store information for future use in completing annual reports. It also makes available a portable file of data in standard formats so the nominee can share information, at his or her discretion, with the White House Office of Presidential Personnel and other agencies. Nomination Forms Online is freeware.

THE WHITE HOUSE 2001 PROJECT REPORT SERIES

available in PDF format (as noted) from: http://whitehouse2001.org

GUIDE TO TRANSITIONS SERIES

This collection of reports from the White House 2001 Project traces the lessons learned from previous transitions.

1. Opportunities and Hazards – The White House Interview Program
2. Meeting the Freight Train Head On – Planning for the Presidential Transition
3. Lessons from Past Transitions
4. A Tale of Two Transitions: 1980 and 1988

WHITE HOUSE OPERATIONS SERIES

This collection of reports describes topics of general concern to White House operations. Those in the general series marked with an asterisk (*) are currently only available to the Presidential Transition Team.

5. The Presidency and the Political Environment*
6. The White House World – Start Up, Organization, and the Pressures of Work Life*

APPOINTMENTS REFERENCE SERIES

This collection of reports analyzes the mountain of paperwork facing nominees. Those in the general series marked with an asterisk (*) are currently only available to the Presidential Transition Team and the White House as per agreements with the funders.

7. A Guide to Inquiry*
8. Analyzing Questionnaires for Nominees*
9. Changing the White House Personal Data Statement*
14. Refining the White House Personal Data Statement*
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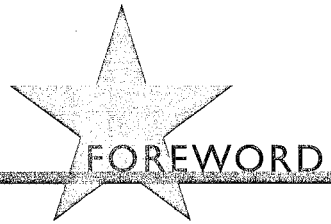
TO FORM A GOVERNMENT

A BIPARTISAN PLAN TO IMPROVE THE PRESIDENTIAL APPOINTMENTS PROCESS

THE PRESIDENTIAL
APPOINTEE INITIATIVE
A PROJECT OF THE BROOKINGS INSTITUTION

APRIL 2001



FOREWORD

The Founding Fathers believed that the quality of a president's appointments had a direct bearing on the nation's survival. "There is nothing I am so anxious about as good nominations," Thomas Jefferson wrote in 1801, "conscious that the merit as well as reputation of an administration depends as much on that as on its measures."

More than 200 years later, the merit and reputation of an administration still depend on the willingness of talented Americans to accept the call to service. The jobs may be stressful, the pay is often less than an appointee could have earned in the private sector, and the public scrutiny is unrelenting, but presidential service is still essential to the nation's survival.

Unfortunately, there is ample evidence that the process for both nominating and confirming talented citizens to presidential service is failing at its most basic tasks. According to research conducted by The Presidential Appointee Initiative, and available at its website, www.appointee.brookings.org, virtually every measure suggests that the process is on the verge of collapse:

★ Delays are increasing. More than half of the 435 senior-level first-term Reagan, Bush, and Clinton administration appointees interviewed by The Presidential Appointee Initiative in 1999-2000 said their appointments took more than five months to complete, compared to just one-sixth of the individuals who served in the Kennedy, Johnson, Nixon, Ford, and Carter administrations.

★ Confusion and embarrassment are also increasing. Two-fifths of the Reagan, Bush, and Clinton appointees described the appointments process as confusing, and a quarter called it embarrassing.

★ All stages of the process have become more burdensome. The Reagan, Bush, and Clinton appointees said that the process took longer than necessary at every turn, from the president's personal approval of their nomination to final Senate confirmation.

★ Both the executive and legislative branches need to improve their procedures. Nearly half of the Reagan, Bush, and Clinton appointees said the Senate made the process an ordeal, and a third made the same criticism of the White House.

These trends have not gone unnoticed among potential appointees. According to other research conducted by The Presidential Appointee Initiative, America's civic and corporate leaders have been watching the appointments process over the past few years and are troubled by what they read in the press and see in the personal experiences of friends and colleagues. They are, in fact, much more likely to regard the process as confusing, embarrassing, and unfair than those who have actually served in office. They are also more concerned about the way the Senate and the White House approach confirmations, believing that both branches have turned the process into something of an ordeal.

None of this means that talented Americans have lost their willingness to serve. The nation's civic and corporate leaders still see presidential service as both an honor and an opportunity to make a great impact on behalf of their country. Yet, if the spirit of service is still strong, the process for actually bringing talented citizens into governing now borders on collapse, and must be reformed.

That is why the advisory board of The Presidential Appointee Initiative developed the reform agenda presented here. Some of the reforms could be implemented immediately by executive order, others by simple changes in Senate rules, and still others through legislation. But whether embraced as a package or implemented one at a time, the reforms would help restore a measure of dignity and honor to what is arguably the most important recruitment process the nation has.

The agenda could not have been completed without the commitment of the advisory board's co-chairs, distinguished public servants, former Senator Nancy Kassebaum Baker and former Office of Management and Budget Director Franklin D. Raines, the leadership of Brookings Vice President and Director of Governmental Studies, Paul C. Light, and the wise counsel of G. Calvin Mackenzie, Distinguished Presidential Professor of American Government at Colby College, who guided the development of the reform agenda as adviser to The Presidential Appointee Initiative.

They have all been well served by the staff of The Presidential Appointee Initiative, which is led by its executive director, Sandra Stencel, its associate director, Carole Plowfield, and its support team of Erin Murphy, Michael Hafken, and Suzanne Morse. All deserve our thanks. So does The Pew Charitable Trusts, which provided the generous support to create The Presidential Appointee Initiative.

The opinions expressed here are those of The Presidential Appointee Initiative and its advisory board and do not necessarily reflect the views of The Pew Charitable Trusts.

Michael H. Armacost
President, The Brookings Institution

CO-CHAIRS' INTRODUCTION

For more than a year the staff and advisory board of The Presidential Appointee Initiative have been gathering and analyzing information about the presidential appointments process. Those studies include detailed empirical analysis of past presidential transitions, the history of the appointments process, and the evolution of the Senate confirmation process; a survey of a representative sample of appointees from the Reagan, Bush, and Clinton administrations; and a survey of leading Americans who represent the types of individuals who typically would be considered as candidates for presidential appointments. This has been the most sweeping study and assessment of the presidential appointments process ever undertaken.

From all of those analyses, there now emerges our major enterprise: an agenda for reform. We offer here a small number of recommendations that we believe can substantially improve the process by which candidates for presidential appointments are selected, vetted, and confirmed.

Our research shows that the appointments process is too slow. It is buried in excesses of redundant and unnecessary information. It too often mistreats the very people the federal government must recruit to manage its complex activities.

It doesn't have to be this way. We believe that careful consideration of these proposals can lead to enlightened action by the president and the Senate to fix much of what is wrong with the appointments process.

The urgency of this task could not be greater. Like all of its recent predecessors, the new administration is caught in a morass of outdated and irrational procedures and requirements as it seeks to fill its top ranks. What the Eisenhower and Kennedy administrations were able to complete in a few months will likely take all of President George W. Bush's first year. That's not good enough. We believe that the proposals offered here provide a roadmap for those seeking a way out of the appointments maze. We hope those with

authority to effect these changes will carefully consider our proposals for doing so.

Before turning to the agenda, we wish to express our gratitude to the members of PAI's advisory board, whose names are listed at the end of this report. All of them reviewed and commented on this study. Readers should not presume that every advisory board member agrees with every word here, but their support for the thrust of these recommendations and understanding of the dire need for reform of the appointments process are unanimous.

The Honorable Nancy Kassebaum Baker
Former Republican Senator from Kansas
Co-Chair, The Presidential Appointee Initiative
Advisory Board

Franklin D. Raines
Chairman and CEO, Fannie Mae
Former Director of the Office of Management and Budget
Co-Chair, The Presidential Appointee Initiative
Advisory Board

TO FORM A GOVERNMENT
A BIPARTISAN PLAN TO IMPROVE THE PRESIDENTIAL APPOINTMENTS PROCESS

Few elements of American politics cause so much consternation and such widespread complaint as the operations of the contemporary presidential appointments process. The number of positions filled by appointment grows steadily. More of those positions than ever before require the confirmation of the Senate. The time it takes to fill those positions lengthens steadily. Nominees are subjected to investigations and interrogatories that are deeply invasive, take months to complete, and rarely yield information that sheds significant light on their fitness for public service. The caustic politics of our time make appointments an inviting target for those who wish to shape public policy, settle old scores, or bargain with the incumbent administration.

As a consequence, the appointments process lumbers along slowly and fitfully while vacancies accumulate in the executive and judicial branches and the work of government is impeded. The situation grows increasingly intolerable, and the time has come for sweeping improvements in the operation of the political appointments process. Reasonable people may disagree on the precise nature of the reforms that must be made, but we believe the following suggestions focus on the critical problem areas and promise real improvement in the way we fill the senior, non-elected positions in the federal government.

Streamline the Recruitment and the Nomination Processes

It is hard to imagine a set of recruitment and induction procedures less hospitable and inviting than those now used to bring political appointees into the federal government. From selection to confirmation, the process often takes a half year or more and requires the most exhaustive and invasive scrutiny of the personal lives and personal finances of nominees. Talented Americans decline the honor of public service with increased frequency. Some accept, then later withdraw in frustration. Almost all who

enter the process acquire a deep distaste for its impositions and costs.

Even more troublesome is the low yield of all this invasive scrutiny. We constantly confuse ethics vetting with vetting for national security concerns, personal character, and political qualifications. So we end up with the national security investigators making inquiries into the business dealings, political affairs, and personal lives of presidential appointees. An apparatus designed principally to protect the national security is used to assess personal qualities for which it is a blunt and often useless instrument. Personal and political vetting are better left to the White House.

We ask far too much of candidates for appointed positions and get far too little of value from the arduous inquisition to which we subject them. Much can be done to simplify and shorten the recruitment and nomination processes without any loss of useful information or diminution of integrity in the public service.

RECOMMENDATION 1

The Congress should enact legislation to establish a permanent Office of Presidential Personnel in the Executive Office of the President and to authorize staff levels sufficient to recruit the president's appointees efficiently and to provide them with transition assistance and orientation. This should include some career employees who retain appropriate records from one administration to the next and who are experts in the operations of all aspects of the appointments process.

As a practical matter, there has been an office of presidential personnel since 1970. Earlier permutations and analogs can be traced back to the Eisenhower administration. No modern president can function without an effective staff agency overseeing the chief executive's personnel recruitment responsibilities.

But too little attention has been paid to the form and operation of the office of presidential personnel. It has always lacked an adequate institutional memory. Staff turnover is often too high to produce any stability in performance. And staff size is often too small to meet the steady demands of recruiting hundreds of political appointees every year and shepherding them through the appointments process.

It is time now to formalize and institutionalize this critically important component of the contemporary presidency. The Congress created a Bureau of the Budget in 1921 and moved it into the new Executive Office of the President (EOP) in 1939. In subsequent years it created a Council of Economic Advisers, a National Security Council, and other statutory elements of the EOP. The Bureau of the Budget became the Office of Management and Budget more than three decades ago. But Congress has never focused on the management of the presidential appointments process. We believe the time has come to establish a formal Office of Presidential Personnel with authority to employ staff adequate to its needs, including some career staff who would remain as administrations change to provide professional supervision of the systems and information that now affect every president's personnel-selection efforts.

The costs of inexperienced personnel management are too high. Every president should be free to designate his own subordinates to supervise the recruitment of appointees for his or her administration. But those designees will be much better able to serve the president who chooses them if they are supported by an institutional structure and staff of adequate size and skill.

RECOMMENDATION 2

The president should order all departments and agencies to simplify and standardize the information-gathering forms used in the presidential appointments process. The Senate should require its committees to do so as well. The president should then order the General Services Administration to develop and maintain on-line, interactive access to all such forms and questionnaires for persons who are going through the presidential appointments process.

The Presidential Transition Act of 2000 requires the Office of Government Ethics (OGE) to "conduct a study and submit a report on improvements to the financial disclosure process for Presidential nominees." That is a welcome undertaking. The forms and questionnaires imposed on candidates for presidential appointments have grown like Topsy over the past two decades and now drown them in a bewildering, duplicative, and often irrelevant flood of invasive questions and information requirements. We hope that OGE's recommendations will call for a significant reduction and simplification of this part of the appointments process and for the employment of common and consistent data elements by the agencies and Senate committees that create forms and questionnaires. We especial-

ly hope that OGE's simplification efforts will reduce the amount and detail of information required of nominees to only that which is necessary to detect a potential conflict of interest.

To further facilitate appointee responses to legitimate information demands, we urge the General Services Administration to develop and maintain a secure website at which nominees can find all of the forms and all of the guidance they need to complete them. We also believe that this website should be interactive so that nominees can complete their information requirements electronically. Those who select presidential appointees and those who confirm them need to know some things about the people they consider. But we have fallen into the unfortunate practice of replacing or compounding effective and incisive personal interviews with endless forms and questionnaires. Current information demands on nominees greatly exceed anyone's need to know, and the process of information gathering is embarrassingly inefficient. Corrective action is long overdue.

RECOMMENDATION 3

The president should issue an executive order reducing the number of positions for which FBI full-field investigations are required and adapting the length and depth of full-field investigations to the legitimate security concerns of each position where they continue to be required.

President Eisenhower ordered the first FBI full-field investigations for presidential appointees during the height of the McCarthy period. The order was a response to the heated national security concerns of the time. The immediate concerns abated, but the full-field investigations have survived into our own time. Now they are carried out in greater detail than ever before for virtually all presidential appointments. They slow the appointments process, they deter good people from entering public service, they are sometimes misused, and they rarely yield information that affects appointment decisions in any significant way.

It is time to reduce the number of positions for which such investigations are conducted to those with genuine national security impacts. And where such investigations are a reasonable requirement, the form of the investigation should be adapted to the particular character of the posi-

tion for which it is being conducted. The FBI has better things to do than to conduct elaborate full-field investigations on people who have accepted part-time appointments to federal boards and commissions, people who have no decision-making authority, or people who will deal with policies that have little or no national security implications. The task of recruiting talented public servants will be eased and hastened by the proper utilization of this instrument of limited necessity.

RECOMMENDATION 4

Congress should undertake a comprehensive review of the ethics requirements currently imposed on political appointees. Its goal should be to strike an appropriate balance between legitimate concerns for the integrity of those who hold these important positions and the need to eliminate unnecessarily intrusive or complex requirements that deter talented Americans from entering public service.

Sometimes political reforms produce unintended consequences that outweigh their benefits and their good intentions. In the aftermath of Watergate, the American people hungered for some assurance that their leaders were not corrupt, that national politics was protected from self-interested schemers. The Ethics in Government Act of 1978 was a logical response to that set of public demands. We have now had more than two decades of experience under that Act, and its requirements have been augmented on several occasions by amendments or by other ethics legislation.

We now have an Office of Government Ethics, designated agency ethics officials and inspectors general in every department and agency, a Merit Systems Protection Board, and a Public Integrity Office in the Justice Department — all engaged in an effort to make the federal government scandal-proof. Much of the work of these agencies contributes to the establishment and maintenance of high ethical standards for government employees. But it is time to ask if some of this isn't overkill, if the resources and effort committed to ethics regulation do not now exceed the need.

More importantly, we must ask whether the increasingly draconian standards for public disclosure of personal finances, for avoidance of conflicts of interest, and for constraints on post-employment activity by former public servants have produced recruiting and retention burdens that outweigh the potential benefits of those measures.

We believe these questions need answers and that it is an appropriate time for the Congress to conduct a broad review of the impacts of all of our ethics laws and regulatory apparatus to assess their impact not only on the integrity of government officials, but also on the ability of government to recruit and retain the kind of talented leaders it so urgently needs.

RECOMMENDATION 5

The Congress should amend the Postal Revenue and Federal Salary Act of 1967 to ensure annual changes in executive-level salaries equal to changes in the Consumer Price Index.

Few endeavors are as politically thorny for a democratic government as setting the salaries of its top leaders. The tendency is to let salaries slide, often through periods in which little or no increase is enacted, then to realize that government salaries have fallen behind and to seek to make a large and politically hazardous catch-up increase.

We believe there has to be a better way to manage this task and we think it is to tie congressional and executive-level salaries to the Consumer Price Index. Those salaries would increase, not in fits and starts, but through regular cost-of-living adjustments. All government pension programs, including Social Security, now function this way and, while less formal in its application, the process of adjusting civil service salaries is similarly related to changes in consumer prices. We see no reason why a system that works reasonably well for the tens of millions of Americans whose incomes are subject to annual cost-of-living adjustments cannot also serve the needs of legislators and presidential appointees.

Government salaries will never be fully competitive with those in the private sector — or even in other parts of the public sector — from which many presidential appointees are recruited. But we should seek to ensure that government salaries at least keep pace with inflation. Indexing those salaries would serve that purpose and eliminate much of the agony that now accompanies efforts to adjust executive and congressional salaries.

Strengthen and Stabilize the Confirmation Process

The Senate confirmation process is longer, much more complex, and filled with more political potholes than ever before. Perhaps that is no surprise in an era when divided government is normal and partisan divisions are broader than they have been in decades.

But a hostile political environment is only part of the problem. More troublesome, but also more subject to correction, is the expanded utilization of procedures and practices that unnecessarily delay the confirmation process and create inviting opportunities for small groups of Senators, sometimes even for individual Senators, to thwart action by Senate majorities. Practices intended to be used only in the most extreme cases of concern about nominees' qualifications are now routinely employed on both sides of the aisle, often simply to use nominees as hostages in political conflict over larger policy issues or legislative efforts.

The accumulated effect of these practices is deeply injurious to the federal government's ability to recruit and retain talented leaders in the executive and judicial branches. The following steps, we believe, will help to set the confirmation process on a sounder and more sensible foundation.

RECOMMENDATION 6

The Congress should enact legislation providing that Senate confirmation only be required of appointments of judges, ambassadors, executive-level positions in the departments and agencies, and promotions of officers to the highest rank (0-10) in each of the service branches.

Confirmation of appointments is a constitutional duty of the Senate and a valuable component of the government's responsibility to ensure the fitness and diversity of those who serve in the highest administrative and judicial offices. But the application of the confirmation requirement now extends to many thousands of positions, only a relatively small number of which benefit from the full attention or careful scrutiny of the Senate.

We believe that this is an appropriate time for the Congress to do something it has never done: to review the entire scope of Senate confirmation responsibilities and to scale those responsibilities down to only those positions that are appropriate to its collective attention. We see no value, for

example, in the continued requirement that all military, foreign service, and public health service promotions be subject to Senate confirmation. Nor do we believe there is sufficient justification for Senate confirmation of part-time appointments to the government's many boards and commissions.

The Senate's participation in the appointments process is most valuably applied to positions of genuine management authority and to the judicial and ambassadorial positions for which it has constitutional responsibilities. A simpler, more focused set of confirmation obligations can only yield a more efficient and more consistent performance of the Senate's confirmation responsibilities.

RECOMMENDATION 7

The Senate should adopt a rule that limits the imposition of "holds" by all Senators to a total of no more than 14 days on any single nominee.

Few features of the modern appointments process are as troublesome as the Senate practice that permits any single Senator to delay indefinitely the confirmation of a nominee. Senators are under no obligation to announce the reasons for their holds nor to place only holds that are directly related to concerns about the individual's fitness to serve in the office to which nominated. With ever greater frequency in recent years, holds have been used to make well-qualified nominees hostages to some other dispute between the Senator placing the hold and the administration. The harmful consequences to efficient government management and to individual nominees are obvious.

We recognize that there may be times when Senators want to know more about a nominee and may require more time to gather information. In such cases, placing a temporary hold on a nomination may be useful. But we believe the Senate needs to limit the duration of these holds to ensure that they don't unduly delay the confirmation process nor unduly complicate the lives of the nominees in that process. A simple time limit on the total length of holds on any single nomination would better balance the legitimate needs of all parties to the confirmation process.

RECOMMENDATION 8

The Senate should adopt a rule that mandates a confirmation vote on every nominee no later than the 45th day after receipt of a nomination. The rule should permit any Senator,

at the end of 45 days, to make a point of order calling for a vote on a nomination. A majority of the Senate may postpone the confirmation vote until a subsequent date.

The average length of time required to confirm presidential appointees has been growing steadily in recent years. While there are many reasons for this, few of them are directly related to the task of reviewing and assessing the qualifications of nominees. But these delays impede the ability of presidents to manage the government and of courts to process their caseloads efficiently. Equally important, long confirmation delays leave nominees in an extended and awkward limbo. Nominees withdrawing in the midst of such long confirmation delays has been a more common phenomenon in recent years than ever before.

We believe that this is an appropriate time for the Senate to impose a firmer discipline on the confirmation process by establishing through Senate rule an expectation that any nomination would receive a confirmation vote by the full Senate no later than 45 days after receipt. Under such a procedure any Senator could call for a vote at that time, a vote that could be postponed only by vote of a majority of the Senate.

This would permit the Senate, in extraordinary circumstances, to take more than 45 days before voting on confirmation. But it would establish a standard review period and offer a mechanism for any Senator to request a confirmation vote at the end of a time long enough for careful review of all but the most complex nominations.

RECOMMENDATION 9

The Senate should adopt a rule that permits nominations to be reported out of committee without a hearing, upon the written concurrence of a majority of committee members of each party.

For most of American history, nominations were reported to the floor of the Senate without any formal hearings by its committees. The practice of holding hearings began to emerge in the second decade of the 20th century. Even then, it was common for hearings to occur in executive session or without the nominee present. The current practice of formal public confirmation hearings on nearly all appointments, with the nominee present, is a relatively recent development.

But with the growing number of presidential appointments subject to Senate confirmation, a heavy burden falls on the Senate to arrange and schedule hundreds of confirmation hearings each year. Scheduling conflicts often lead to unnecessary delays in confirmation. Many nominations provoke no controversy whatsoever. With the lengthy questionnaires nominees now complete and the individual meetings they typically have with senators and committee staff, hearings are sometimes unnecessary. And public hearings force nominees and staff from the agencies to which they are nominated to spend long hours preparing, usually for questions that are never asked.

Clearly the Senate should hold public confirmation hearings whenever there is a justification for that: unresolved concerns about a nominee's qualifications, a desire by several committee members to engage the nominee in a discussion of his or her future duties, some charge against a nominee that the nominee seeks to rebut. But for a great many nominations, none of these conditions obtain, and confirmation hearings are little more than a time-consuming ritual. We believe that no good purpose is served by these rituals, certainly not one that justifies the delays they often impose on confirmation. It would be better for the Senate to hold public confirmation hearings only when there is a valid reason for so doing. We believe that written expression of that desire from the majority of each party's members on a committee would be an appropriate indication of the need for a public hearing.

Reduce the Number and Layers of Political Appointees

The appointments process suffers from system overload. There are too many political appointees and too many of those require confirmation by the Senate. This burdens every stage in the appointments process, especially during presidential transitions, diminishes leadership momentum, and causes widespread vacancies in key executive positions.

But more than that, the entire senior executive level of the federal government has evolved into an advanced state of structural irrationality. The senior management levels of government are now heavily freighted with layer after layer of deputies and assistants and deputy assistants and assistant deputies and so on. Lines of authority and responsibility are blurred to the vanishing point. In this organizational morass, new policy and management initiatives often disappear along the tortuous route to implementation.

This is a problem larger than the scope of our inquiry, but we believe that reducing the number of presidential appointees would be a valuable inspiration for broader reform of the senior management levels of every agency and department.

RECOMMENDATION 10

The Congress should enact legislation requiring each department and agency to recommend a plan for reducing the number and layers of political appointees by one-third. Such reductions, wherever feasible, should limit political appointments requiring Senate confirmation to the assistant secretary level and above in each department and to the top three levels only in independent agencies. Schedule C and other non-confirmed political appointees should be similarly reduced in number.

RECOMMENDATION 11

The Congress should grant the president renewed executive reorganization authority for the limited and specific purpose of de-layering the senior management levels, both career and political, of all executive departments and agencies.

Reducing the number and layers of political appointees is a critical step in any effort to improve the performance of the appointments process. The number of political appointees has grown steadily and dramatically in recent decades. In the Cabinet departments alone, appointees in the top five executive positions grew in number from 196 in 1961 to 774 in 1998.

No one ever argued that the federal government would work better with thousands of political appointees filling its top and middle-management layers. That, however, has been the unintended consequence of years of accumulation of independent and disjointed legislative and administrative decisions.

The growth in the number of political appointees also is a response to failures in the civil service system, especially in the flexibility and responsiveness of the Senior Executive Service. The civil service system and the Senior Executive Service now need broad reform. But too often the executive departments and agencies or their overseers in Congress have turned to political appointees when they felt hemmed in by the rigidities of an antiquated civil service structure.

Solving this problem is not simple. No two departments are the same. Management patterns and needs vary widely. Each department operates in a unique political milieu. So there is no one-size-fits-all prescription for reducing the number of political appointees.

We believe that the best approach is for the Congress to adopt a formula, or a set of standards, and to delegate to each department and agency — and to the president — initial responsibility for meeting those standards or implementing the formula. We further believe that such a formula should have two broad elements:

First, there should be a target for government-wide reductions in the number of managerial layers in each agency and department and a broad goal for overall reduction in the number of presidential appointees.

Second, we believe that the Congress should impose limits on the penetration of political appointees into the management layers of executive departments and agencies. Layering throughout government has become a growing source of management difficulty. The proliferation and ever-deeper penetration of political appointees contribute to this problem. We believe that the establishment of clear lines below which there should be no political appointees is both good management and a genuine source of relief for an overburdened presidential appointments process.

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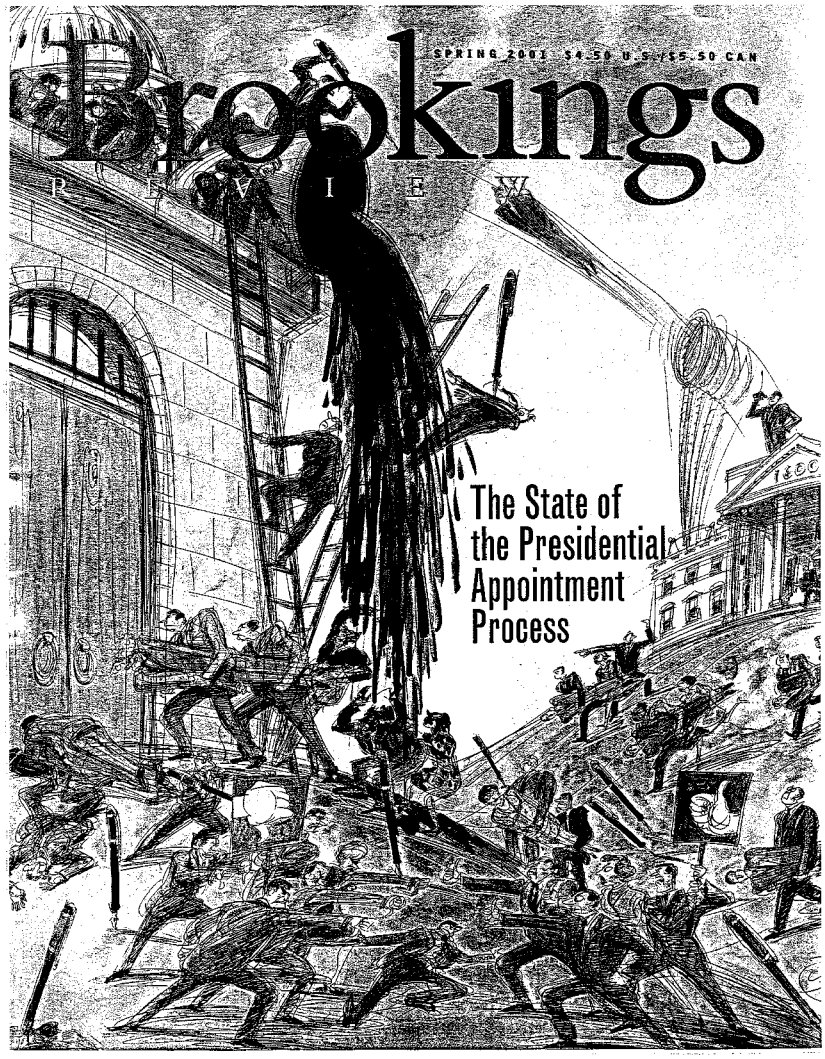
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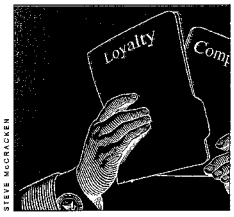

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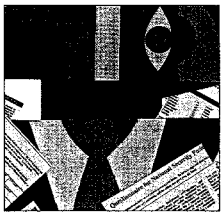
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A CONSIDERED OPINION

NANCY KASSEBAUM BAKER AND FRANKLIN D. RAINES

Renewing Citizen S

BOTH PHOTOS: FRED OEWS/BROOKINGS INSTITUTION

George W. Bush took the oath of office on January 20, 2001, the first president elected in the 21st century. Unfortunately, relatively few members of the new administration went to work that week, or in the weeks that followed. In fact, if history is any guide, it will be nine or ten months before the new president is firmly in control of the government. That is roughly when the last of President Bush's nominees to the subcabinet and independent agencies are likely to complete the presidential appointment process. Only then can the real work of the administration fully begin.

Americans may be dismayed by the delays, but they should not be surprised. Since 1960, every president has taken longer and longer to complete his appointments. President Kennedy's top appointees were not in place until mid-April, Nixon's until mid-May, Carter's until July, Reagan's until August, Bush's until mid-September, and Clinton's until October. President Bush will be lucky to have a full administration by November.

The delays reflect many factors, not least that the number of positions open for appointment has grown steadily over the decades. In 1961, for example, Kennedy filled a grand total of 196 Senate-confirmed appointments in the cabinet departments. Thirty years later, Clinton had nearly 800 to fill. And these figures do not include the growing number of posts in the independent agencies, the advisory board positions, and lesser political posts, which now number in the 5,000 range.

The review process has also grown more onerous and complex with each passing scandal. The number of forms has increased, as has the list of questions and disclosure requirements. And those questions now penetrate more deeply—and some would say intrusively—into a broader range of personal issues than ever before. At a time when our government is vigorously pursuing improved ways to ensure the privacy of our citizens on the Internet, it seems ironic that we force potential leaders of the executive and judicial branches to reveal ever more details about their personal lives as a condition of public service.

The increasing complexity of the process is more than a bureaucratic nuisance. It also has reduced the number of talented Americans willing to accept the call to presidential service. Presidential recruiters report that it takes more calls to find candidates willing to subject themselves to the process and more work to keep candidates from bolting once the process begins. The number of initial turndowns is rising, as is the number of later withdrawals. A recent survey of top executives in the private sector, conducted for The Presidential Appointee Initiative, found that more than a fifth of those who'd been considered for a presidential appointment had turned it down.

Nancy Kassebaum Baker, a former U.S. senator from Kansas, and Franklin D. Raines, a former director of the Office of Management and Budget, are co-chairs of The Presidential Appointee Initiative advisory board.

ervice

It is little wonder that talented people would opt out of a process that opens every detail of their lives to the fullest public scrutiny or that they might be frightened off by a White House questionnaire that asks whether they "have ever had any association with any person, group, or business venture that could be used, even unfairly, to impugn or attack your character and qualifications for a government position?"

Filling out these forms, answering the scores of exhaustive questions, and enduring the reviews and background checks and investigations now routinely takes half a year or more. That's a lot of time out of the life of these busy people, and it's simply an obstacle course that too few choose to enter.

We know that delays are not the only reason for America's civic and corporate leaders' increasing reluctance to serve. Public cynicism about government also plays a big part. Why step out of a distinguished career to serve in a job that most Americans think is not worth the time and trouble?

Although the Founding Fathers most certainly expected the time spent in citizen service to be inconvenient, even burdensome, they did not expect the process of entering office to be so long, intrusive, and frustrating. They clearly wanted presidents to make speedy nominations and the Senate to discharge its advice-and-consent function, aye or nay, with equal dispatch.

Two hundred years later, the presidential appointment process is increasingly incapable of fulfilling its most basic responsibility: recruiting able citizens for government service. More and more citizens are saying no, and those who do say yes are being forced to endure a process that is more torturous than the Founders ever could have imagined.

What can be done? We believe that a short list of reforms, some of which require our elected leaders to forgo or relax traditional prerogatives, can yield dramatic improvements in the appointment process and in the quality of people willing to enter public service at the highest levels.

Considerable agreement already exists on a short list of reforms that could cut the current delays by several months, including a modest broadening of the financial disclosure categories for the president's most senior nominees and development of an EZ disclosure form and fast-track FBI field investigations for selected nominees further down the appointee hierarchy. The recent doubling of the president's salary to $400,000 also creates room for augmenting salaries in hard-to-recruit appointee positions.

The delays would be cut even further if the Senate and White House can restore comity to their joint review process. It is not clear whether doing so requires a constitutionally acceptable time limit on the process or a sharp reduction in the total number of presidential appointments. What is clear is that reducing delays must involve a genuine dialogue between the two branches.

Nothing perhaps can undo decades of cynicism and deterioration of the appointment process in a moment. Overcoming that painful legacy—and its harmful effects on the quality of citizen leadership in government—will require leaders on both sides of the aisle to come together to make public service more attractive. In this era of handshakes across the party divide, we can think of no other issue that deserves bipartisan attention more than the need to renew citizen service as a basic democratic duty. ■

The articles in this special issue of the *Brookings Review* on The State of the Presidential Appointment Process were commissioned by The Presidential Appointee Initiative (PAI). Founded by the Brookings Institution in 1999 with funding from The Pew Charitable Trusts, PAI is working to encourage talented citizens to seek and accept presidential appointments and to build support for reforms that will simplify and expedite the appointment process. The opinions expressed here are those of the authors and do not necessarily reflect the views of The Pew Charitable Trusts.

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"Nasty & Brutish Without Being Short": The State of the Presidential Appointment Process

by G. Calvin Mackenzie

The presidential appointment process is a national disgrace. It encourages bullies and emboldens demagogues, silences the voices of responsibility, and nourishes the lowest forms of partisan combat. It uses innocent citizens as pawns in politicians' petty games and stains the reputations of good people. It routinely violates fundamental democratic principles, undermines the quality and consistency of public management, and breaches simple decency. Republicans and Democrats, legislators and chief executives, journalists and special interests all share responsibility for allowing one of the rare and genuine inventions of American political creativity to fall into a state of malignancy.

G. Calvin Mackenzie is guest editor of this special issue of the Brookings Review. *He is Distinguished Presidential Professor of American Government at Colby College.*

VICTOR JUHASZ

This special issue of the *Brookings Review* examines the contemporary appointment process from several perspectives. But all the articles share the same concern: at a time when the quality of political leadership in government matters more than ever, the principal procedures for ensuring that quality are less reliable than ever.

How did we get into this distressing condition? What is wrong with the contemporary appointment process? And what can we do about it?

The Empty Chairs

The evolution of the presidential appointment process over the years, described elsewhere in this issue, has been far from happy. A quick overview suggests the extent of its current shortcomings, beginning with its failure to meet its simplest responsibility: to fill the top offices of the government.

During the spring of 1997, 15 important countries had no U.S. ambassador. Ottawa had gone almost a year without one; Bonn almost ten months, Moscow almost five, Tokyo almost three, Paris almost two. Things were not much better at home. Nearly 250 of the U.S. government's 726 most senior jobs—more than a third—were unfilled. The average appointee vacancy rate in the executive branch for all of 1997 was 25 percent. One of every eight federal judgeships was vacant. The Federal Election Commission was unable to get a quorum for much of 1998. The Food and Drug Administration had no commissioner for 18 months. The nation went for years without a surgeon general. This is now the norm. Vacancies in appointed positions are a prominent feature of the contemporary Washington landscape.

Moreover, the attempt to fill appointed positions moves at a snail's pace—and it gets slower all the time. The data on this constitute one of the clearest and most consistent patterns in all of political analysis. The time required to fill presidentially appointed positions at the beginning of new administrations has grown steadily over the past 40 years, from 2.4 months in the Kennedy administration to 8.5 months in the Clinton administration. Of appointees who served between 1964 and 1984, only one of every twenty reported spending more than 6 months in the appointment process. Of those who served between 1984 and 1999, that share had grown to almost one in three. Every component of the process now takes longer than ever.

Frightening Away Talent

The ordeal of being appointed repels the successful and creative people needed to run a modern government. For many positions it now takes six months to a year just to find a nominee willing to serve. Some people agree to be considered, then withdraw when they find out how intrusive and extensive the scrutiny has become. Some go through all the investigations and questionnaires, then withdraw because there is still no end in sight. Talented people like Anne Hall, Bobby Inman, Stanley Tate, Peter Burleigh, and Laurence Pope all gave up in frustration.

Once a president locates willing appointees, the process mistreats—some would say abuses—them. William Gould was a Stanford law professor and a distinguished labor lawyer when he agreed to be President Clinton's nominee to head the National Labor Relations Board in May 1993. He dutifully informed the Stanford administration that he would take a leave from his teaching and made the usual plans to move to Washington. But his appoint-

ment was not confirmed for ten months, leaving him in a prolonged, uncomfortable limbo. Some opponents of his views on labor issues circulated charges that he had run up large gambling debts. The rumors were unfounded, but putting them to rest took several weeks of "investigation" during which he heard little from the White House and almost nothing from the Senate.

This was no aberration. Anthony Lake, who endured a similar experience after his selection as CIA director, described a contemporary nomination as little more than a "political football in a game with constantly moving goal posts." The process, he said, is "nasty and brutish without being short."

How Can Presidents Be Accountable?

The current appointment process undermines the accountability of the president to the American people. Imagine this: after a lengthy search, you are aggressively recruited to lead a large corporation. The hiring committee tells you that it has chosen you because it admires your vision of what the company can become. It wants you to do whatever is necessary to increase the company's profits and to ensure its future strength. This is a job you've been seeking, so you're anxious to start and you begin thinking about the kinds of people you'll need to recruit to head up the company's important divisions.

But then the hiring committee says, "Oh, by the way, did we mention that all of your top personnel choices will have to be approved by a committee that includes some of your worst enemies, any one of whom can blackball any of your selections?"

Who would be willing to run a company under those conditions? Who would be willing to be held accountable for its performance? Yet that is precisely the situation that modern American presidents face. The American people will hold them accountable for their leadership of the government, but in a system that now routinely denies them the freedom to pick their own management teams.

Relentlessly Revolving Doors

The appointment process also exacerbates turnover and inconsistency in leadership. A 1994 GAO report examined turnover in 567 Executive Schedule positions from 1981 to 1991. In the 409 positions with no fixed term of office, the incumbents' median length of service was only 2.1 years. Appointees in eight departments had median tenures of less than two years; the lowest was 1.6 years. Between 1981 and 1991 the Commerce Department had seven assistant secretaries for trade development, the Justice Department seven deputy attorneys general. In 15 years the Federal Aviation Administration had seven appointed and four acting administrators. In 14 years the Federal Housing Administration had thirteen commissioners. And the General Services Administration had eighteen administrators in 24 years. Could anyone reasonably argue that this is a sensible way to manage a large and complex government?

The Challenge to Majority Rule

Today's appointment process undermines the central democratic principle of majority rule. The U.S. Senate, which must approve presidential appointments, is the least representative legislative body in the democratic world except for the British House of Lords (and the Blair government has been dealing with that). Every state gets two votes, regardless of size. In 1787 the largest state had 19 times the population of the smallest. Now the ratio is 69:1. Today, half the Senate is elected by 15 percent of the American people.

And the problem is only getting worse. Almost all the population growth in the United States in the foreseeable future will be concentrated in a few populous states. By the middle of the next century, as few as 5 percent of the population may well have majority power in the Senate. Even now, only 10 percent of the U.S. population elects 40 percent of the Senate. By using or threatening a filibuster, senators representing little more than 10 percent of the nation can block presidential appointments.

As the Senate has grown more energetic in its opposition to presidential personnel nominations, its own malapportionment and undemocratic practices have become more glaring and distressing anomalies. A single senator can prevent unanimous consent agreements and place a hold on a nomination. A committee chair can kill a nomination, as Jesse Helms killed William Weld's posting to Mexico, by simply declining to hold a hearing.

Insider Government

The singular promise of the American approach to filling top positions in government has always been to allow elections to blow fresh breezes through Washington, to provide infusions of new blood for the body politic. Whatever cost this approach might impose in diminished professionalism and inconsistencies in administration would find due compensation in its constant replenishment of energy and enthusiasm.

Perhaps that was once the case. It is no longer. Today most presidential appointments offer little in the way of a "fresh breeze" or "new blood." Instead, our government is now largely run by a governing class. A growing majority of appointees these days comes from the Washington metropolitan area, especially from think tanks, congressional staffs, and special interest groups and trade associations. A Presidential Appointee Initiative study of appointees in the past three administrations found that 58 percent were working inside the Washington beltway when they were appointed.

In 1998, for example, President Clinton made three appointments to the International Trade Commission. Thelma Askey came from her job as staff director of the House Ways and Means Trade Subcommittee; Steve Koplan had been a trade specialist for the AFL-CIO and then a lobbyist for Seagrams; Jennifer Hillman was general counsel to U.S. Trade Representative Charlene Barshefsky. Moving to their new jobs meant simply crossing the street.

The problem could

Political Bypass Operations

The breakdown of the contemporary appointment process is causing presidents to avoid it altogether in filling positions. Senate aggressiveness over appointments is leading, ironically, to a shrinking Senate role. The simple reality is that presidents are unwilling to play a game that they often lose. So they do what losers usually seek to do: change the rules—or change the game.

To avoid confrontations, presidents delay making appointments, choosing instead to leave positions in the hands of acting officials or to make recess appointments. The past four administrations have averaged nearly 20 recess appointments a year. In February 1998 "acting" officials held one of every five cabinet department jobs that require Senate confirmation—64 out of 320 slots. For most, the administration had not even sent a nomination to Capitol Hill. Of the 64 acting officials, 43 had served beyond the 120-day limit imposed by the federal Vacancies Act. John C. Keeney headed the Justice Department's Criminal Division for two and a half years before a nomination was finally sent to the Senate in 1999. Jonathan L. Fiechter served from 1992 until 1997 as acting director of the Treasury Department's Office of Thrift Supervision, without ever being nominated. The FDA was officially leaderless for 18 months before Jane Henney was confirmed in November 1998.

What to Do?

The problem could not be clearer. The appointment process does not work. It doesn't accomplish what it should and it does many things it shouldn't. Would any other American institution tolerate a process that so badly served its substantive and administrative purposes? What are the options for solving the problem?

One approach—that chosen by most other national democracies—would be to end the confirmation requirement completely. Make executive appointments an executive prerogative. Take the legislature out of the process. Let the president choose his own appointees and be held accountable for their collective performance at election time. Appointees would have to abide by the law in their actions, and they could be impeached. But they would be the president's appointees.

A second option is to require Senate approval for fewer appointees, either by reducing the number of presidential appointees (both the 1989 Volcker Commission and the 1996 Twentieth Century Fund task force recommended reducing the number by a third) or by limiting political appointments to the top few positions in each department and to their immediate special assistants. The latter approach would cut the number of appointees substantially, replacing them with career senior executives—as in most other democracies.

A third option, a less radical variant of the second, has been the choice of most panels and reform commissions that have studied the appointment process over the past two decades. It would do away with many of the worst defects of the current system, by, for example, eliminating, or at least putting strict time limits on, Senate "holds" or by prohibiting Senate filibusters on appointments. Through a fast-track process, the Senate would have to vote up or down on a nomination within a fixed time, say 45 or 60 days, or, like the old legislative veto, confirmation would occur automatically unless the Senate by majority vote rejected a nomination within 45 days of its receipt. Another possibility would be to limit the confirmation requirement to executive schedule appointments and judges.

Numerous lesser solutions have also been proposed, again with most coming from earlier reform efforts. Personnel staffs and investigatory agencies could be augmented during presidential transitions to better handle the crunch. The FBI full-field investigation could be rationalized, so it is not one-size-fits-all. Ethics laws, especially the post-employment restrictions, could be made less draconian and decriminalized. Nominees' financial disclosure forms and other reports and questionnaires could be simplified and reduced in number. Confirmation hearings could be waived for noncontroversial appointments. A new Senate Office of Confirmations could centralize and streamline the reviews of nominees before committees hold confirmation hearings. Appointee salaries could be increased to attract more talented people and keep them longer. Appointees could be given a salary bonus for every year on the job after the first two. An office could be created to provide transition assistance and orientation for new appointees.

A final set of options—equivalent to taking two aspirin and calling the doctor in the morning—is merely hortatory. We could exhort presidential candidates to do a better job of transition planning or even name their cabinets before the election. We could urge presidents to devote more attention to team-building and to making public service more family friendly. We could encourage participants to exercise greater civility in the appointment process. We could press the media to exercise more balance and caution in reporting on appointment matters.

Past Time for a Change

The contemporary presidential appointment process is slower, more cumbersome, more contentious, more repellent to talented Americans, and more distant from the purposes of good government than it has ever been. For too long we have turned away from its excesses, accepting them as the inevitabilities of high-stakes politics. It is past time to begin rebuilding and reinvigorating the way executive and judicial personnel are selected. If we merely continue doing what we've been doing, then we will surely continue getting what we've been getting. That wasn't good enough for the late 20th century, and it certainly won't be good enough for the 21st. ■

not be clearer. The appointment process does not work.

"Political Hacks" v

by E. J. Dionne, Jr.

"Bureaucrats"

Can't Public Servants Get Some Respect?

The most moving moment at either party's national convention in 2000 was a resolutely nonpartisan speech that evoked a moment when taking a job in government was seen as far more than, well, just taking a job. "When my brother John and I were growing up," said Caroline Kennedy Schlossberg, "hardly a day went by when someone didn't come up to us and say: 'Your father changed my life. I went into public service because he asked me.'"

Note that lovely phrase "public service." Ms. Schlossberg was not exaggerating or being unduly romantic about the spirit of John F. Kennedy's New Frontier, which both shaped its time and reflected it. Serving in a new administration, whether on the White House staff, in the cabinet, or in a less grand post, was not simply an obligation or, in the current ugly phrase, "a ticket to punch." It was also a source of excitement. And so, as Godfrey Hodgson put it in his biography of Daniel Patrick Moynihan, "a varied population of political and intellectual adventurers" descended on Washington in the winter of 1960 and 1961.

"They came," Hodgson writes, "from New York and San Francisco law firms, from state and city politics across the nation, from the growing world of foundations and pressure groups, and of course from the great graduate schools, swollen by the postwar demand for academic manpower." Hodgson understood that this crowd of adventurers weren't saints, but neither were they mere opportunists: "The mood," he says, "was strangely blended from ambition and idealism, aggressive social climbing and a sense of youthful adventure."

The Diminished Promise of Citizen Service

No doubt many have entered the new Bush administration with that same sense of vigor and adventure. Long lists of Republican office seekers, out of executive power for eight years, testified to the continuing lure of executive positions, from the highest posts to the lowest. Still, it's difficult to hear Schlossberg and to read Hodgson's account and not sense a shift in the spirit of the times. Forty years on from that winter of the New Frontier, public service in the executive retains its allure, but not quite the same sense of glamour or promise.

As columnist Mark Shields pointed out at an event at Brookings in late December, most politicians who have won the presidency over the past quarter-century did so by running against "the government in Washington." Bush was no exception. As a result, expressing an open desire to serve in that very government and an open belief that it might accomplish large things flies in the face of what is now deeply ingrained conventional wisdom.

Yet no country is as dependent as ours on "citizen service" in its national administration. None relies so heavily on people who might be called amateurs, as against career civil servants, to govern. From the beginning of the republic we've operated on the assumption that a professional ruling class is problematic and to be avoided. Government, according to this view, should be refreshed periodically by tides of new leaders with new ideas and untapped energy—the very spirit captured so well by Hodgson and Schlossberg. The assumption continues to prevail that citizen service is essential to the health of civil society—in this case, citizen service at the very highest levels—because citizen service links the government to the rest of the society in a way a purely professional bureacracy could not.

Professionalism vs. Politics

That's the theory, anyway. In truth, our attitude toward those citizen servants reflects an odd balance of ideas. Our history is one of ambivalence as between professionalism on the one side and politics on the other. We admire the independence and expertise of professionals, yet we regularly denounce them when they work for the government. It is no accident that the famous Republican campaign commercial of 2000 in which the word "rats" appeared ever so briefly on our television screens—conveying or not conveying a "subliminal" message,

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BETTMANN/CORBIS

depending on whom you believed—was in fact depicting the word "bureaucrats" at that critical and controversial moment. However honored they might occasionally be, the day-to-day civil servants who make the American government run do not enjoy the honor or prestige of their counterparts in France or Germany, Britain or Japan.

Yet if we denounce bureaucrats, we also denounce political appointees. This is obvious from the normal parlance of politics and journalism. We condemn certain agencies of government as "patronage dumping grounds." We say we dislike the "political spoils system." We insist on praising "independent, nonpartisan government." Indeed, this was the impetus behind the civil service reform that, from the 1880s forward, took the awarding of tens of thousands of jobs "out of politics." The premise, as James Q. Wilson put it in his classic work *The Amateur Democrat*, was that "the merit system and open competition should be extended to insure, insofar as is feasible, that general principles rather than private advantage govern the awarding" of government benefits.

These two traditions—a preference for political appointees over bureaucrats, a preference for civil servants over the beneficiaries of political patronage—are deeply rooted in our history. To understand the contradictions in our history is to understand our ambivalence today.

Jacksonian "Rotation in Office"

It's worth remembering that the idea of wholesale changes in the government following the defeat of an incumbent party in an election was originally seen as a "reform" by the advocates of Jacksonian Democracy in the 1820s and 1830s. The followers of Jackson referred not to a "spoils system" but to a principle they held up as admirable and called "rotation in office." The Jacksonians believed their political foes had come to regard holding the appointive offices of government as a right that could not be disturbed even by the electorate.

That's what Andrew Jackson was against. "Office is considered as a species of property," Jackson declared, "and government rather as a means of promoting individual interests than as an instrument created solely for the service of the people." As Harry L. Watson summarized Jackson's views in *Liberty and Power*, his admirable book on Jacksonian Democracy: "No one in a republic had an inherent right to public office...so no one could complain if he lost a public job in favor of someone more honest, more competent, or more in agreement with elected officials who carried a popular mandate."

Jackson, as Watson notes, emphatically rejected the views of his soon-to-be Whig and former Federalist foes that "no one except a tiny elite had the training or experience to qualify for public office." As Jackson himself put it: "The duties of all public officers are, or admit to being made, so plain and simple that men of intelligence may readily qualify themselves for their performance." Jackson, as Watson notes, wasn't arguing for the hiring of incompetents, but he did demand "that public duties be shared among the large body of qualified citizens to avoid the creation of an entrenched and corrupt bureaucracy."

The notion that rotation in office was a mighty weapon in the larger battle against privilege is nicely captured by historian Robert V. Remini in his study *Martin Van Buren and the Making of the Democratic Party*. Remini notes that the Democrats' 1828 campaign placed heavy stress on the words "people" and "reform." He writes: "The precise direction all this 'reform' was to take was not explained. There was no need to. The people were simply banding together to take the national government out of the hands of the favored few. They were claiming what belonged to them. They were dispossessing 'the wise, the good and the well born.'"

In other words, America's tradition of political appointees is rooted in a philosophical view of how democratic government can work best—and become more democratic in the process. If European democracies have a much shallower tradition of political nominations and a larger reverence for a career civil service, it is in part because none of the Western European democracies—many of which were not terribly democratic at the time—went through anything that quite resembled the Jacksonian Revolution. Hard as it was for reformers to accept the idea later, the creation of a system of political patronage was originally seen as a way to foil both corruption and elitism. Despite abuses, Watson is correct in seeing rotation in office as "a solidly democratic principle that brought greater openness to government."

Civil Service Reform: Depoliticizing Public Service

But there were, indeed, abuses, and they grew over time. The Jacksonian system was "susceptible to political manipulation," as Watson acknowledges. Those abuses and manipulations helped unleash the other great American public service tradition—civil service reform and a preference for expertise. It reached high tide between the 1880s and 1920.

Historian Robert H. Wiebe picks up this thread in his excellent study of the period, *The Search for Order*. In contrast to the Jacksonians, the new reformers saw removing government jobs from the political realm as "democracy's cure." Wiebe wrote: "By denying politicians the spoils of office, the argument ran, civil service would drive out the parasites and leave only a pure frugal government behind. The nonpartisanship inherent in civil service would permeate politics, and as party organizations withered away, the men of quality now excluded by the spoilsmen and unscrupulous businessmen would resume their natural posts of command."

It's also important to see that civil service reform and enhanced faith in a professionalized bureaucracy arose at a moment of growing faith in scientific rationality and a belief in the importance of expertise. The professionals of the period, Wiebe observed, "naturally conceived of science as a method for their disciplines instead of a set of universal principles." Or, as the sociologist Max Weber put it in his famous essay on bureaucracy: "Naturally, bureaucracy promotes a 'rationalist' way of life, but the concept of rationalism allows for widely differing contents. Quite generally, one can only say that the bureaucratization of all domination very strongly furthers the development of 'rational matter-of-factness' and the personality type of the professional expert."

Still a Healthy Tension?

Where do our dueling traditions of political appointments and professionalized bureaucracy leave us today? The professional view suffered body blows during the 1960s from both the left and the right. The rise of the idea of "participatory democracy" on the New Left suggested that the distant bureaucrat claiming vastly more knowledge than average citizens needed to be taken down a peg or two. The War on Poverty's goal of "maximum feasible participation" suggested that real expertise could be found only on the streets and in the neighborhoods. On the right, George Wallace's attacks on "pointy-headed bureaucrats with thin briefcases full of guidelines" nicely captured the conservative rebellion against experts—and, in the case of Wallace and his followers, especially those pushing for new programs of racial inclusion.

But if the bureaucrat has not fared well in public esteem in recent years, neither has the average political appointee. Politics and government still do not enjoy the prestige they did when Caroline Kennedy Schlossberg's father was president. The tendency in both political parties, described well by Martin Shefter and Benjamin Ginsberg in their book *Politics by Other Means*, is to fight political battles through the courts, press disclosures, and congressional investigations. Whatever the merit or utility of these approaches, they have had the effect of making the never-easy life of the political appointee far more difficult—and far less attractive.

It is thus striking, and not surprising, that young people devoted to public service tend less than ever to carry out that service through government—in either civil service or political posts. As Paul C. Light has pointed out, the trend among young people oriented toward service is to seek to reform institutions and change society through the nonprofit sector rather than through government itself. Part of the problem, as Light points out, is the difficulty government has under current rules and practices in offering the flexibility and work opportunities available in the nonprofit sector. But it's also true that the idea of government service as an adventure, described so well by Hodgson, is about as fashionable as the now late, lamented Oldsmobile.

At its best, the American tradition of tension between the political and the professional control of government is highly productive. The Jacksonian instinct that elections should matter and that there should be a significant degree of political control—meaning democratic control—over the bureaucracy is right. But the desire for genuine expertise in the right places is also right. The president, and the people, need military strategists, research scientists, lawyers, economists, and environmental specialists who will feel free to tell the truth as they see it and inform decisionmaking. A democratic government cannot be effective if it changes capriciously from one administration to another. The American tradition creates a constant battle between the democratic impulse and the impulse for efficiency and predictability. This tension is not only useful, but necessary. The Jacksonian principle insists that in a democracy, there is not a bright line between "the government" on the one side and "civil society"—the array of communal institutions independent of government—on the other. If a government is not rooted in, and does not draw on, civil society, it can be neither democratic nor effective.

A Plague on Both Your Houses

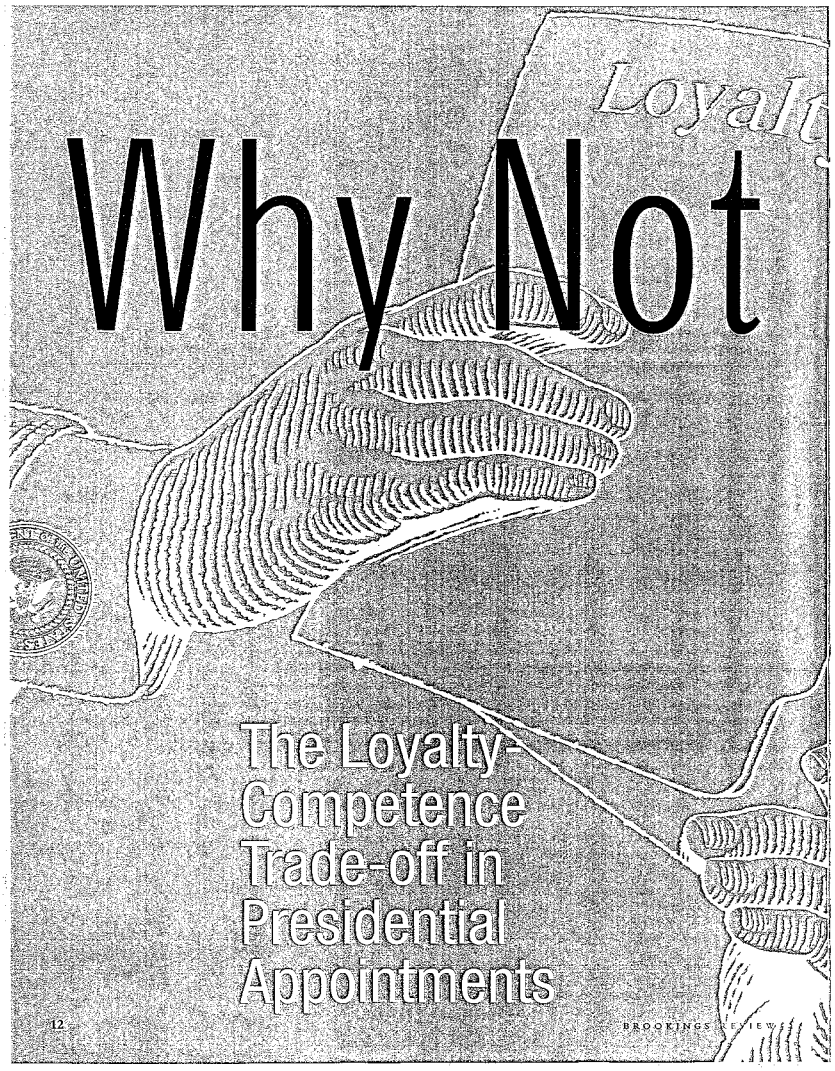
It's not at all clear that the tension between our traditions is serving us well today. At most points in our history, at least one side of the government (the politicians or the professionals) enjoyed some claim on public esteem. Now it can be argued that neither does. The Jacksonians lifted up the political appointee to put a check on the arrogance of expertise. The civil service reformers lifted up expertise to put a check on political abuses. Now putting down both sides is more the rule.

And the rise of a specifically presidential bureaucracy has in some ways divided the executive branch itself, aggravating its problems and the problems of those who work for it. As the political scientist Nelson Polsby has argued, one of the most interesting developments of the past half-century "is the emergence of a presidential branch of government separate and apart from the executive branch." It's the presidential branch, Polsby writes, "that sits across the table from the executive branch at budgetary hearings, and that imperfectly attempts to coordinate both the executive and legislative branches in its own behalf."

If a government is not rooted in, and does not draw on, civil society, it can be neither democratic nor effective.

In *The Presidency in a Separated System*, Charles O. Jones makes a parallel point: that "the mix of career ambitions represented by presidential appointees may well bring the outside world to Washington, but there is no guarantee that these officials will cohere into a working government." Jones sees the president as "somewhat in the position of the Olympic basketball coach. He may well have talented players but lack a team."

None of this means that George W. Bush or any future president will have trouble filling his (or, someday, her) government. None of it means that the country lacks the "practical idealists" of whom Al Gore liked to speak. But a government as peculiarly dependent as ours is on the willingness of citizens to interrupt the normal trajectory of their lives to devote themselves to government service needs to worry that it is not nourishing either of our great traditions of public service. When the political tradition has faltered, we have been able to call on our civil service tradition. When expertise falters, the politicos can step in to right the balance. But when both traditions fail, where do we turn? It would help to have a president who drew people to public service because he asked them to do it and because he made it an adventure in which ambition and democratic idealism could coexist. ■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Why Not
The Loyalty-Competence Trade-off in Presidential Appointments
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BROOKINGS REVIEW

by George C. Edwards III

Every new presidential administration promises to nominate highly talented, well-qualified people to fill appointed positions in the executive branch of the federal government. Yet every president makes more than a few appointments that do not satisfy the National Academy of Public Administration's call for "able, creative, and experienced people," who will serve as "the most important ingredient in the recipe for good government." Indeed, when 435 senior-level appointees in the second administration of Ronald Reagan and in the administrations of George Bush and Bill Clinton were asked recently by Paul C. Light and Virginia L. Thomas to evaluate their fellow appointees, only 11 percent agreed that they represented the best and brightest America has to offer.

The Dimensions of "Quality"

Why do presidential administrations so often fail to make quality appointments? Quality, like beauty, is in the eye of the beholder.

Everyone wants integrity, of course. Beyond that, however, how the White House and the American public at large view quality appointments varies widely. A newly elected presidential administration places the highest value on an appointee's unwavering commitment to the president and to his programs. As presidential recruiters see it, what a president needs most from his appointees is loyalty—especially when the going gets rough, as it inevitably will.

But what most people mean when they discuss the quality of an appointment is a person's ability in a wide variety of areas. Intellectual skills and substantive expertise are essential. Political skills—prowess in dealing

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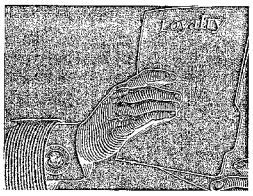
with the press, Capitol Hill, the courts, state and local officials, and interest groups—are also key. Requisite managerial skills are many and varied: planning, organizing, and motivating employees in a bureaucracy, creating open communication with subordinates and good working conditions for employees, and developing administrative strategies for accomplishing the president's goals. Strong interpersonal skills include personal stability, a sense of self-esteem, flexibility, a tolerance for conflict, the ability to accept criticism, and a sense of duty.

The tension between the White House's need for loyal and committed appointees and the country's requirement for men and women of exceptional ability to run the executive branch appears to require a trade-off between loyalty and competence. But is such a trade-off unavoidable?



Why Is Loyalty So Important?

As the size and scope of the federal government have grown since the 1960s, so has White House distrust of the government bureaucracy, especially among Republicans. Richard Nixon told his cabinet, "We can't depend on people who believe in another philosophy of government to give us their undivided loyalty or their best work." As a result, when presidents make their political appointments, they focus less on improving management of the bureaucracy and more on gaining control over it. As Mark Huddleston observes in *The Government's Managers*, "It is a rare political appointee...who does not take up his or her office convinced that senior career officials are...recalcitrant adversaries, saboteurs-in-waiting, obstinately committed to existing programs, and resistant to new policy initiatives."

These fears have at least a theoretical basis. The agendas of executive departments and independent agencies have been set by laws that predate the president's arrival in office—and that serve as a force for continuity rather than change.

For their own reasons (usually political), Congress and the White House have historically given great leeway to government agencies in implementing public policy, granting them significant influence over the rules, procedures, design, and substance of agency action.

As the federal government has grown since

The sheer complexity of policymaking, among other things, keeps the president and Congress from developing and defining all the requisite details of how to carry out policy. Most, sometimes all, details must be left to subordinates, usually in the executive branch.

Moreover, people attracted to work for government agencies are likely to support their policies, whether in the fields of social welfare, agriculture, or national defense. And all but a few high-level members of the civil service spend their careers within a single agency whose range of responsibilities is relatively narrow. Officials in the Education Department, for example, do not deal with the entire national budget; they deal only with the part that pertains to their programs. With each bureaucratic unit focusing on its own programs, few people in the unit view these programs from a wider, national perspective.

Outside influences also encourage parochialism among bureaucrats. Interest groups and congressional committees that support an agency expect bureaucratic support in return. Because these outsiders generally favor the policies the bureaucracy has been carrying out all along—and which they probably helped initiate—what they really want is to perpetuate the status quo.

The White House has gone to some lengths to constrain the exercise of bureaucratic discretion. It requires clearance of regulations and congressional testimony, limits agency budgets, and restricts procurement and other spending. Perhaps most important, it has tried to control personnel decisions more centrally and deepened the penetration of political appointees into departments and agencies. It has made ever more political appointments not only at the top of the executive bureaucracy, but also at lower ranks. Presidents have also tried to place political appointees in career positions just before leaving office, and presidents and their appointees have used the Civil Service Reform Act of 1978 to reassign top-level civil servants.

Are Careerists Responsive to the President?

Is the bureaucracy as problematic as the White House believes? Certainly the ideologies of the White House and senior members of the civil service have clashed at times, although the potential for resistance to presidential initiatives has varied across agencies. Verifying that the policy predispositions of civil servants are critical to their compliance with the president's wishes is more difficult.

A few studies have found instances of bureaucratic sabotage. In his 1977 work, *A Government of Strangers*, Hugh Heclo concluded that sabotage was common, but he did not provide systematic evidence in support of this conclusion. In a more rigorous 1994 study, *Bureaucratic Dynamics*, B. Dan Wood and Richard Waterman found that the Environmental Protection Agency maintained and even increased its inspections and citations of violations of environmental regulations in the face of efforts by the Reagan administration to weaken the enforcement of environmental protection laws. Marissa Golden also found some resistance to Reagan initiatives in the Civil Rights Division of the Justice Department.

Francis Rourke, however, argues that cases of bureaucratic challenge to presidential authority have been rare and that senior bureaucrats follow the election returns and defer to the president. "What is surprising," agrees James Q. Wilson in *Bureaucracy: What Government Agencies Do and Why They Do It*, "is not that bureaucrats sometimes can defy the president but that they support his programs as much as they do. The reason is simple:...bureaucrats want to do the right thing."

Many studies of federal bureaucracies—the Equal Opportunity Employment Commission, the Federal Trade Commission, the Food and Drug Administration, the Office of Surface Mining and Reclamation, the Securities and Exchange Commission, the Nuclear Regulatory Commission, the National Highway Traffic Safety Administration, the Environmental Protection Agency, the National Labor Relations Board, the Justice Department's Antitrust Division, the Interstate Commerce Commission—have consistently found that bureaucracies change the way they implement policy in line with the president's wishes, even in areas of political controversy.

Perhaps more important, argues James Pfiffner, despite their initial suspicion and hostility, political appointees themselves usually develop trust in the career executives who work for them. Indeed, according to surveys of appointees ranging from the administration of Lyndon Johnson to the present, political appointees—regardless of party, ideology, or administration—find career executives both competent and responsive. "In interview after interview," observes Paul Light, "presidential appointees celebrate the dedication of their bureaucrats."

In a 1984 survey, large majorities of political appointees in the administrations of Johnson, Richard Nixon, Gerald Ford, Jimmy Carter, and Ronald Reagan rated career executives both competent and responsive. A later survey by Judith Michaels found that George Bush's political appointees relied heavily on careerists for all aspects of their jobs, from formulating policy to implementing it. Bush appointees found career civil servants helpful in everything from mastering substantive policy details and anticipating policy implementation problems to liaison with Congress and other components of the bureaucracy. In another survey, by Joel Aberbach and Bert Rockman, most of Bush's political appointees agreed that civil servants brought valuable experience to the job and had good leadership qualities and management skills. Not only did the appointees view senior civil servants as working hard to carry out administration policies, they saw them as more experienced and as better managers than themselves.

The most recent data, from the Brookings Presidential Appointee Initiative, confirms that more than four out of five appointees found the career officials with whom they worked to be both responsive and competent (table 1). Only 25 percent of appointees found directing career employees to be a difficult task. Indeed, every other task about which appointees were asked was more difficult. More than a third of appointees, for example, found it hard to deal successfully with the White House.

In sum, the bulk of the evidence is that federal bureaucrats are "principled agents." Whatever their preconceptions, political appointees usually develop trust in the career executives who work for them. There is in fact little need to make a trade-off between ability and loyalty to "control" the civil service. The bureaucrats, it turns out, are not that hard to control.

Then why do new administrations persist in the expectation of facing bureaucratic resistance? The answer seems to be that most political appointees think that their experience with careerists is somehow unique—that their careerists are different. The belief in a recalcitrant bureaucracy is so deeply ingrained in the conventional wisdom about how government works that it perseveres in the face of widespread contradictory experience.

the 1960s, so has White House distrust of the bureaucracy.

Loyalty Is Not Enough

No matter how loyal appointees are to the president, they need to know what to do and how to do it once they get their jobs. The ability to manage, design, and effectively carry out new programs, implement key legislation, or deliver services should be prominent—indeed primary—criteria for choosing potential appointees.

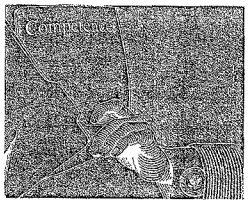
Although there are no systematic data on how individual appointees

TABLE 1. How Reagan, Bush, and Clinton Administration Appointees View Career Civil Servants

APPOINTEES' ADMINISTRATION	PERCENTAGE OF APPOINTEES EXPRESSING VIEW: CAREERISTS ARE COMPETENT	CAREERISTS ARE RESPONSIVE
All	83%	81%
Reagan administration	86	87
Bush administration	85	83
Clinton administration	82	78

Source: Paul C. Light and Virginia L. Thomas, *The Merit and Reputation of an Administration: Presidential Appointees on the Appointments Process* (Presidential Appointee Initiative, 2000), pp. 9, 31, 32.

affect the performance of the federal executive branch, there is no shortage of commentary on it. Several years ago David Cohen, a former career senior executive, forcefully argued in the *Journal of Public Administration Research and Theory* that no matter what the selection criteria, political appointees themselves are often not responsive to the White House because they come with personal agendas, have multiple loyalties, and are layered upon each other. Patricia Ingraham adds that links between the White House and political appointees are frequently unclear and tenuous, providing everyone more discretion.



No president is going to appoint political opponents to positions in the executive branch. The issue is not either-or but rather one of relative emphasis. Quality matters.

Even where appointees are responsive to presidential agendas, Cohen says, they tend to lack the managerial skills to enact those agendas successfully. Most appointees are lawyers, legislators, congressional staffers, academics, lobbyists, presidential campaign workers, and trusted aides to senior appointees. Some may have substantial policy expertise, but almost all are essentially individual entrepreneurs, not team players. They have little managerial experience. Many are quite young.

Thus, Cohen maintains, when it comes to selecting the top leadership of the executive branch, the White House largely abandons professional standards. The professional standards it does observe are limited to technical and program expertise. The abilities to manage, design, and effectively carry out new programs, implement key legislation, or deliver services are not prominent criteria for evaluating potential appointees. Would any large corporation, Cohen asks, place at the head of a major operating division a person with no experience managing funds or supervising people? What enterprise would fill every senior management position with people with little or no inside experience? Who would accept the "mindless notion that any bright and public-spirited dilettante can run a government agency"?

In an 1987 article entitled "When Worlds Collide," Paul Light found that preparation for a presidentially appointed job, whether defined in terms of management experience, negotiating skills, congressional relations, or personal style, makes a difference. Most important, appointees' preparation for office directly affects their ability to use the career service to an administration's advantage. The better they were prepared for office, the more they saw the careerists with whom they worked as responsive and competent. In short, good preparation for their jobs helps political appointees mobilize the resources of the career bureaucracy. Appointees who knew what they wanted—and how to get it—viewed the career service as the most helpful in all areas, including management, substantive policy, technical analysis, and congressional relations. Thus, concludes Light, "skills are the crucial link between appointees and careerists."

Laurence Lynn is one of the few analysts to focus on how the quality of appointees affects policy implementation. In a 1985 study of the administration of Ronald Reagan, Lynn examined five agencies, looking for lasting changes each may have made in its core activity consistent with Reagan's policy preferences. He found that appointees' success in changing the behavior of an agency was related not to their loyalty to the president and commitment to his policies, but to four specific factors. One was the opportunities within the agency environment to accomplish change. The others were managerial skills and experience, the appointee's personality, and the appointee's design for achieving his or her goals. Although the environment of an agency is outside a president's control, appointing skilled and experienced managers with appropriate personalities and designs for achieving goals is not. Presidents should take full advantage of that opportunity.

Bring Out the Best

Although the conventional wisdom urges the president-elect to stress personal loyalty and commitment to his program in evaluating candidates for positions in the bureaucracy, the best evidence is that bureaucratic resistance to change does not pose a substantial obstacle to the president's achieving his goals.

No president is going to appoint political opponents to positions in the executive branch. The issue is not either-or but rather one of relative emphasis. Quality matters. The greater the administrative challenge, and thus the more sophisticated the design needed to exploit it, the greater the premium on analytical ability, managerial and political skills, and personality—on those skills that bring out the best in the bureaucracy. ■

Fixing the Appointment Process

What the Reform Commissions Saw

by Alvin S. Felzenberg

After the British electorate turned his party out of office in 1945, Winston Churchill's wife Clementine advised him to look upon the results as a "blessing in disguise." He replied that if she was correct, the blessing was "very much disguised." ● Churchill had reason for remorse. When Britain struggled alone to resist the advance of Hitler's forces in 1940, Churchill had summoned his nation to its "finest hour." Together with Franklin Roosevelt, who later provided assistance—first through lend-lease and after Pearl Harbor with manpower—Churchill devised the strategy that saved Western civilization as he knew it. He could hardly be blamed for indulging in a brief bout of self-pity after what he regarded as a personal repudiation on the part of an ungrateful citizenry.

Alvin S. Felzenberg is the author of [illegible] *and a fellow in the Heritage Foundation's Center for Research on Congress and Presidency.*

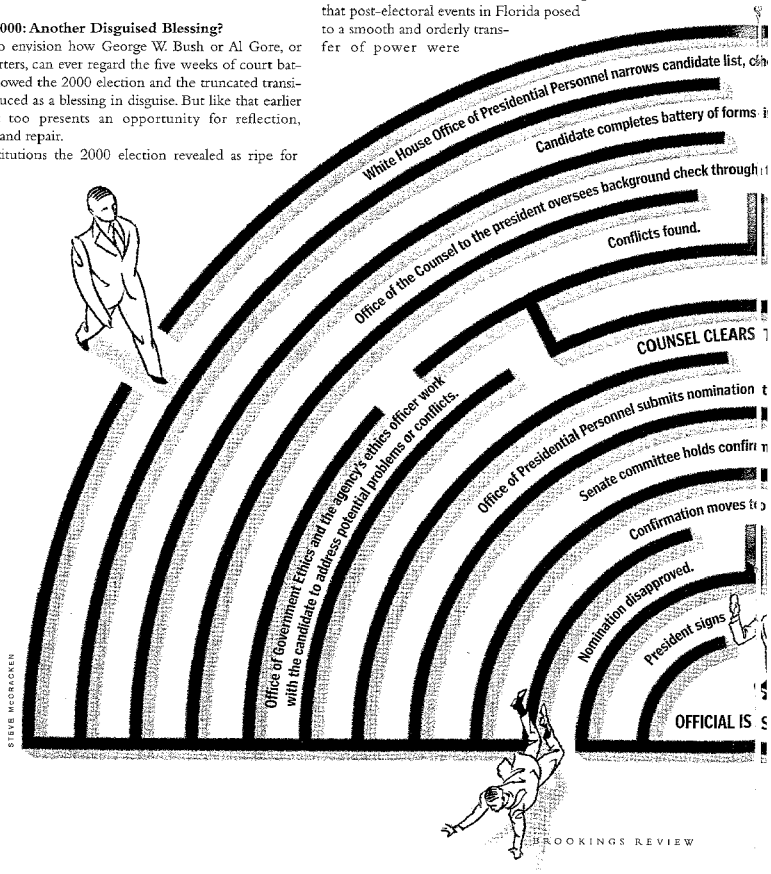
But Mrs. Churchill had it right. Defeat spared Churchill blame for the industrial strife that followed the war. It also assured that Clement Atlee, rather than he, would "preside over the dissolution of the British Empire," something Churchill vowed never to do. It also gave him time to produce a literary classic: his six-volume history of World War II. Churchill was returned to power in 1951, beginning a dozen-year span of uninterrupted Conservative party rule. When he died in 1965, he was hailed as the savior of his nation. His magisterial funeral set a record for a non-royal, equaled only by that afforded the Duke of Wellington almost a century earlier.

Recount 2000: Another Disguised Blessing?

It is hard to envision how George W. Bush or Al Gore, or their supporters, can ever regard the five weeks of court battles that followed the 2000 election and the truncated transition it produced as a blessing in disguise. But like that earlier instance, it too presents an opportunity for reflection, recharging, and repair.

Two institutions the 2000 election revealed as ripe for reform were the rickety and discordant election practices common in so many American counties, with no uniform standards to resolve disputes, and the lengthy, convoluted, and unwieldy procedures by which appointees of a new administration assume positions of responsibility.

Electoral practices and devices are attracting ample attention, and the legislative hopper is filling with reform proposals. But little has been done to streamline a presidential appointment process almost universally regarded as broken. Vice President Richard Cheney, who spearheaded George W. Bush's transition effort, stated that the greatest obstacle that post-electoral events in Florida posed to a smooth and orderly transfer of power were



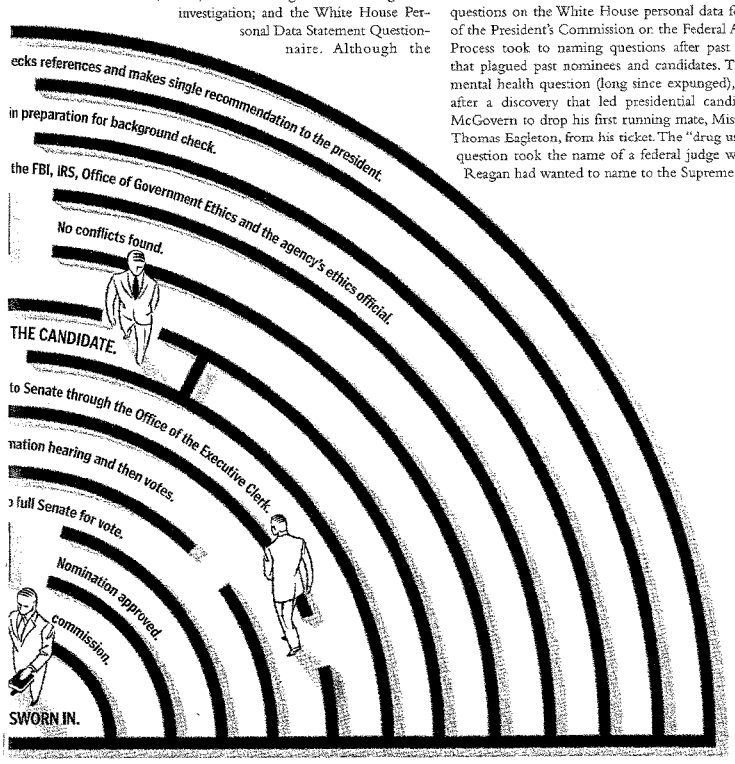
delays in obtaining the necessary "clearances." Most observers of recent transitions heartily agree.

What's So Hard about a Clearance?

Background checks may seem to lay-people a simple undertaking, one that corporations, universities, credit companies, and state and local governments routinely do with great speed. But in Washington these clearances have become a torturous and lengthy trial by ordeal. The typical appointee must complete a minimum of three forms: SF-278, a financial disclosure statement; SF-86, a form that begins an FBI background investigation; and the White House Personal Data Statement Questionnaire. Although the White House and FBI are free to modify their forms, information on the financial disclosure form is required by statute.

Nominees needing Senate confirmation must also complete forms required by the appropriate committee. Nominees who will be engaged in national security matters must complete still others. Each form comes with appropriate "waivers" granting permission for investigators to obtain medical and academic records, tax returns, and credit histories.

All the forms have lengthened over the years in response to accumulating scandals that embarrassed past nominees and administrations. In 1990, to dramatize the mushrooming of questions on the White House personal data form, the staff of the President's Commission on the Federal Appointments Process took to naming questions after past controversies that plagued past nominees and candidates. They named a mental health question (long since expunged), for example, after a discovery that led presidential candidate George McGovern to drop his first running mate, Missouri Senator Thomas Eagleton, from his ticket. The "drug use in college" question took the name of a federal judge whom Ronald Reagan had wanted to name to the Supreme Court. Prov-



ing the President's Commission's point, the Clinton administration added a question about hiring foreign nationals as domestics after withdrawing the nominations of two prospective attorneys general who had failed to pay Social Security taxes for such employees. With an eye toward protecting new administrations against similar blowups, the FBI has also extended its fields of inquiry.

The rush of paper that sweeps through Washington during each transition has all but brought the process to a standstill. Scholars estimate that in Lyndon Johnson's day, it took about six weeks for an appointee, once nominated, to assume his or her job. By Bill Clinton's time, it was averaging more than eight months. The system now in place resembles nothing so much as the old "I Love Lucy" show in which Lucy and Ethel, working in a candy factory, are overwhelmed by the increasing speed of the conveyor belt moving chocolates in their direction.

Past Reform Efforts

All who have participated in or observed the process agree that this is a problem crying out for a solution. In the past 15 years, no fewer than six blue-ribbon commissions have suggested ways to improve the process: the National Academy of Public Administration (in 1983 and 1985), the National Commission on the Public Service (1989), the President's Commission on the Federal Appointments Process (1990), the National Academies of Sciences and Engineering and the Institute of Medicine (1992), and the Twentieth Century Fund (1996). Most of their recommendations have gone unheeded, largely through the force of inertia. Although parties to the appointment process have been sensitive to growing backlogs, duplication of effort, and wasted energies, few saw it in their immediate interest or capacity to make the needed reforms.

That may change. What post-election controversies may have done to improve election equipment and methods, the Clinton-Bush transition may do for the presidential appointment process. Americans have always been adept at applying Jonathan Swift's adage about "necessity" being the "mother of invention."

Indeed, unless improvements are made soon, more will be lost than the speed with which a new administration begins discharging its full obligations to the American people. Delays in placing people in their posts impede the president's ability to direct the workings of the government. "Holdovers" from the past administration may be unsympathetic to his goals, and civil servants may be unable to anticipate his policy preferences and unwilling to take bold action in the absence of political leadership.

Unless improvements are made soon, more will be lost than the speed with which a new administration begins discharging its full obligations to the American people. Delays in placing people in their posts impede the president's ability to direct the workings of the government.

An excessively slow appointment process also prevents the public from holding public officials to account through duly elected representatives. That is best achieved by having top-level, presidentially selected officials in place early to testify before Congress and present the administration's case through the media.

Extensive background checks and confusing and contradictory forms that are more obstacle than invitation to service may discourage the most able people from joining an administration. Even under the best of circumstances, potential candidates for high-level policy positions may find their salaries cut, their careers interrupted, and their privacy lost. To that list might be added "exit restrictions" that can limit their future earnings, as well as the potential harm of politically inspired "leaks" and rumors during the nomination and confirmation processes.

Just How Good Are Those Blue-Ribbon Recommendations?

The new administration and Congress will not need to name another commission or hold lengthy hearings to decide how to proceed. The problem has been studied extensively. Although the recommendations vary as to their practicability, findings of the half-dozen bodies that have studied the appointment process over the past two decades cluster around seven major ideas.

First, start transition planning early. Traditionally, presidential candidates have eschewed talking about plans for a possible transition, lest they appear presumptuous. Ronald Reagan was an exception, and scholars attribute much of his success to his early planning. In 2000, candidates George W. Bush and Al Gore, following in the Reagan mold, placed trusted advisers in charge of planning their transition. The impact of those efforts was clouded, of course, by the unprecedented delay in determining the winner of the election.

Second, assist new nominees. All the studies speak to the "isolation" nominees endure while awaiting appointment or confirma-

tion. They recommend that a new White House Office of Presidential Personnel or inter-agency committee guide candidates through the process and advise them periodically where they stand. Another common suggestion is that either the Office of Management and Budget or the executive clerk to the president maintain job descriptions for every position the president is free to fill. These suggestions are sound and can easily be implemented.

Third, decide which positions merit a "full-field" FBI investigation. The Twentieth Century Fund panel found the full-field investigation, standard practice since 1953, "too blunt and intrusive an instrument for the purposes for which it is currently used." Its study and several others questioned whether certain appointed positions required an FBI investigation. Mindful of its professional role, the agency prefers to "treat all comers the same." But it is not the FBI's responsibility to decide which nominees to investigate or exempt. Present coverage can be streamlined either statutorily or by executive order.

Reports issued by the President's Commission on the Federal Appointments Process and the scientific communities recommended limiting investigations of nominees to the time since they last departed government service. The President's Commission suggested leaving the matter to the discretion of the agency where the appointee would serve.

Recent "leaks" of raw data from FBI files and misuse of files by either White House or congressional personnel underscore the need to enforce existing statutes and to enact others to protect the privacy of citizens. Information available to those who review a nominee's suitability should also be made available to the nominee before his or her fate is decided.

Fourth, clarify conflict-of-interest restrictions. This may be another area crying out for statutory change. Commonsense practices, subject to peer review, should replace "straitjacketing" restrictions that now determine conflicts of interest and set exit requirements. Requirements that nominees divest themselves of holdings in industries over which they have jurisdiction should be modified to allow them to spread capital gains taxes over several years or otherwise avoid forced "losses." Rules regarding blind trusts could be clarified.

Fifth, allow cabinet officers to do the hiring in their departments. Although several commissions urged this measure both to enhance the efficiency of government and to relieve the president and his staff of the need to pass upon people with whom their interaction will be slight, the recommendation flies in the face of recent history. Presidents who delegated this task exclusively to the cabinet (Nixon and Carter) found that appointees were more likely to pursue interests other than and often contrary to the president's. Those who exerted a firm hand over hiring decisions (Reagan and Clinton) put together administrations that worked better as a team.

Sixth, make fewer political appointments. This has become all but gospel in most of the foundation-supported, "good government" commissions on the appointment process. Noting the burden on the president of filling numerous positions, they see having fewer political appointees as a way to increase efficiency, especially during transitions.

Overlooking the practical obstacles to these proposals—why would any president want to give up this hefty instrument for asserting control over the executive branch?—such recommendations do not consider the costs such "reforms" would entail. Surely fewer than 6,000 people in a government workforce of 1.7 million is hardly a sign of the "politicization" of the government. That relative handful of appointees is one primary means presidents have of assuring that their directives are carried out. The more committed they are to the president's goals, the more energy they are likely to invest in furthering them.

It is through political appointees, who set policy, rather than through career civil servants, who execute it, that Congress, the media, and the public hold administrations accountable. Success in this arena may require skills more readily acquired in the political arena or outside government entirely. Appointees who are not effective can be easily dismissed.

Seventh, establish limits on senatorial "holds" and make fewer positions subject to Senate approval. Senators value their prerogatives highly. Often they use holds to extract concessions from the administration or influence the direction an agency is to take. This is a scepter they are unlikely to give up. And, given its committee structure, the Senate can hardly be expected to agree on which posts to exempt from the reach of its advise and consent authority.

A more promising route would be for the new president to request the Senate's leaders to supply the White House with its forms so that all required paperwork can go to nominees at the same time. This simple measure can save nominees days, if not months, of paperwork and fees spent on lawyers and accountants. The president may be able to persuade the Senate to adopt a common form, with each committee free to request additional information as an attachment. Perhaps the Senate can even be persuaded to follow the White House form.

An Undisguised Blessing

Anything the new president and Congress do to assist new nominees, clarify conflict-of-interest rulings, reduce the tax liabilities and exit requirements placed on new nominees, establish order, logic, and priorities to FBI and other "clearance" processes, and bring the Senate's demands and requirements into closer conformity with the White House's will go a long way to streamline what has become an excessively burdensome and antiquated process. All can be achieved without intruding upon the prerogatives of either the president or the Senate to discharge their constitutional obligations.

Practical measures such as these will improve both the functioning of American democracy and the quality of public service not only for the Bush administration, but for all administrations to come. That would constitute an important part of President Bush's legacy—and that of the 107th Congress. If such remedies are successfully undertaken, historians of the future may proclaim them the "blessing in disguise" that flowed from the aftermath of the 2000 election. ■

Fabulous Formless Darkness

Presidential Nominees and the Morass of Inquiry

by Terry Sullivan

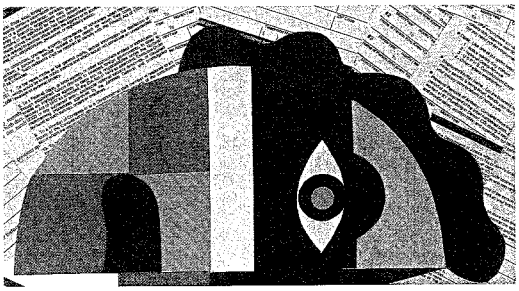
The White House wants to know what real estate you or your spouse now own. It also wants a list of properties you and your spouse have owned in the past six years but don't now. ■ The FBI wants to know about properties in which you have an interest. Presumably the properties you might have an interest in include more than those you own outright. Drop the spouse and drop the past six years. ■ The U.S. Office of Government Ethics wants you to report real properties that you have sold or bought. It also wants you to list real estate assets currently held, as well as any you have sold that made you at least $200. Drop the past six years, but add the past two. Skip the properties you own but have not bought recently. Add your spouse to the mix. Add any dependent children. Then set the values of the transactions within one of eleven ranges. ■ A Senate committee wants to return to the White House question of ownership, drop the spouse, drop the dependent children, take the FBI time frame, drop the past six years, then drop the two years, forget about sales and acquisitions, drop the value ranges. But add a specific value to each of the properties reported.

Terry Sullivan is on the faculty in political science at the University of North Carolina at Chapel Hill and Edwards Chair in Democracy and Public Policy at the James A. Baker III Institute for Public Policy.

DAVID WILLMANS

Though W. B. Yeats had in mind the primordial chaos of mythology when he penned my title phrase, the Irish poet could well have been speaking of the inquisition that U.S. presidential appointees face in securing a post in the federal government. Over the past 30 years, the process by which the president's nominees are confirmed has become an increasingly murky fen of executive branch and Senate forms, strategic entanglements, and "gotcha politics." According to the 1996 Task Force on Presidential Appointments assembled by the Twentieth Century Fund, the appointment process has discouraged and demoralized many who would work in a presidential administration. A recent survey of former appointees from the past three administrations released by the Presidential Appointee Initiative elicited such descriptions of the process as "embarrassing," "confusing," and "a necessary evil." The PAI study concluded that "the Founders' model of presidential service is near the breaking point. Not only is the path into presidential service getting longer and more tortuous, it leads to ever more stressful jobs. Those who survive the appointment process often enter office frustrated and fatigued." Both the Twentieth Century Fund's task force and the Presidential Appointee Initiative report called for finding ways to diminish the blizzard of form filings.

This article explores what such efforts might entail. It describes the different inquiries, identifying the general areas of scrutiny, specific questions and their variants, and the array of relationships between these questions. It demonstrates the degree of commonality in areas of scrutiny and across forms. And it assesses three potential approaches to reform, concluding that two strategies seem most effective.



The Formless Darkness

Anyone nominated for a position requiring Senate confirmation must file four separate forms. The first, the Personal Data Statement (PDS), originates in the White House and covers some 43 questions laid out in paragraphs of text. Applicants permitted by the White House to go on to the vetting stage fill out three other forms. The first, the Standard Form (SF) 86, develops information for a national security clearance investigation, commonly called the "FBI background check." The SF-86 has two parts: the standard questionnaire and a "supplemental questionnaire" that repackages some questions from the SF-86 into broader language often similar though not identical to questions asked on the White House PDS.

The second additional questionnaire, SF-278, comes from the U.S. Office of Government Ethics (OGE) and gathers information for financial disclosure. It doubles as an annual financial disclosure report for all federal employees above the rank of GS-15. For most nominees, the third additional form comes from the Senate committee with jurisdiction over the nomination. Having returned each of these four forms, some nominees will receive a fifth questionnaire, again from the Senate committee of jurisdiction, with more specific questions about the nominee's agency or policies it implements.

While nominees complain about several aspects of the process, they regularly and uniformly express frustration with the repetitive and duplicative questions. Indeed, nominees leave the impression that the forms contain nothing but repetitive inquiries. Although the problem is not that severe, the degree of repetitiveness does represent an undue burden. As indicated at the outset, for example, a presidential nominee is obliged to muster information on real estate property on four forms involving three separate time periods, three separate classes of owners, and at least two separate types of transactions—providing essentially the same information four times, but sorted each time in a different way.

> Over the past 30 years, the process by which the president's nominees are confirmed has become an increasingly murky fen of executive branch and Senate forms, strategic entanglements, and "gotcha politics."

Measuring Repetitiveness

Just how repetitive are the forms? This section tackles that question, first identifying the different levels of repetitiveness and then assessing the distribution of repetitiveness over the different categories of inquiry pursued in the questionnaires.

Table 1. How Repetitive Are the Questions?

TOPIC	NONREPETITIVE QUESTIONS	REPETITIVE QUESTIONS	TOTAL QUESTIONS	PERCENT REPETITIVE
Personal & family background	39	22	61	36
Professional & educational background	22	39	61	64
Tax & financial information	11	21	32	66
Domestic help issue	1	0	1	—
Public & organizational activities	2	7	9	78
Legal & administrative proceedings	10	25	35	71
Miscellaneous	31	3	34	9
Totals	116	117	233	Avg. 50

Source: White House Personal Data Statement, Standard Form 86, Standard Form 278, and a representative Senate committee questionnaire.

The questions fall into three repetitiveness categories based on how much common information they require. Identical questions (for example, "last name") inquire into the same subject without varying the information elicited. Repetitive questions (for example, the real property questions) request information on the same subject but vary it along at least one dimension. And nonrepetitive questions (for example, the "nanny-tax" question asked only on the White House PDS) seek different information.

On the four forms mentioned (one a representative Senate committee questionnaire), nominees must respond to 233 questions. They must answer 116 nonrepetitive questions (those without an analog) and 99 repetitive questions (those with analogs). They regularly repeat the answers to 18 identical questions. Thus half of the questions nominees answer have some analogs elsewhere while slightly less than half have no analogs anywhere.

Table 1 shows how questions are distributed across the seven topics used in the White House Personal Data Statement—personal and family information, profession and education, taxes and finances, domestic help, organizational activities, legal and administrative activities, and miscellaneous. More than a third of the questions cover personal and family background. This large share derives primarily from the detailed background information required on the SF-86. Most of the remaining questions focus on professional and educational achievement or—much emphasized by the PDS and the FBI background check—legal entanglements.

Table 1 also reports the degree to which a category includes repetitive questions. One potentially misleading result, however, should be noted. Although the personal and family background category has a repetitiveness rate of 36 percent, it is not as burdensome on nominees as might appear, primarily because it contains almost all the identical questions (15 of the 18 asked) found across the four forms and those questions tend to focus on basic information such as name and telephone number. This category also accounts for the largest number of separate questions (39). One prescription for reducing repetitiveness in this category, then, could simply be to reduce the contact information required of nominees.

The greatest repetitive burden occurs on three topics: professional and educational background (64 percent over 61 questions), tax and financial information (66 percent over 32 questions), and legal and administrative proceedings (71 percent over 35 questions). Association with employers and potential conflicts of interest constitute a classic example of repetitiveness. Everyone involved in vetting nominees wants to know about potential conflicts of interest embedded in the nominee's professional relationships. Patterns of repetitiveness in reporting conflicts of interest resemble those found in reporting property: multiple reporting periods, multiple subjects, and multiple types of information. Real property, of course, is a classic example of the kinds of repetitiveness found under the rubric of tax and financial information.

The level of repetitiveness under the rubric of legal and administrative proceedings seems particularly telling because, as noted, the Office of Government Ethics asks no questions about legal entanglements. The repetitiveness results almost exclusively from the FBI's tendency to turn a single general question from the PDS into multiple specialized variations. For example, while the White House asks about arrests, charges, convictions, and litigation all in one question, the FBI asks a series of questions covering separate classes of offenses and case dispositions: felonies, firearms, pending charges on felonies, courts martial, civil investigations, agency procedures, and so on. The FBI background check also changes the time period from that used on the PDS.

Table 2. How Repetitive Are the Questions after Reform?

TOPIC	NONREPETITIVE QUESTIONS AFTER REFORM	REPETITIVE QUESTIONS AFTER REFORM	TOTAL QUESTIONS AFTER REFORM	PERCENT REPETITIVE AFTER REFORM	PERCENT REPETITIVE BEFORE REFORM
Personal & family background	39	19	58	33	36
Professional & educational background	22	11	33	33	64
Tax & financial information	11	6	17	35	66
Domestic help issue	1	0	1	—	—
Public & organizational activities	2	7	9	78	78
Legal & administrative proceedings	10	7	17	41	71
Miscellaneous	31	3	34	9	9
Totals	116	53	169	Avg. 31	Avg. 50

Source: White House Personal Data Statement, Standard Form 86, Standard Form 278, and a representative Senate committee questionnaire.

Strategies for Rescuing Nominees

The informational burden on nominees can be eased by reform in three directions—by narrowing the scope of inquiry, by cutting redundancy, and by reconsidering strategic institutional imperatives.

Ask Fewer Questions

Reducing the scope of inquiry would be most straightforward. Because fewer than half of all questions asked of nominees are repetitive, reform could properly focus on reducing the number of unique questions. Yet of the 116 questions having no counterpart elsewhere, exactly half (58) are on the FBI background check; more than half of those (37), or a third of the total, involve personal and family background. They establish a host of background characteristics presumably necessary to trace an individual's identity, including basic descriptors like "height" and "hair color" and spouse citizenship. The only questions that might seem superfluous require information on the nominee's previous marriages and descriptions of adults who reside with the nominee but are not part of the immediate family. It does not seem likely that trying to ask fewer questions will reduce the burden on nominees, except where authorities are willing to challenge the basic techniques used in carrying out a background investigation.

One possible reform in this area would be to transfer basic background information on a nominee before the FBI conducts its investigation. The administration would request a name search on the nominee from the government's files, transfer the results to the appropriate forms, then hand the forms to the nominee to check, amend, and complete. At that point the background check would begin in earnest. This approach would not only reduce the burden on nominees but also reduce the time the FBI spends retracing its earlier investigatory steps.

Reduce Repetitiveness

Reform could also accommodate nominees by reducing repetitiveness, as shown in table 2. Taking this approach increases the number of identical questions by smoothing the questions asked across forms, and it may involve changing congressional mandates. Among the repeated questions, three-quarters require nominees to reshape answers to previous questions. The real property questions described earlier are a perfect example. Nominees must answer six separate though similar questions. Settling on a single question—using the OGE approach, for example— instead of on six, would cut the percentage of repetitiveness in the tax and financial category by 47 percent, from 66 percent to 35 percent, while cutting the number of questions in this category almost in half.

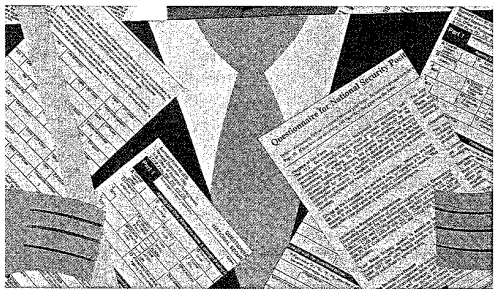
To create one common question, the four institutions could rely on the broadest range of information required on any dimension involved in a topic. For example, on the real property example, all institutions could settle on the longer time periods of the White House, the broader definition of subjects used by the FBI, and the broader notion of ownership inherent in the FBI's term "interest." In the end, this reform reduces the burden on nominees by affording them a standard format in which to provide information.

Rethinking questions about professional relationships could also help. At least ten separate questions involve connections between the nominee and corporations and other institutions. Like the questions on property, they vary by time period, the type of organizations involved, the level of connection to the organization necessary to report, the level of compensation triggering a report, and so forth. Reform here could reduce the number of questions on conflict of interest from ten to, say, three. Other changes could cut the number of questions about education, plans for

post-government compensation, and foreign representation. Consolidation in these three groups could reduce eight questions to three. In all, reformulation could decrease repetitiveness in this area by half—from 64 percent to 33 percent.

Under the last topic with serious repetitiveness, legal and administrative proceedings, reformulation could eliminate all but seven questions, reducing repetitiveness from 71 percent to 41 percent. Overall, reformulating these questions would reduce repetitiveness in the executive branch forms from almost half of all questions to less than one-third—a very substantial improvement of 38 percent.

The difficulty of this approach is that the questions generated by both the FBI in SF-86 and the OGE in SF-278 have substantial institutional justification. In the former, the FBI can rely on expertise about the nature of the investigative process to suggest that it must generate sufficient data to discover security risks. In the latter, the SF-278 has a substantial statutory basis for its inquiries. Changing the form requires changing the statute.



Reconsidering Institutional Imperatives

A final reform strategy would be for one of the four institutions to surrender control over information and rely instead on information already gathered by others. The White House has the best opportunity to take this approach. Because it initiates the process, it can afford to limit its own information requirements by securing the information delivered to the other agencies. Instead of offering its own form, the White House could rely on the fact that it can see how applicants fill out their SF-86 and draft their SF-278 as part of the initial negotiations that identify eventual nominees. Based on those drafts, the White House would then decide whether to carry through its intent to nominate, thereby triggering the appointment vetting process. Because almost all the PDS questions are repeated on other forms, this strategy would reduce repetitiveness to around 28 percent, slightly less than the more complicated strategy outlined earlier.

For its own deliberations, the White House would not lose any relevant information. Except for the "nanny question," the PDS provides information secured on other forms. Because the PDS does not provide information on any "decision criteria" unique to White House concerns, eliminating it would not adversely affect White House considerations.

The Senate Forms

Except for a few questions requiring the nominee to list publications and honors, Senate committee questionnaires differ from executive branch forms in two important respects. First, they attempt to commit nominees to resolving "constitutional" conflicts in the Senate's favor. For example, committee questionnaires regularly require nominees to commit to reporting to the Senate on policy decisions that vary from legislative policy. No amount of reform will likely reduce the interest of the Senate in committing nominees to follow committee dictates on policy differences.

Second, many Senate committees require more detailed financial information than the executive branch questionnaires, in the form of "net worth" statements. The issue here has become the necessity of requiring information about net worth when it does not clearly indicate the kinds of relationships typically understood to create conflicts of interest.

The Relative Ease of Reform

Extracting nominees from the formless darkness of the appointment questionnaires requires only a few simple changes in the requirements imposed on them for information. As noted, streamlining information across forms, taking the highest and broadest levels of variation as the focus, greatly reduces repetitiveness without severely curtailing the information made available. Without even attempting to assess either what information is necessary to select the president's team or whether decision criteria are appropriate, the government can make big improvements and thereby begin to reverse the unwholesome atmosphere for potential appointees. ■

> The informational burden on nominees can be eased by reform in three directions—by narrowing the scope of inquiry, by cutting redundancy, and by reconsidering strategic institutional imperatives.

First Impres

A Look Back at Five Presidential Transitions

by Stephen Hess

In most of the world's democracies, the pieces of a newly elected government are already in place in the form of a shadow cabinet whose members have been serving as the government's loyal opposition. When a new leader takes office, members of the new cabinet are immediately available. In the United States, however, a newly elected president must quickly put together his government, choosing hundreds of private citizens to serve in his administration.

The new president's first challenge, between election day and inauguration day, is to select some 30 people to serve in his cabinet and as his top White House staff. The cabinet includes the secretaries of the 14 executive departments plus an assortment of other top echelon jobs, such as the U.S. trade representative. The key White House staff includes the chief of staff, the national security adviser, counsel, press secretary, and the top economic and domestic policy aides.

For those on the inside of the selection process, noted Martin Anderson in *Revolution: The Reagan Legacy*, the transition is a time of "delicious chaos." For those on the outside, including the press, bankable information is hard to come by. It is a complicated business, largely conducted behind closed doors. Yet the selection of these 30 individuals determines, in large measure, the initial success and lingering impression of each presidency. An orderly transition shows Americans a presidency predisposed for success. But personnel mistakes, sometimes serious errors, can and have plagued chief executives even before they took office.

A quick survey of the highlights—and lowlights—of five recent first-term transitions provides a roadmap to successful transitions.

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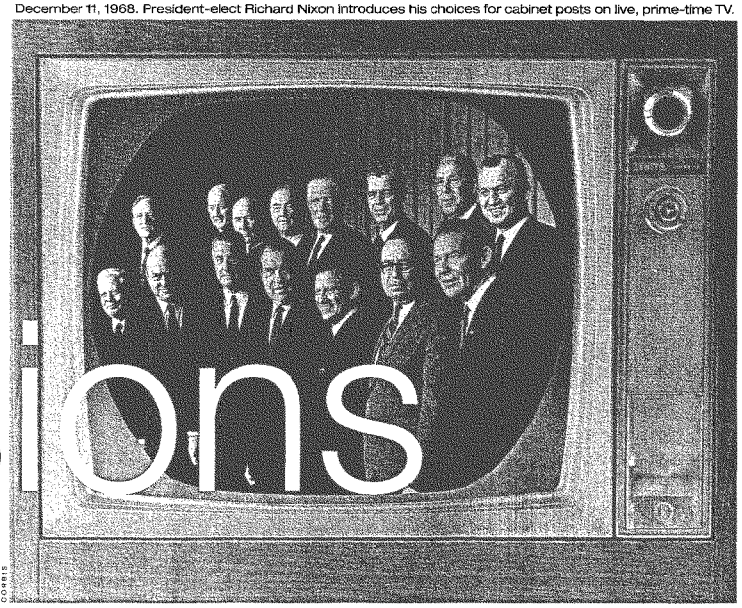
RICHARD NIXON

Elected November 5, 1968

Richard Nixon's transition was one of the smoothest in recent memory. By the end of the second week after his closely fought campaign against Hubert Humphrey, Nixon had appointed his White House congressional liaison (Bryce Harlowe), chief of staff (Bob Haldeman), counsel (John Ehrlichman), and press secretary (Ronald Ziegler). Two weeks later he

December 11, 1968. President-elect Richard Nixon introduces his choices for cabinet posts on live, prime-time TV.



sions

had picked his top national security, economic, and science advisers. On December 11 he introduced all 12 departmental secretaries—all white males—on live, prime-time TV. The extravaganza made the expected splash and grabbed attention, but in hindsight its real value was to reduce the nitpicking attention given each nominee. It was as if to say, noted Tom Wicker, "Let's have a big hand for the new Government."

Senate committees held informal hearings on the president-elect's cabinet choices quickly. On January 20, Nixon took the oath of office and sent his cabinet nominations to the Senate, where, except for Alaska governor Walter Hickel, his choice as secretary of the interior, they were approved during a 20-minute session. The next day they were sworn in. And after Hickel expressed to the Senate a devotion to environmental conservation that had not been previously evident, he too was approved and sworn in on January 23. The *Washington Post's* Herblock, whose drawings of Nixon consistently featured dark jowls, now drew a barbershop with a sign, "THIS SHOP GIVES EVERY NEW PRESIDENT OF THE UNITED STATES A FREE SHAVE." In general, it was that sort of transition.

JIMMY CARTER

Elected November 2, 1976

Trying to avoid the type of bunker mentality that had eventually characterized the Nixon presidency, Jimmy Carter conspicuously chose his cabinet before announcing his White House staff (excepting press secretary Jody Powell). Because the president-elect, a stranger to Washington, was not widely acquainted with the typical denizens of a cabinet, he invented a selection process of elaborate interviewing. That allowed him to get to know the candidates, but also invited intense lobbying of the kind Nixon had eluded with his TV show. Operating from hotel-less, motel-less Plains, Georgia, did not make the search any easier.

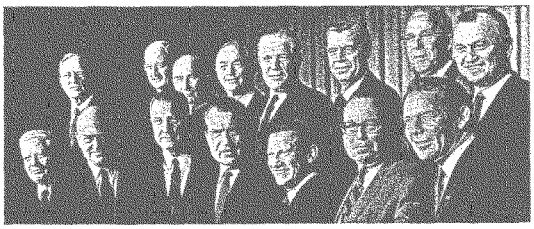
Five weeks after the election Carter announced his first two cabinet choices—Cyrus Vance as secretary of state and Bert Lance to head the Office of Management and Budget. Two weeks later he had rounded out a cluster of national security posts with Harold Brown (Defense) and Zbigniew Brzezinski (National Security) and an economic cluster with Michael Blumenthal (Treasury) and Charles Schultze (Council of Economic Advisers). All but Lance were experienced

Washington hands; all, white males. On December 16 Carter announced Congressman Andrew Young, a long-time friend, as his choice for United Nations ambassador. By December 23, Carter had completed his cabinet selections, including two women—Juanita Kreps at Commerce and Patricia Harris, a black, at Housing and Urban Development. Senate hearings generated some heated controversy, especially over Griffin Bell (attorney general) and Ted Sorenson (CIA). In the end, Sorenson asked that his name be withdrawn. Finally, a week before the inauguration Carter named a Georgia-dominated White House staff, emphatically "open door" and "free access" in nature. Whatever the Carter administration was going to be, it did not want to be the Nixon administration.

RONALD REAGAN

Elected November 4, 1980

Reagan's transition team prepared well and early, taking advantage of a landslide election victory and also of the readiness of experienced Washington hands to join his new administration after only a four-year GOP hiatus—not to mention a cadre of veterans of California's state government. Led by Reagan's chief of staff in Sacramento, Ed Meese, the transition



team filtered nominees through a "kitchen cabinet" of Reagan's California friends, including his personal lawyer, William French Smith. Although some appointments mattered deeply to Reagan, he left many choices almost entirely to others. By the end of the seventh week, almost all appointments had been announced. On December 22, Reagan added the lone black (Samuel Pierce, Housing and Urban Development) and the lone woman (Jeane Kirkpatrick, United Nations) to his cabinet. In the end, ironically, there were more strangers—people the president had scarcely even met—in Reagan's cabinet than in Carter's. Although all Reagan's nominees were approved by the Senate with ease, several, including Al Haig (State), William French Smith (Justice), James Edwards (Energy), and James Watt (Interior), had contentious hearings.

Reagan's White House staff was not—as Ed Meese had accurately predicted—"nine guys from California." Indeed, what most distinguished his aides was their collective experience in the executive branch. Chief of staff James Baker, for example, had first come to Washington to be under secretary of commerce in the Ford administration. Other top assistants had also served Washington apprenticeships in previous GOP administrations. This presidency, it appeared, was prepared to "hit the ground running."

GEORGE BUSH

Elected November 8, 1988

George Bush, the man with the golden resumé—congressman, ambassador to the UN and to China, national party chairman, CIA director, two-term vice president—would not assemble a government of strangers. Said one old friend, "Loyalty is his ideology." But the "friendly takeover" from Reagan to Bush was surprisingly rocky. Although Bush retained numerous Reagan appointees (of 53 White House staffers, 27 came from the Reagan government), everyone knew somebody who had gotten a pink slip.

Bush got off to a fast start, announcing the morning after the election that he would appoint James Baker as secretary of state and several days later that he would retain three other Reagan cabinet members—Nicholas Brady (Treasury), Richard Thornburgh (attorney general), and Lauro Cavazos (Education). In the end he selected two Hispanic Americans, one African American, and two women—a considerable advance in diversity over previous Republican cabinets.

The conundrum of the Bush transition was why a team so knowledgeable in the culture of the capital had such severe startup problems. Dr. Louis Sullivan, nominated to be secretary of health and human services, found himself embroiled in—and entirely unprepared for—a bitter abortion controversy. In the end, he won a 98–1 confirmation vote on March 1. But if the matter of Sullivan was an embarrassment, the matter of John Tower was a disaster. Tower, nominated as defense secretary, was no innocent traveler in the Washington wilderness. Indeed, he had chaired the Senate Armed Services Committee that held hearings on his nomination. But when the hearings began in January, Tower was subjected to an almost daily barrage of allegations about drinking and womanizing, as well as about his defense industry connections. The committee voted 11–9 against Tower, and the full Senate narrowly rejected his confirmation. Bush quickly patched up relations with Congress by appointing Dick Cheney, the popular Wyoming congressman who had been President Ford's chief of staff. But he paid a heavy price for the Tower humiliation. Three other cabinet nominees—James Watkins (Energy), William Bennett (drug czar), and Edward Derwinski (Veterans Affairs)—were not confirmed until March. The *New York Times* reported "a growing impression in Washington" that the administration was "adrift."

BILL CLINTON

Elected November 3, 1992

If the Bush transition was uneasy, the Clinton transition was downright chaotic. On the plus side, Clinton's earliest nomi-

nations—Lloyd Bentsen (Treasury), Roger Altman (deputy at Treasury), Leon Panetta (Office of Management and Budget), Alice Rivlin (deputy at OMB), and Robert Rubin (National Economic Council)—illustrated his priority on economics. Much of Clinton's transition problem was his self-imposed task of creating a cabinet that "looks like America," reserving the attorney general slot for a woman. But by Christmas Eve, the mythic date by which presidents-elect aim to complete their cabinets, he had not yet announced his choice for chief law enforcement officer and hurriedly chose Zoë Baird. When it was revealed that Baird and her husband had hired illegal aliens to care for their child and additionally had not paid their employees' Social Security taxes, the confirmation hearing was brutal. Baird's nomination was withdrawn, to be replaced by Kimba Wood, who also had a "nanny problem." On the third try, Clinton chose Janet Reno, state attorney for Dade County, Florida. When Reno was confirmed, on March 11, Clinton's cabinet had eleven men and four women, nine whites, four blacks, and two Hispanic Americans. Yet the fallout from the attorney general fiasco helped create the impression that the new presidency would, as the *New York Times* put it, "hit the ground stumbling."

Lessons

If we could gather in one room the five presidents whose transitions we have just explored and ask them what advice they could give the next president, this is what I think they would say.

First, be prepared, even before you are elected. There are risks to planning personnel decisions before election day, but emerging from an election with a carefully vetted list of those who should be considered for top jobs is of inestimable value.

Second, act quickly. The normally sound counsel—"Take your time and get it right"—is bad political advice. Most bad transition decisions are those that take the longest, those made as the transition clock is running down. The longer you delay, the greater pressure you will be subjected to. Every prompt decision means you will have to say "no" a lot fewer times. Quick decisions mean that the transition news will be momentum, not indecisiveness. A handy rule of thumb: have your White House staff in place by Thanksgiving and your cabinet secretaries announced by Christmas (assuming your election is not contested).

Third, put the White House first. By election day you probably do not know who you want to head the departments of Agriculture, Commerce, or Labor. But you do know who you want as your top White House aides. So why delay the announcements?

Fourth, think clusters. For one shining moment at the administration's creation, you have the opportunity to relate the parts to each other. If you choose a secretary of state, a secretary of defense, and a national security adviser who are in sync, whose egos and ambitions are properly aligned, you will have a better shot at achieving your objectives.

Fifth, send a message. Appointments, so microscopically examined and interpreted by the media, can be used by presidents-elect to make a statement. Clinton picked an economic team, signaling thereby his top priority. Most presidents in transition simply announce their intentions as they make up their minds and thus fail to take advantage of these early opportunities.

Sixth, choose your demographic goals. Deep in the archive of your mind should be a rough sketch of what you want and need your administration to look like. This is personal property. To announce that you want the attorney general to be a woman is to paint yourself into a corner. Remember that this is a game that you can win by changing the dimensions of the playing field. The U.S. government has 14 departments, but some government agencies or even offices are more important than some departments. Announce which positions are in your cabinet before you make the appointments so that the appointments will not be denigrated as pandering to special interests.

Seventh, feed the beast. As Lloyd Bentsen's press secretary noted, given "a constant supply of doggie biscuits," the news media will "gleefully lick the hand that feeds them." But run out of treats, and they will "devour your arm." The problem can be particularly severe for a transition press secretary who has nothing to report while the boss juggles the makeup of the cabinet. The lesson here is that having a press corps on hand and no hard news is an opportunity for the incoming administration to educate the journalists through daily briefings by visiting experts on all matters that they expect to confront in the next four years.

The selection of the cabinet and top White House staff determines, in large measure, the initial success and lingering impression of each presidency.

Finally, tell your nominees to smile and grovel. After the nominations have been made and sent to the Senate, the new president confronts a lot of brush fires and, it seems, at least one truly horrendous confirmation. Nominees must be prepared to endure being confronted by growl and swagger—no easy task for people who also think they are important. To which the best advice of the political sherpas most experienced at leading nominees through the confirmation process is to accept the short-term pain. And handle senators with care. Once senators get the respect they think they deserve, they give the president pretty much what he asks for.

Now What?

And so the team is in place: president, White House staff, cabinet. The last act of the transition is for someone to quote the favorite line of all political junkies: from the 1972 movie, a dazed Robert Redford, the winning candidate, suddenly realizes that now he must actually govern. "What do we do now?" ■

The Senate and Executive Branch Appointments

An Obstacle Course on Capitol Hill?

by Burdett Loomis

"When you draw a line here and say, 'no further,' then you've basically stopped the work of the Senate. It isn't a threat. It's a reality."

Senator Larry Craig, Republican Policy Committee Chair, June 2000

Bolstered by analyses from both journalists and academics, the conventional wisdom now holds that the Senate has become increasingly hostile to presidential appointees. Would-be judges, justices, ambassadors, commissioners, and executive branch officials are "borked" by vicious special interests and their Capitol Hill co-conspirators. Appointees are "held hostage" by senators who seek substantive trade-offs or the confirmation of their own favored candidates for judicial or regulatory posts. Senators place so-called "holds" on nominations, thus delaying matters interminably. All in all, the Senate's performance, at least as commonly portrayed, does little to enhance the appointment-confirmation process. Quite the contrary. The Senate, to recall Robert Bendiner's description of more than 30 years ago, seems a major culprit in the lengthy and often distasteful politics of confirmation—a veritable "obstacle course on Capitol Hill."

This characterization fits with our broader understanding of the Senate of the past 20 years. As detailed by political scientist Barbara Sinclair and her fellow congressional scholars, the Senate has become both highly individualized and extremely partisan. At first blush, such a pairing seems unlikely—would not senators in a highly partisan legislature subordinate their individual desires for the good of the entire partisan caucus? But the Senate, once a bas-

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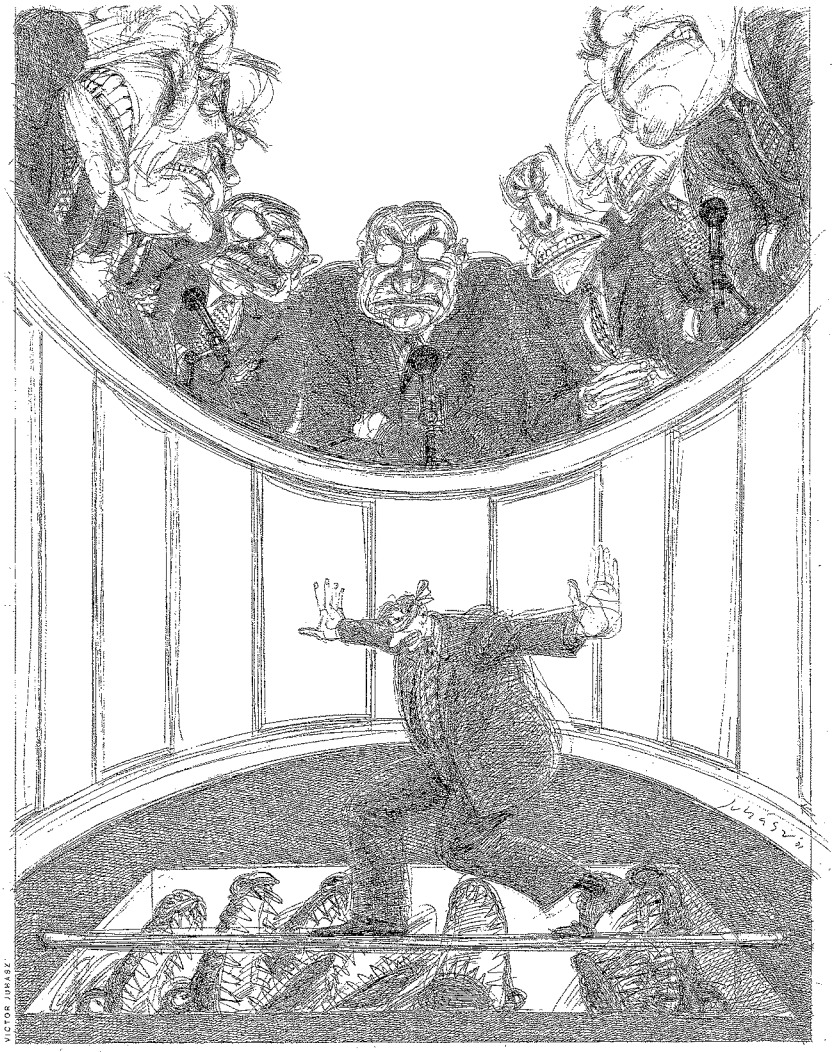

VICTOR JUVERZ

tion of collegiality, has become less civil, less cordial—sometimes almost rivaling the raucous House of the 1990s in its testiness. The lengthy, increasingly bitter partisan stand-off over the final year of the Clinton administration has given further credence to the perception that the Senate has become deeply hostile to appointments from a Democratic executive.

Still, headlines, assumptions, and conventional wisdom can be wrong, to a greater or lesser extent. We might do well to examine the data on confirmations. Do Senate confirmations take longer than they used to, especially in the modern era? Are more nominations withdrawn or returned to the executive?

Second, we might well ask how Senate processes might be altered in a partisan, individualistic era, especially when the upper chamber, unlike the rule-dominated House, usually operates through the mechanism of unanimous consent—that is, a single senator's objection can delay, if not stop, the normal legislative process. Even if we find that the conventional wisdom is accurate and that presidential appointments often run into a congressional roadblock, there may be little that can be done within the legislative branch. Indeed, Christopher Deering's assessment of Senate confirmation politics, circa 1986, bears repeating: "The relationship between the executive and legislative branches...remains essentially political.... The Senate's role in the review of executive personnel is but one example of that relationship. The Senate's role in the confirmation process was designed not to eliminate politics but to make possible the use of politics as a safeguard...a protection against tyranny." Circa the year 2000, one might well argue that more is going on than "protection against tyranny," but exactly what remains open to question.

The following discussion focuses on 329 top policymaking, full-time positions in the 14 executive departments that require presidential appointment and the approval of the Senate. Ambassadors, regulatory commission slots, military commissions, and federal attorneys are excluded.

Executive Branch Appointments and the Senate, 1981–99

To understand the magnitude of any "problem" with Senate confirmations of executive branch appointments, we need to know three things. First, how lengthy is the Senate confirmation process, and to what extent do some appointments take a disproportionately long time to be resolved? Second, how many appointments are withdrawn and returned? And third, how are appointments processed under differing conditions, such as divided government and various periods of a presidency (especially during the transition to a new administration as opposed to the remainder of a president's tenure)? Because the available data do not allow for systematic explorations before the Reagan administration, over-time comparisons are limited. Still, some trends do begin to emerge.

First, the confirmation process has grown longer. In 1981, the Republican Senate took an average of 30 days to confirm Ronald Reagan's executive branch appointees; in 1993, the Democratic Senate took 41 days to confirm Bill Clinton's first nominees, an increase of 37 percent. Six years later, in the first session of the 106th Congress, the confirmation process had dragged out to 87 days, more than twice the 1993 figure and almost three times that of 1981. The comparisons are skewed somewhat by the Republican control of the Senate in 1999 and the less urgent, less visible nature of confirming appointees late in an administration, as opposed to the initial round of appointments that receive considerable attention given the need to put a government in place a few weeks after the November election.

The Senate, once a bastion of collegiality, has become less civil, less cordial—sometimes almost rivaling the raucous House of the 1990s in its testiness.

Still, the process has grown longer, both early and late in an administration. In 1992, for example, a sample of George Bush's appointments during the last year of his presidency (and facing a Democratic Senate) averaged 60 days for confirmation, in contrast to Clinton's 86 days in 1999 and early 2000. Thus the typical 1999 confirmation process averaged almost three months when Congress was in session. Taking

Table 1. Confirmed, Returned, and Withdrawn Executive-Branch Nominees, 1981–99

YEARS	NOMINEES	CONFIRMED NUMBER	CONFIRMED (PERCENT)	RETURNED NUMBER	RETURNED (PERCENT)	WITHDRAWN* NUMBER	WITHDRAWN* (PERCENT)
Bill Clinton							
1999	85	68	(80.0)	0		3	(3.5)
1997–98	207**	166	(80.2)	16	(7.8)	9	(4.3)
1995–96	79	59	(74.7)	19	(24.1)	1	(1.7)
1993–94	323	310	(96.0)	9	(2.8)	4	(1.2)
George Bush							
1991–92	136	111	(81.6)	21	(15.4)	4	(2.9)
1989–90	292	278	(95.5)	8	(2.7)	0	
Ronald Reagan							
1987–88	159	131	(82.5)	24	(15.1)	4	(2.5)
1985–86	182	165	(90.7)	14	(7.7)	3	(1.7)
1983–84	111	93	(83.8)	18	(16.2)	0	
1981–82	269	260	(96.7)	6	(2.2)	3	(1.1)

* In 1999, 14 appointments were carried over; in 1998, 9 recess appointments were made
** Included 16 carryover appointments
Sources: Various Congressional Research Service studies, 1983–2000, compiled by Rogelio Garcia.

into account the 34 days of late-summer congressional recess, the confirmation process of 1999 averaged 121 days—almost exactly four months. The positions, of course, did not necessarily remain vacant, because the 1998 Federal Vacancies Reform Act allowed acting officials to fill many slots. Still, the lengthening Senate confirmation process indicates that a problem does exist—all the more so given the increasing time that the president has taken to make appointments.

A second data set relates to the likelihood that a president's appointments will be confirmed. How often does the Senate return appointments to the president or cause nominations to be withdrawn? Again, looking at the rates under differing circumstances makes sense. The president is likely to do better with appointments he makes right after being elected than with any other, and divided government may affect confirmation rates.

As reported in table 1, Presidents Reagan, Bush, and Clinton fared about the same in winning confirmation for their nominees. All three won approval of more than 95 percent of their appointees in their administrations' first two years, but did less well for the rest of their tenure in office. To the extent that a trend emerges, it reinforces the inference that the Senate has put up more obstacles over time. Reagan's nominees were confirmed at an 86 percent clip between 1983 and 1988, whereas Clinton won approval for only 79 percent of his appointments. But Clinton faced a Republican Senate for the entire six-year stretch, while Reagan dealt with a Democratic chamber only in his last two years, when his confirmation rate fell to 82.5 percent (much like Bush's 81.6 percent success rate in 1991-92, under similar conditions).

A summary view of confirmations over the past two decades demonstrates that the Senate process has grown longer, that divided government lowers confirmation rates a bit, and that the president's capacity to win Senate approval for his nominees declines modestly. At the same time, President Clinton did win confirmation of 96 percent of his nominees in the first two years of his administration, albeit with less dispatch than did Ronald Reagan in 1981.

This leads us to consider whether the Senate is truly the culprit here and, if it is, whether anything might be done to affect the way the chamber handles the confirmation process.

The Senate: Partisan, Individualistic, and Separate

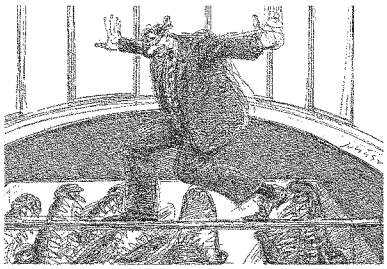
Aside from anecdotal evidence of particular bitter confirmation fights, such as former Senator John Tower's failure to win confirmation as secretary of defense in 1989, or ineptly handled appointments, such as Lani Guinier and Zoe Baird in the Clinton transition, we have little systematic data on how the Senate

affects confirmation politics in the post-1980 era of increased individualism and stronger partisanship. Nevertheless, convincing evidence does exist that the Senate has become both more individualistic and more partisan. Barbara Sinclair, for example, reports steady growth in filibusters over the past 40 years, especially in the past 20, and Sarah Binder and Steven Smith demonstrate that the use of filibusters continues to reflect the policy goals of individual senators, groups of senators, and, at times, the minority party. Moreover, the Senate continues to consider itself a co-equal partner within the appointment process. As separation-of-powers scholar Louis Fisher observes, "The mere fact that the President submits a name for consideration does not obligate the Senate to act promptly." Indeed, the Senate's willingness to sit on a nomination may reflect its status in a "separate-but-equal" system.

Still, the unlikely combination of individualism and partisanship surely defines the contemporary Senate. As Sinclair summarizes, by the mid-1970s, the Senate "had become a body in which every member regardless of seniority considered himself entitled to participate on any issue that interested him for either constituency or policy reasons. Senators took for granted that they—and their colleagues—would regularly exploit the powers the Senate rules gave them." Senators also emphasized "their links with interest groups, policy communities and the media more than their ties with each other."

And, notes Sinclair, by the late 1980s, "Senators were increasingly voting along partisan lines. In the late 1960s and early 1970s, only about a third of Senate roll call votes pitted a majority of Democrats against a majority of Republicans. By the 1990s, from half to two-thirds of roll calls were such party votes. ...By the 1990s a typical party vote saw well over 80 percent of the Democrats voting together on one side and well over 80 percent of the Republicans on the other." In fact, in the 105th Congress, Senate party loyalty scores slightly exceeded those of the House, which has been seen as the more partisan chamber.

Unsurprisingly, the heightened individualism and partisanship has affected the confirmation of executive branch nominees. Guarantees by the Senate leadership to the contrary, every senator can place a "hold" on a nomination—delaying it, if not delivering a death sentence—though this tactic has been used more visibly on ambassadorial than on executive department appointments.



Even noncontroversial nominations can fall victim to highly partisan Senate politics, as nominees are "held hostage" to other nominations, to appropriations bills, or to substantive legislation.

Even noncontroversial nominations can fall victim to highly partisan Senate politics, as nominees are "held hostage" to other nominations, to appropriations bills, or to substantive legislation. Where there is real controversy, as with the appointment of Bill Lann Lee to head the Justice Department's civil rights division, partisan conflict increases and extends beyond Congress to the Senate's relationship with the White House.

Confirmation and the Senate

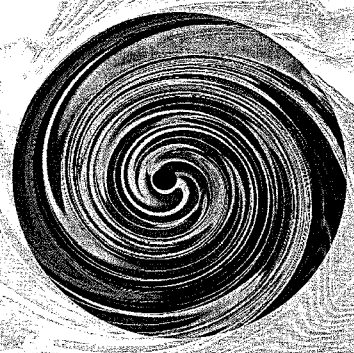
The great majority of presidential appointees to high-level executive positions win approval by the Senate, although the success rate hovers at about 80 percent once a president has initially constructed his administration. Adding to their uncertainty, these later appointees must wait an average of four months for the Senate to act, once it has received their nomination. For these nominees, the process is long, and the outcome uncertain. Add to this the partisan politicking and the intense scrutiny, and it is no wonder that some potential officeholders decline the honor of nomination.

Might the Senate smooth the way for future nominees? Given the profound changes in the chamber over the past 25 years—the great latitude allowed individual members and the intense partisanship that dominates much decisionmaking—it seems unlikely that reformers would profit much from attempting to reshape Senate procedures. The best circumstance for speedier and more successful confirmations would be for the same party to control both the Senate and the presidency. Ronald Reagan did better in the mid-1980s with a Republican Senate than did either George Bush or Bill Clinton with opposing-party control in the 1990s. Bridging the separate institutions may be more valuable than seeking to reform an institution that has proven highly resistant to planned change. ■

The Senate as a BLACK HOLE

Lessons Learned from the Judicial Appointment Experience

by Sarah A. Binder



For many a presidential appointee, the Senate must loom like an institutional black hole—an abyss that engulfs even the most luminous nominee. That impression is, in fact, mistaken. Most presidential nominees emerge from the Senate confirmation process and are eventually confirmed. But for many recent nominees, the experience has been long and unsettling.

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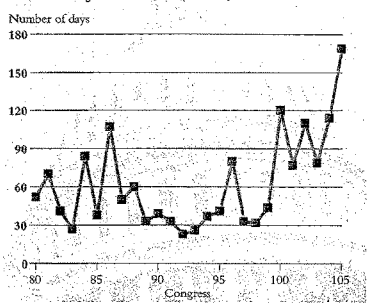
Richard Paez, for example, a federal district court judge selected by President Clinton to fill a vacancy in 1996 on the pivotal Ninth Circuit Court of Appeals, had received the highest rating possible from the American Bar Association and been confirmed just two years earlier by a Democratic Senate for a seat on a federal district bench. Yet it took a Republican Senate more than four years to confirm his elevation to the appellate bench.

Is Paez's confirmation experience typical? Are recent delays in the confirmation process for judicial appointees due mostly to antagonisms between President Clinton and the Republican Senate? Or are broader institutional and electoral trends at work? If so, what can other presidential appointees learn from the experience of judicial nominees? Although judges' lifetime tenure on the federal bench and their broad policy jurisdiction distinguishes judicial nominees from all other appointees, no presidential appointee can afford to ignore the institutional and partisan hurdles that the Senate erects against presidential appointees seeking public service.

Figure 1.
Average Length of Confirmation Process for Successful Judicial Nominees, 1947–98



The Senate Record

Judge Paez's drawn-out confirmation, though extreme, reflects a broader trend under way in recent Congresses. Figure 1 shows how the confirmation process lengthened over the last half of the 20th century for all judicial nominees eventually confirmed by the Senate. Whereas the Senate took just one month to confirm the average judicial nominee during Ronald Reagan's first term, by the end of Clinton's second term the average wait had grown sixfold. At least one-third of Clinton's judicial nominees in the 105th Congress (1997–98) waited more than six months to be confirmed, with the longest wait for a confirmed nominee stretching nearly the entire length of the Congress.

The delays Clinton weathered in getting his nominees confirmed to the bench are not simply a reflection of his polarized relations with a conservative Republican Senate. During the mid-1980s a Democratic Senate took an average of nearly four months to confirm judicial nominees of Presidents Reagan and Bush. And during 1993 and 1994, a Democratic Senate averaged three months in confirming Clinton's nominees.

Indeed, although the politics of recent confirmations might be especially polarized, contentious relations between the Senate and the president go back a long way. During Dwight Eisenhower's last term, for example, it took the Democratic Senate led by Lyndon Johnson an average of four months—and sometimes as long as seven months—to confirm judicial nominees.

The Politics of Senate Delay

By any measure, the Senate's performance in dispensing advice and consent varied widely over the last half of the 20th century. How do we account for the uneven performance? Pundits assessing the Senate's treatment of Clinton's nominees typically point first to the poisoned relations between conservative Republicans and Clinton. It is often suggested that personal and political antagonisms between Clinton and hard-right conservatives led Republican senators to hold up unduly even the most highly qualified nominees. This may account for some of the delay, but hardly for all, since the trend toward lengthy confirmation proceedings was well under way before Clinton took office in 1993 and Republicans gained control of the Senate after the 1994 elections.

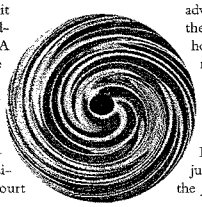
Others suggest that extreme delays encountered by judicial nominees in the 106th Congress owed much to the approaching presidential election. With control of both the Senate and the White House up for grabs in November 2000, it was natural for Republican senators to approach their confirmation duties with particular caution. Rather than confirming an outgoing Democratic president's last judicial nominees, pragmatic politics would dictate that Republicans save these lifetime appointments for a president of their party. Not surprisingly, at the end of the 106th Congress, 40 judicial nominees remained in limbo. Most had not even received a hearing before the Senate Judiciary panel.

The historical record confirms that an approaching presidential election affects the politics of advice and consent. Over the past 50 years, the Senate has treated judicial nominations submitted or pending during a presidential election year differently than it has treated others. First, it has taken longer to confirm nominees pending before a presidential election than those submitted earlier in a president's term. Second, and more notably, presidential-election-year nominees are much less likely to be confirmed, even controlling for the presence of divided government and the quality of the nominee. For all judicial nominations submitted between 1947 and 1998, nominees pending in the Senate before a presidential election were 25 percent less likely to be confirmed than nominees submitted earlier in a president's term.

Divided party control of the White House and Senate also slows the confirmation process. Judges are policymakers as well as judicial arbiters with life tenure, giving senators good

cause to scrutinize the views of all potential federal judges. Because presidents overwhelmingly seek to appoint judges from their own party, Senate scrutiny of judicial nominees should be particularly intense when two different parties control the White House and the Senate. It is no surprise then that the Senate has taken nearly 60 percent longer to confirm nominees during periods of divided government than during unified control. Judicial nominees are also less likely to be confirmed during divided government, even controlling for the quality of the nominee and other relevant factors.

Party politics also affects the course of nominations when presidents seek to fill vacancies on appellate circuits whose judges are evenly balanced between the two parties. Senate majorities are especially reluctant to confirm nominees to such courts when the appointment would tip the court balance in favor of a president from the opposing party. One of the hardest hit such courts is the Sixth Circuit Court of Appeals, straddling populous Midwestern states such as Michigan and Ohio. A quarter of the bench is vacant, including one seat declared a judicial emergency after sitting empty for five years. The Senate slowdown on appointments to the circuit likely was motivated by the strategic importance of the circuit, since confirming Clinton's nominees would have deprived a Republican president of the opportunity to move a balanced court into the conservative camp. In short, electoral and partisan dynamics strongly shape the Senate's conduct of advice and consent, making it difficult for presidents to stack the federal courts as they see fit.



No presidential appointee can afford to ignore the institutional and partisan hurdles the Senate erects against appointees seeking public service.

Institutional Culprits

If elections alone were to blame for slow confirmations, presidential appointees might have little opportunity to hasten matters along. But the process of advice and consent is equally affected by an array of Senate rules, each of which distributes power in a unique way across the institution. Understanding chamber and committee rules is thus critical for any nominee preparing for Senate confirmation.

The first institutional hurdle for any nominee is the committee system charged with scrutinizing presidential appointees. Senate rules affect judicial nominees in committee in two ways. First, by tradition, senators from the home state of each nominee cast first judgment on potential appointees. The veto power of home state senators is institutionalized in Judiciary panel procedures, which allow them to register "blue slip" objections to judicial nominees referred to the committee. Although "negative" blue slips no longer kill a nominee outright, they weigh heavily in the committee chair's assessment of whether, when, and how to proceed with a nominee.

Historically, big ideological differences between the president and the home state senator for at least appellate nominees have led to longer confirmation proceedings than normal, confirming the power of home state senators to affect panel proceedings. In practical terms, the strong support of a nominee's home state senator is essential in gaining committee approval. Given the often fractured attention of the Senate and the willingness of senators to heed the preferences of the home state senator, having a strong advocate in the Senate with an interest in seeing the nomination proceed is critical. Although home state senators for executive branch nominees lack the leverage of a "blue slip," securing a strong Senate sponsor can go a long way in greasing the skids in committee.

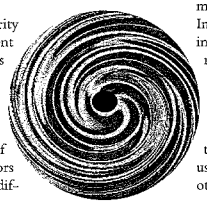
Second, Senate rules grant considerable procedural powers to committee chairs. Because of the generally low salience of most judicial nominations, the Senate largely defers to the Judiciary Committee's judgment on whether and when to proceed with a nomination. The committee chair, who has the power to convene hearings and to hold a vote to report a nomination to the chamber, thus holds great discretion over the fate of each nominee. Not surprisingly, ideological differences between the Judiciary panel chair and the president affect discernibly the course of judicial nominations. The greater the ideological differences, the longer it takes the committee to act. And because all committee chairs retain agenda-setting powers, executive branch appointees are well served by establishing rapport with and support from the relevant panel chair.

Once approved by committee, however, a nomination must clear a second broad institutional hurdle: making it onto the Senate's crowded agenda. By rule and precedent, both majority and minority party coalitions can delay

nominations after they clear committee. Because the presiding officer of the chamber gives the majority leader priority in being recognized to speak on the Senate floor, the majority leader has the upper hand in setting the chamber's agenda, especially given his control of the executive session agenda, the arena in which nominations may be called up for confirmation. When the president's party controls the Senate, nominations are confirmed more quickly; under divided control, nominations can be kept off the floor by the majority leader. Such procedural advantages clearly enhance the importance of support from the majority leader in shaping the fate of presidential appointees.

But the majority leader's discretion over the executive session agenda is not wielded without challenge, as nominations can be filibustered. That possibility usually motivates the majority leader to seek unanimous consent of the full chamber before bringing up a nomination. As a result, nominations are unlikely to clear the Senate without the endorsement of the minority party.

Given the de facto requirement of minority party assent, the party opposing the president retains power to affect the fate of nominees even when it does not control the Senate. As policy differences increase between the president and the opposing party, that party is more likely to exercise its power to delay nominees. Even controlling for the quality of the nominee and the many electoral factors shaping the confirmation process, ideological differences across the branches significantly slow and often derail judicial nominees.



It has been said that the Senate is composed of 100 atomic bombs, each of which can be triggered on a second's notice.

Presidents and the Senate

Although presidents lack formal means of pushing nominations through to confirmation, they are not powerless in shaping how the Senate dispenses advice and consent. In the first place, better qualified nominees tend to sail more quickly through the Senate. At least in recent decades, a higher rating from the American Bar Association has often cut the time it takes judicial nominees to get confirmed and increased the probability of confirmation. The type of nominee appointed by the president, in other words, helps smooth the way to confirmation.

Presidents can also have tremendous impact on the fate of a nomination by strategically timing its referral to the Senate. As noted, nominations made earlier in a president's term tend to move more swiftly than those made in a presidential election year. Nominations also take longer as the Senate gets mired in considering scores of appointees. The fewer nominees pending, the more quickly a nominee will be confirmed.

Perhaps surprisingly, there is little evidence that more popular presidents are able to get their nominees approved more quickly. That may be why presidents only rarely use their bully pulpit to draw attention to the plight of their nominees. In short, presidents have some influence over the speed of advice and consent, but their influence is exercised only at the margins of the legislative arena.

Help from the Stars?

It has been said that the Senate is composed of 100 atomic bombs, each of which can be triggered on a second's notice. Perhaps—though the dozens of judicial nominees recently detained by senators in pursuit of assorted policy and political goals would suggest that a hostage-taking metaphor would be equally apt. Senator James Inhofe of Oklahoma certainly set a new standard in the wars of advice and consent when he held more than 30 judicial nominees hostage in a battle with the president over an unrelated recess appointment. Whether nominees are taken hostage as each party seeks action on blocks of nominees hanging in limbo before the Senate or whether nominees are simply used as pawns by senators trying to influence other matters of import to them, the low and uneven salience of most nominations encourages such hijacking, as senators rarely pay a political cost for holding up presidential appointees.

Though the Senate's pattern of advice and consent may at times seem encumbered neither with rhyme nor with reason, more careful scrutiny suggests that Senate rules widely and predictably allocate influence across the Senate. With senators often willing to exploit their procedural rights, swift confirmation of presidential appointees, however well qualified, is rare. But for nominees navigating the shoals of the chamber, understanding the ways and means of Senate institutions is essential. Committee chairs, pivotal senators, and majority and minority party leaders alike wield considerable influence over the fate of presidential nominees. Cultivating support from these critical institutional players is essential in building a deliberate path toward confirmation. And a little help from the stars doesn't hurt one bit. ■

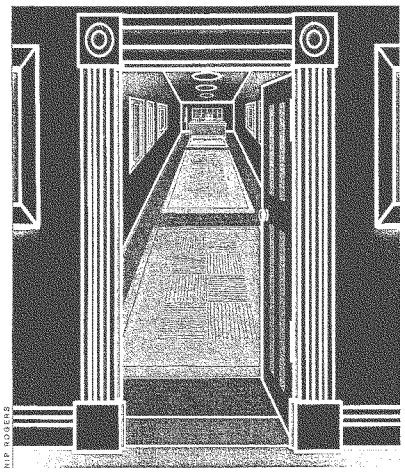
RECRUITING Executive Branch LEADERS

The Office of Presidential Personnel

by James P. Pfiffner

"I had hardly arrived [in Washington] before the door-bell began to ring and the old stream of office-seekers began to pour in. They had scented my coming and were lying in wait for me like vultures for a wounded bison. All day long it has been a steeple chase, I fleeing and they pursuing."

President Garfield, in a letter to his wife, May 29, 1877



NIP ROGERS

Despite the demise of the spoils system about which Garfield was complaining, the demand for government jobs after each presidential election continues to be a hallmark of American politics. It took the assassination of President Garfield by one of the vultures, deranged office-seeker Charles Guiteau, to galvanize Congress to pass the Pendleton Act in 1883 establishing the merit system of civil service. But remaining atop the executive bureaucracy was and is a layer of political officers, a layer that has grown thicker in recent years.

The Constitution vests the "executive power" in the president and commands that "the laws be faithfully executed." To fulfill this responsibility each president appoints the major officers of the government. The government's ability to carry out its primary functions depends crucially on capable civil servants, whose effectiveness is intimately tied to the quality of the leadership of the executive branch, that is, presidential appointments.

Each new president who comes to office appoints thousands of men and women to help lead the executive branch. While the career civil servants who work under their direction are recruited on a continual basis by the Office of Personnel Man-

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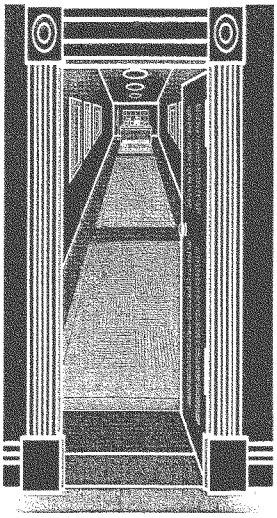
agement and individual agencies, the leaders themselves are recruited by the White House Office of Presidential Personnel, which is formed anew by each president. The obligations of the OPP are threefold—to serve the nation by recruiting executive branch leaders, to serve the president by finding qualified loyalists, and to shepherd nominees through the sometimes treacherous appointment process.

Serving the Nation

Until a few decades ago presidents lacked the personal staff to control the process by which appointees were selected. In the 19th and first half of the 20th century, presidential appointments were dominated by the political parties. As presidents began to assert more personal control, they slowly increased the institutional capacity of the White House to recruit their own nominees for positions in the government and gradually superseded the dominance of the political parties.

The presidential recruitment function was transformed in the second half of the 20th century in four ways. First, an increasingly professionalized executive recruitment capacity replaced the political parties as the primary source of appointees. Second, this capacity, which began with one person in charge in the Truman administration, was gradually institutionalized as a regular component of the White House Office headed by an aide with the title of assistant to the president. Third, the reach of the office was extended not only to presidential appointments but also to what are technically agency head appointments (noncareer Senior Executive Service and Schedule C positions). And finally, the office grew from six people in the Kennedy administration to more than 100 at the beginning of the Reagan and Clinton administrations. Thus an institutionalized OPP is handling an increasing number of political appointments for the president.



The OPP is often pushed to or beyond its limits in meeting the needs of the president, the appointees, and the country.

The positions for which the OPP recruits are the most important in the executive branch: the cabinet and subcabinet, leaders of independent agencies, and regulatory commissioners. Together with ambassadors (185), U.S. attorneys (94), U.S. marshals (94), and others, the total number of presidential appointments requiring Senate confirmation is 1,125.

Additional lower-level political appointments are available to each administration to help implement its priorities. For example, noncareer appointments in the Senior Executive Service (created in 1978) can by law amount to 10 percent of the total career SES; today they number 720. Schedule C positions, about 200 when first created in 1953, now number 1,428. These latter two categories, technically made by cabinet secretaries and agency heads, have been controlled by the OPP since the Reagan administration. Though less important than presidential appointments, they place an added burden on the OPP, which must also advise the president on hundreds of part-time appointments, many to boards and commissions that may meet several times a year.

Given the growing number of political positions, along with the OPP's increasing scope of authority, it is not surprising that the pace of appointments has slowed in the past four decades (see table 1).

Serving the President

The primary task of the OPP—helping the president match the right nominee with the right position—is not simple. The personnel office must be ready to go the day after the election, so advance planning is crucial, but often neglected in the pressure of the campaign. The onslaught of office seekers begins immediately, and the OPP must be ready to handle the volume with some political sophistication. The delay in establishing the personnel recruitment process is one of the reasons that the 2000-01 transition has been particularly challenging. A process must be set up to strike the right balance between the president's personal attention and the need to delegate much of the recruitment task to the OPP. Intense pressure for appointments from the presidential election campaign, Capitol Hill, interest groups, and the newly designated cabinet secretaries will buffet the process. Perhaps most important, the newly elected president's policy agenda will not be fully implemented until most of the administration's appointees are confirmed and in office.

Political patronage has a long and colorful history in the United States. The purposes of patronage appointments are to reward people for working on the campaign and for the political party and also to ensure that the government is led by people who are committed to the political philosophy and policy agenda of the president. As long as these purposes are consistent with putting qualified people in charge of government programs, there is no problem.

But from the perspective of the OPP, demands for patronage are frustrating. Pressures for appointments come from all sides: everybody, it seems, wants to ride the president's coattails into Washington jobs. According to Pendleton James, President Reagan's assistant for presidential personnel in 1981–82, "...being the head of presidential personnel is like being a traffic cop on a four-lane freeway. You have these Mack trucks bearing down on you at sixty miles an hour. They might be influential congressmen, senators, state committee chairmen, heads of special interest groups and lobbyists, friends of the president's, all saying 'I want Billy Smith to get that job.'" Thus the OPP has to deal with external pressures for appointments, but it also faces internal battles with cabinet secretaries over subcabinet appointments.

From the White House staff perspective, subcabinet positions are presidential appointments and should be controlled by the White House. But from the cabinet secretary's perspective, these appointees will be part of his or her management team, and the secretary will be held accountable for the performance of the department, so substantial discretion should be delegated to department heads. Cabinet secretaries also suspect that the White House OPP is more concerned with repaying political debts than with the quality of subcabinet appointments.

Chase Untermeyer, President Bush's director of presidential personnel, voiced the White House perspective when he suggested that the president introduce his assistant for presidential personnel to his newly appointed cabinet secretaries as someone who has "my complete confidence," someone who "has been with me many years and knows the people who,...while you were in your condo in Palm Beach during the New Hampshire primary,...helped me get elected so you could become a cabinet secretary." And, the president should conclude, he will depend on his assistant "to help me see that those people who helped us all get there are properly rewarded."

The perspective of the cabinet secretary was expressed by Frank Carlucci, secretary of defense in the Reagan administration, whose advice to newly appointed cabinet secretaries was, "Spend most of your time at the outset focusing on the personnel system. Get your appointees in place, have your own political personnel person, because the first clash you will have is with the White House personnel office. And I don't care whether it is a Republican or a Democrat...if you don't get your own people in place, you are going to end up being a one-armed paper hanger."

What the White House sees as a presidential prerogative and opportunity to reward loyal supporters of the president, the cabinet secretary sees as a chance to mold a management team. The OPP has to strike the right balance for each president.

Table 1. Length of Appointment Process, As Reported by Appointees

LENGTH OF PERIOD	1964-84	1984-99
1 or 2 months	48%	15%
3 or 4 months	34%	26%
5 or 6 months	11%	26%
More than 6 months	5%	30%

Source: Paul C. Light and Virginia L. Thomas, *The Merit and Reputation of an Administration* (Presidential Appointee Initiative, 2000), p. 8. The number of appointees surveyed was 532 for 1964-84, 435 for 1984-99.

Serving Presidential Nominees

While OPP's most important duties are to the nation and the president, it also has obligations to the individual Americans who want to serve their country. U.S. citizens have a venerable tradition of serving in government for a few years and then returning to private life. The practice brings in people with new ideas and much energy to participate in governing their country. Many of these idealistic Americans, however, have recently had less than inspiring experiences with their nominations to high office.

When past and present presidential appointees were asked their general impressions of the nomination and confirmation process, 71 percent thought the process was "fair," but many also had negative reactions. Twenty-three percent found it "embarrassing"; 40 percent "confusing"; and 47 percent a "necessary evil." Most nominees began by seeing public service as an honor, but were later put off by the intrusiveness of the process in delving into their personal finances, the investigations into their backgrounds, and the time it takes to be confirmed.

Becoming a presidential appointee necessitates collecting much information for financial disclosure forms. Of appointees who served between 1984 and 1999, 32 percent found gathering the information difficult or very difficult (compared with 17 percent of appointees from 1964 to 1984). Completing the financial disclosure forms was so complicated that 25 percent of appointees had to spend between $1,000 and $10,000 for outside expert advice; 6 percent had to spend more than $10,000.

From surveys of past appointees, it is clear that the nomination and appointment process has room for improvement. Many problems cited by respondents, however, are not hard to alleviate. One theme that came through clearly is that, once contacted by the OPP, many potential nominees felt that they had been abandoned without sufficient information about how the process would unfold. Chase Untermeyer pointed out "the sad truth" that "often nominees feel abandoned." He noted how important it is for a nominee "to have somebody holding his or her hand in getting through the process." The OPP should allocate sufficient personnel to keeping nominees informed of the status of their nominations and helping them through the difficult aspects of disclosure forms and Senate confirmation.

Thus the dilemma of the modern White House personnel operation. Far larger and more professional than ever before, the number of appointees under its purview has grown so huge and the appointment process itself so procedurally thick and politically vexing that the OPP is often pushed to or beyond its limits in meeting the needs of the president, the appointees, and the country it is expected to serve. ■

Placing the Call to Service

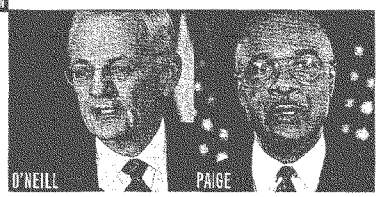
The Founding Fathers designed America's government to be led by citizens who would step out of private life to serve their nation and then return to their communities ready to recruit the next generation of public servants. Their hopes extended to what Philadelphia's Benjamin Franklin called the "posts of honor" in the executive branch. Watchful lest private gain rather than the public interest tempt citizens to take these positions, Franklin proposed that executive officers receive "no salary, stipend, Fee or reward whatsoever for their service." (The Constitutional Convention quietly tabled his proposal without debate.)

Thomas Jefferson also had a high regard for these executive posts, believing quality appointments as important to the public's confidence in government as the laws that its elected leaders would enact. "There is nothing I am so anxious about as good nominations," he wrote nearly two hundred years ago at the dawn of his presidency.

The passage of two centuries has seen the young nation mature into the world's strongest government. But its need for talented citizens to fill its posts of honor remains undiminished. And, fortunately, the nation's civic leaders remain willing to serve. That is most certainly the message from two surveys of past and potential appointees conducted on behalf of The Presidential Appointee Initiative.

Of 435 senior-level appointees from the Reagan, Bush, and Clinton administrations interviewed during the winter of 1999–2000, more than half said they would strongly recommend presidential service to a good friend. And of 580 civic and corporate leaders interviewed during the summer and fall of 2000, almost three-quarters said that presidential service would be both an honor and an opportunity to make a difference.

Paul C. Light is vice president and director of the Brookings Governmental Studies program and senior adviser to The Presidential Appointee Initiative.



How Past and Future Presidential Appointees View the Appointment Process

by Paul C. Light

But if the spirit of service is strong among America's leading citizens, the presidential appointment process is weak. Past appointees view it as a burden at best, an ordeal at worst. They report unnecessary delays and frustration at both ends of Pennsylvania Avenue. And the civic leaders who make up the pool from which future appointees will be drawn see the process as confusing, embarrassing, and unfair. Unless something is done soon to improve the manner in which presidents make their appointments, fewer and fewer of the nation's most talented leaders will accept the call to service.

The Willingness to Serve

During the past summer and fall, Princeton Survey Research Associates, a nationally recognized opinion research firm, conducted telephone interviews with a cross-section of U.S. civic and corporate leaders on behalf of The Presidential Appointee Initiative. The 580 respondents included Fortune 500 executives, college and university presidents, chief executive officers of the nation's largest nonprofits, think tank scholars, lobbyists, and state and local government officials.

The vast majority of the respondents were very or somewhat favorably inclined toward serving as a presidential appointee. Seventy-two percent said that such service would be an honor. Most also saw it as a way to earn heightened respect from friends, family, and neighbors, as well as a way to increase their ability to make a difference. When asked about the benefits of service, they also saw solid returns on their investments (see table 1). Most thought presidential service would give them valuable contacts, open future leadership opportunities, and increase their earning power, all at a relatively low cost in terms of lost contacts and promotions and difficulties returning to their careers afterward.

This is not to say that these civic and corporate leaders saw presidential service as either lucrative or easy. Few of the corporate, academic, and nonprofit executives in the sample

ALL PHOTOS AP/WIDE WORLD

Table 1. Benefits and Costs of Service, as Perceived by Civic Leaders, by Group

PERCENT WHO AGREE	TOTAL	FORTUNE 500 EXECUTIVES	UNIVERSITY PRESIDENTS	NON-PROFIT CEOS	THINK TANK SCHOLARS	LOBBYISTS	GOVERNMENT OFFICIALS
Benefits of service include:							
Make valuable contacts	97	95	96	94	99	98	99
Increase future leadership possibilities	83	73	80	73	84	95	93
Increase earning power	61	46	41	46	72	80	79
Costs of service include:							
Lose valuable contacts	10	14	10	11	8	11	5
Risk losing promotions or other career advancement	23	43	19	19	24	22	13
Prevent a return to career	21	32	30	18	15	8	20

Source: "Posts of Honor: How America's Corporate and Civic Leaders View Presidential Appointments," Paul C. Light and Virginia L. Thomas (PAI, January 2001). Total number surveyed was 580: 100 Fortune 500 executives, 100 university presidents, 85 nonprofit CEOs, 95 think tank scholars, 100 lobbyists, and 100 state and local government officials. Data reflect percentage of civic leaders surveyed who agree or agree strongly.

Table 2. Impact of Reforms on Attractiveness of Presidential Appointment, as Perceived by Civic Leaders, by Group

PERCENT WHO SAY EACH REFORM WOULD MAKE AN APPOINTMENT MORE ATTRACTIVE	TOTAL	FORTUNE 500 EXECUTIVES	UNIVERSITY PRESIDENTS	NON-PROFIT CEOS	THINK TANK SCHOLARS	LOBBYISTS	GOVERNMENT OFFICIALS
Reform							
Make financial disclosure requirements easier to meet	35	47	33	24	34	46	23
Make conflict-of-interest laws easier to meet	36	53	30	18	30	62	20
Increase pay	71	57	69	75	72	77	74
Simplify the process	73	80	74	72	78	79	58
Make it easier to return to previous job	67	68	70	77	64	70	56

Source: Same as table 1. Data reflect percentage of civic leaders who say each reform would make a presidential appointment somewhat or much more attractive.

expected it to increase their earning power, no doubt because they were already at the top of their salary scales. Think tank scholars, lobbyists, and state and local government officials did see future potential gains in salary, either through their increased value to their home institutions or through their increased ability to move elsewhere in their fields.

The three groups of executives also associated service with higher costs. Corporate and academic chiefs were more concerned than other respondents that they might be unable to return to their careers after presidential service, and corporate CEOs were far more apprehensive about losing promotions and other opportunities for career advancement. Unlike most think tanks, which have long traditions of welcoming former colleagues home after service in the executive branch, the corporate and academic doors tend to swing shut behind their departing chiefs.

Moreover, all six groups worried about the potential disruption of a move to Washington, D.C. They cited high real estate prices, commuting times, and problems relocating spouses. More than half said that living in Washington compared somewhat or much less favorably to living in their current residences, and 45 percent said that relocating their spouse would be very or somewhat difficult.

Views of the Nomination and Confirmation Process

As detailed elsewhere in this issue, the process by which those appointees are invited to serve is almost as bad as it can be. It begins with a 60-page stack of forms asking repetitive and intrusive questions, continues with an FBI full-field investigation that can take weeks or even months to complete, and concludes with a Senate inquiry often filled with partisan acrimony. It assumes, as one former White House chief coun-

sel remarked last fall, that all appointees are "innocent until nominated." It also favors Washington insiders and those with enough money to hire outside legal and financial advisers.

Potential appointees are getting the message. America's civic and corporate leaders have been watching what happens to presidential appointees, whether through the experiences of friends and colleagues or through reports in the news media. They do not like what they see. Even more than past appointees, potential appointees called the process embarrassing, a necessary evil, and confusing. Only 43 percent of all potential appointees described the process as fair, as compared with 71 percent of past appointees.

Corporate leaders took a particularly negative view. Thirty percent said the word "confusing" described the process very well, compared with just 15 percent of college and university presidents and 13 percent of state and local officials. Corporate leaders also were more likely to describe the process as both a necessary evil and embarrassing, perhaps acknowledging that their financial holdings create the potential for substantial embarrassment as the media cull through the required financial disclosure forms.

Potential appointees were also harsher than past appointees in their judgment of both the White House and the Senate. Whereas 64 percent of past appointees believed the White House handles nominees reasonably and appropriately, only 42 percent of potential nominees agreed. And whereas 46 percent of past appointees said the Senate also acts reasonably and appropriately, only 28 percent of potential nominees thought so.

Past and potential nominees did agree on one thing. Both groups believed that the current process is uneven at best in recruiting talented people to serve. Only 11 percent of past appointees and 14 percent of potential appointees said that current appointees represent the best and brightest America has to offer, while 79 percent of past and 75 percent of potential nominees described current appointees as a mixed lot, with some highly talented and others lacking the skills and experience their positions require.

The most significant selling point for service is that it is a post of honor in which individual citizens can make a difference for their country.

Paths to Improvement

Past and potential appointees also agreed broadly on how to improve the process, starting with providing information on how it works. The demand is unmistakable: 39 percent of Reagan, Bush, and Clinton appointees either got insufficient information from the White House or got none at all, while 47 percent of the potential appointees knew little or nothing about how the process works. And having that information made a big difference. Past appointees who were well informed about the process were more likely than those who were not to describe it as fair and not embarrassing.

Both past and potential appointees also wanted a simpler, faster process. Of the Reagan, Bush, and Clinton appointees, 37 percent recommended streamlining the process and 28 percent favored accelerating action. Of the potential appointees, 73 percent said that simplifying the process would make a presidential appointment more attractive.

Interviews with potential appointees also highlighted other reforms that would make service more attractive, notably increasing pay and making it easier for them to return to their previous jobs after they serve (see table 2). Interest in particular reforms varied. Lobbyists, for example, were most interested in higher pay, while nonprofit executives were most interested in being able to return to their previous careers.

Making the Case for Service

The call to service might resonate more if employers were more encouraging toward presidential appointments. Roughly half of the potential appointees interviewed said that their employers would encourage them strongly or somewhat to take a presidential appointment. Yet employer support for presidential service was uneven. Only 10 percent of Fortune 500 executives and university presidents and 18 percent of nonprofit CEOs said their employers would offer strong encouragement to serve, compared with 44 percent of think tank scholars, 36 percent of lobbyists, and 33 percent of government officials.

What could make more difference than anything else, however, would be for America's presidents themselves to reach out to the nation's most talented civic and corporate leaders. According to statistical analysis of the telephone surveys, respondents who are most favorably inclined toward presidential service are those who see it as a way to make a difference, who see it as an honor, and who view the appointment process as fair. That suggests three simple ways to enhance the case for service.

First, presidents should talk incessantly about how presidential appointees can make a difference through their work, thereby emphasizing one of the great advantages of public as against private life.

Second, presidents should remind appointees of the honor involved in service to one's country. Old-fashioned though they may be, patriotism and the love of country are still powerful motivators for public service.

Third, presidents—along with the U.S. Senate—should do everything possible to simplify, streamline, and accelerate the manner in which presidential appointees are nominated and confirmed. Potential appointees who view the current process as unfair are much less likely to look favorably on an appointment, no matter how great the honor or the impact.

Presidential service has other advantages, not least the ability to make valuable contacts, enhance future earnings, and strengthen leadership prospects. Still, the most significant selling point for service is that it is a post of honor in which individual citizens can make a difference for their country. Presidents should never stop reminding the nation of that fact. ■

Posthearing Questions
From Senator Carl Levin
for Amy Comstock, Director of
the Office of Government Ethics

United States
Office of Government Ethics
1201 New York Avenue, NW, Suite 500
Washington, DC 20005-3917

May 8, 2001

The Honorable Fred Thompson
Chairman
Committee on Governmental Affairs
United States Senate
Washington, DC 20510-6250

Dear Mr. Chairman:

This letter responds to your letter dated April 6, 2001, received by the Office of Government Ethics (OGE) on April 20, 2001, that transmitted questions from Senator Levin for answers to be included in the record of the April 5, 2001 hearing on the State of the Presidential Appointments Process.

At the hearing, I testified on a report submitted by this Office which contained proposals for changing the public financial disclosure requirements for the executive branch. In that report and in my testimony, I endeavored to assure those reading our recommendations that it was our view the recommendations would not lessen any substantive compliance with any conflict of interest requirement, nor would they undermine the legitimate and necessary purposes of public financial disclosure in our form of Government.

Senator Levin's questions focus upon certain recommendations made in that report. The Senator has been a strong proponent of public financial disclosure since its inception and has always shown a keen interest in this Office and the programs we administer. We have and continue to appreciate his interest and we welcome his thoughtful questions. Those questions and our response to each follow:

Question 1: You propose making the top valuation category "over $100,000" instead of the present categories of "over $50 million" for assets and "over $5 million" for income. This is a big difference. How did you arrive at the $100,000 amount?

I understand the interest in not having the financial disclosure form be a financial worth statement, but rather an indicator of potential conflicts of interest. But, isn't $100,000 too small a figure to have as the top category? Wouldn't $1 million (as you

recommend for reporting liabilities) at least be the appropriate top figure for assets and income?

Answer: In the executive branch the size of an asset is never relevant to the initial determination of whether there is a conflict of interest. If a conflict is identified, the size of the asset that gives rise to the conflict is relevant only for purposes of the application of an exemption or a possible waiver. For purposes of public disclosure, we chose $100,000 rather than a higher amount such as $1,000,000 because we felt that an asset valued at over $100,000 was more than sufficient to represent a significant single asset to most filers and to the public. It also was the value at which we felt depository accounts and Government securities should be reported. We did not choose a higher value because we believe in the executive branch, with its substantial conflict of interest laws and regulations, "over $100,000" represents a reasonable balance of the competing interests of the personal privacy of the filer, the information necessary to meet the purposes for public disclosure and an appropriate conflicts of interest analysis, and the Government's interest in attracting the most qualified persons to Government service. We also hope that this will help focus attention on the absence of conflicts of the filer rather than on his or her net worth.

With regard to income, there are earned income limitations for some employees at just above $20,000. There are no general investment income limitations for anyone in the executive branch. Thus, we believe the categories suggested for income are also more than adequate to meet the same balancing of interests that is involved in asset reporting.

With regard to liabilities, we recommend an uppermost category that is larger than that for assets for practical reasons. The conflicts analysis for assets is quite different from that of liabilities. Unlike assets, where a filer is financially interested in their well-being, with a liability, the lender is financially interested in the borrower's ability to pay. A single loan is often granted based upon the financial health of an individual represented by the aggregation of individual assets. The ability to judge the relative size of a liability in comparison to an individual's assets, provides a more balanced public window to the individual's financial circumstances and vulnerabilities. Consequently, we believe these practical considerations support a higher uppermost category for liabilities than for assets and income.

Question 2. You propose to eliminate the requirement to report the dates and amounts of transactions for the purchase and sale of real property, stocks, bonds, commodity futures or other securities. In addition, you propose to eliminate the separate reporting of assets purchased during the reporting period. Would you agree that it is important to know that a certain sale or purchase was made at a reasonable amount (e.g. fair market value)? Without the dates and amounts of transactions, how would an ethics official know to look further into a particular transaction? Please provide two or three examples of assets where the current reporting requirement of this information is particularly difficult to obtain.

Answer: In seeking recommendations from ethics officials based upon their experiences and from our own experience, we believe that the information that is currently provided in the transactions section is rarely, if ever, needed or used for conflicts analysis purposes. For example, even with the current statutory categories, it would be a rare case that a reviewer could tell that an asset had been purchased or sold at other than market value. Additionally, a new asset or source of income from an asset which is no longer held will already be required to be reported, assuming it meets the threshold. We do intend to continue to make clear that an ethics official who has a question about an asset that has been sold or purchased (or any other information that is reported) should continue to ask for additional information from that filer. Since transaction information (particularly actual dates) rarely raises any conflicts issues, the elimination of this requirement will reduce the burden of most filers.

One of the most typical types of assets held by filers, either directly through IRA's or other retirement accounts, are interests in mutual funds. A filer may use the fund to pay occasional expenses or contribute often but on no established schedule. Currently the value and the dates of these "transactions" have to be tracked to determine whether they will be required to be reported. This is true whether the fund is held directly or through an IRA or other pension plan. This transaction information is of little use in any conflicts analysis by the Government or the public, yet it requires time to compile. We believe that the reduction in "transactions" reporting does not reduce the ability of ethics officials to assess conflicts.

Question 3. You are also proposing to reduce the reporting requirements for disclosing outside positions and former clients. You propose that nominees should report positions held outside the U.S. Government only for the current year and the preceding 1 year versus the current requirement of 2 years. You also propose to

reduce the reporting period for disclosing clients and other sources of individual compensation (e.g. personal services) from 2 years to 1 year. Along the same lines, you propose to increase the threshold for reporting compensation for personal services from individual clients from the current threshold of $5,000 to $25,000.

Since the appearance of a conflict of interest is particularly acute with respect to former clients, please explain the extent to which you believe the 2 year requirement is a real burden and why the burden is not outweighed by the benefit that this information provides.

Answer: Our goal in proposing revised public reporting requirements is that the information requested generally correlate to the conduct statutes and regulations to which the individual is or will be subject. In the executive branch standards of conduct at 5 C.F.R. § 2635.502, there is a standard that addresses an employee's obligation to consider questions of impartiality, in part, with regard to matters involving former clients and employers. In general, that regulation obligates the employee to consider his impartiality in matters where persons or organizations who were clients or employers of the employee during the preceding 12 months are or represent a party. We believe that the reporting requirement reasonably should relate to that requirement. While there is also a provision that requires an individual to consider circumstances other than those listed, we do not believe that asking all nominees to report positions held and major clients during a period that reaches back two calendar years from and including the current calendar year is necessary to meet that standard. Certainly, if the nominee has any continuing financial ties to a client or a former employer he or she will be required to recuse on matters that affect that interest. (18 U.S.C. § 208)

While we believe it is important to relate disclosure to restrictions on conduct, disclosure itself does not resolve the conflict nor cover all matters where actual or apparent conflicts can arise. For example, an interest of an employee's sibling is not reportable, but it may under certain circumstances raise an impartiality question. So too can former clients or employers. The position that an individual held with a company from which he has been retired for four years and receiving a pension does not currently need to be reported as a position, but the pension will and the conflict analysis will occur. Thus, we believe that the public listing of positions held or names of clients where the severance of the relationship happened more than a year ago is not necessary to assist with a conflicts analysis or to ensure public confidence in the services of the nominee.

Finally, with regard to client information, this is an area where the burden oftentimes extends beyond the filer to his or her employer. Currently, the $5,000 threshold is quite low for determining a major client. Frequently, a nominee must share the burden of gathering that information with the employing organization who must go back through billing records that are no longer currently being used. In our 20+ years of experience, we have not found nor seen the extra year's information to be of importance to an executive branch ethics official or the public assessing impartiality.

Question 4. Could you please explain in more detail the basis for your proposed change to eliminate the reporting of dates for agreements and arrangements involving future employment, leaves of absence or continuation of employee benefits? For example, if an agreement or arrangement is for a certain period of time, without knowing the date of the agreement or arrangement how would an ethics official be able to determine how long an appointee will receive payments or benefits from a former employer? Please explain why you believe the burden in this case exceeds the benefits of the disclosure.

Answer: Prior to the Supreme Court's decision in Crandon v. U.S., 494 U.S. 152 (1990), this Office interpreted 18 U.S.C. § 209 in a manner where the dates of dissolution arrangement agreements for a recent employment relationship prior to entry into executive branch service had significance. The decision has changed that; the dates of agreements entered into prior to Government service (which are only those that would be included on an initial nominee statement) raise little or no conflicts questions. Further, with long-established arrangements such as pensions from a former employer of a number of years past, a filer may very easily be able to describe the pension which is the important information, but may have to spend time we believe unnecessary searching for the actual date that pension agreement was entered into. What is of use to a conflicts analysis is the date of any agreement for future employment, and that is why we propose to continue to require that date.

What we also expect and will continue to expect as a part of any description of an agreement or arrangement will be the type of substantive information about which you are concerned. For example, if it is an agreement that includes future payments on a schedule, we believe a description of that schedule is a part of the proper description of the agreement; we would make that clear in the instructions. What we need is information that is useful

for a conflicts analysis and we believe the dates other than the specific one we would continue to require, are not.

I trust our answers are responsive to these initial questions. OGE is of course available to answer additional questions now or in conjunction with the legislative proposal that we will be making shortly. The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the presentation of this letter to the Committee.

Sincerely,

Amy L. Comstock
Director

Additions to the hearing record by G. Calvin Mackenzie in response to questions from Senator Akaka

1. *You raise concern over the appointment process, but as Mr. Light's survey information demonstrates one of the key problems with the appointment process is delay caused by the White House personnel process. Could you comment on that finding and what recommendations you would make for the administration to streamline its procedures?*

Since 1960, the appointments process has steadily lengthened. For the average appointee at the beginning of a new administration, the time elapsed between inauguration and confirmation grew from 2.38 months in the Kennedy administration to 8.13 months in the first Bush administration and 8.53 months in the Clinton administration.

It is clear that the causes of this are spread over all phases of the process. It takes longer for presidents to recruit nominees, longer for them to complete the growing array of forms and questionnaires, longer for FBI full-field-investigations, and longer for the completion of Senate confirmation. When the Presidential Appointee Initiative surveyed a representative sample of appointees from the Reagan, first Bush, and Clinton administrations, it asked them to comment on the length of time necessary to complete various phases of the process. The percentage answering "longer than necessary" is indicated below.

Percentage Saying It Took Longer Than Necessary:

The president's personal approval of your nomination	10%
The conflict of interest review	17
The initial clearance of your selection with members of Congress	18
Other White House review of your nomination	27
The FBI field investigation	30
Filling out financial disclosure and other information forms	34
The Senate confirmation process	39

The evidence here clearly indicates that the lengthening of the appointment process is the consequence of a thickening at every stage.

The reform proposals introduced by Hon. Franklin Raines and Sen. Nancy Kassebaum Baker in their testimony before the Committee offer several ways to make the process more

efficient without losing any valuable deliberation or investigation of each nominee's fitness to serve. I especially call your attention to these suggestions:

> RECOMMENDATION 1. The Congress should enact legislation to establish a permanent Office of Presidential Personnel in the Executive Office of the President and to authorize staff levels sufficient to recruit the president's appointees efficiently and to provide them with transition assistance and orientation. This should include some career employees who retain appropriate records from one administration to the next and who are experts in the operations of all aspects of the appointments process.
>
> RECOMMENDATION 2. The president should order all departments and agencies to standardize the information-gathering forms used in the presidential appointments process. The Senate should require its committees to do so as well. The president should then order the General Services Administration to develop and maintain on-line, interactive access to all such forms and questionnaires for persons who are going through the presidential appointments process.
>
> RECOMMENDATION 3. The president should issue an executive order reducing the number of positions for which FBI full-field investigations are required and adapting the length and depth of full-field investigations to the legitimate security concerns of each position where they continue to be required.
>
> RECOMMENDATION 7. The Senate should adopt a rule that limits the imposition of "holds" by all Senators to a total of no more than 14 days on any single nominee.
>
> RECOMMENDATION 8. The Senate should adopt a rule that mandates a confirmation vote on every nominee no later than the 45th day after receipt of a nomination. The rule should permit any Senator, at the end of 45 days, to make a point of order calling for a vote on a nomination. A majority of the Senate may postpone the confirmation vote until a subsequent date.
>
> RECOMMENDATION 9. The Senate should adopt a rule that permits nominations to be reported out of committee without a hearing, upon the written concurrence of a majority of committee members of each party.
>
> RECOMMENDATION 10. The Congress should enact legislation requiring each department and agency to recommend a plan for reducing the number and layers of political appointees by one-third. Such reductions, wherever feasible, should limit political appointments requiring Senate confirmation to the assistant secretary level and above in each department and to the top three levels only in independent agencies. Schedule C and other non-confirmed political appointees should be similarly reduced in number.

A rational approach to the corrosive delays in the appointments process must focus on all the causes of those delays.

2. *Your testimony noted that no other country fills its government's top executive positions as we do in the United States. How do other countries, especially democracies, address executive appointments?*

Most of the industrialized democracies are parliamentary political systems. The executive is a product of the legislature. The prime minister is usually the leader of the majority party in the legislature or, at least, the leader of the dominant party in a governing coalition. Other ministers are usually chosen from among the senior members of the majority party in the legislature. Members of the cabinet and the sub-ministers keep their seats in the legislature even while they are in government.

Appointments in these systems are the prerogative of the prime minister who usually chooses his cabinet and other ministers in consultation with the senior members of his or her own party. Appointment is nearly immediate. There are no extensive background checks or investigations and no confirmation by the legislature. Appointees serve at the pleasure of the prime minister in most such countries and prime ministers can make cabinet changes very quickly.

Our system is different in a number of ways. Our Constitution established a much broader separation between the legislative and executive branches and even bars individuals from serving simultaneously in both. The appointments process, by constitutional design, is shared by the two branches.

It is worth noting, however, that even without the elaborate array of reviews, questionnaires and investigations that we Americans impose on our executive branch officials, there has been no higher incidence of scandal or corruption in the ministries of most parliamentary democracies in the industrialized countries. And it is also noteworthy that in no other leading democracy does the number of positions subject to political appointment begin to equal the number in America. When there is a change of party control of the government in the United Kingdom, for example, the new prime minister makes fewer than 100 major appointments. All of the ministries have permanent secretaries and other high-ranking career civil servants who serve loyally through changes in partisan control of the government. And because civil servants regularly advance to such high positions in the government, the quality of the people recruited to and retained in the civil service in the UK and other European democracies is very high.

Responses from Common Cause President and CEO Scott Harshbarger
To Questions Submitted by Senator Daniel Akaka

Question One:

Is there a way to give Executive Branch nominees who are trying to comply with disclosure requirements some assurance that they will not be prosecuted for inadvertent misreporting while retaining the deterrent effects of penalties for those who might otherwise be tempted to avoid disclosure?

We believe that we can best address this problem by improving education of appointees about the process. No official will receive a criminal penalty for making a mistake on their disclosure form, and appointees need to be made aware of this. The form itself should explain that there are a continuum of administrative, civil, and criminal penalties for false disclosure and that criminal penalties are reserved for willful and knowing violations of the law. Additionally, the administration should make special efforts to assist appointees and explain to them the potential penalties. Creating an executive level Office of Presidential Personnel that would provide guidance to appointees would be a help step.

Question Two:

Do you believe there is room for revising these break points at the top and bottom of the scale and, if so, where would you redraw these lines?

We could support a modest increase in the minimum for disclosure from the current $501 – perhaps a minimum of $2,501. However, we believe it is important to ensure that the top limits are high enough to give the public a reasonable understanding of the extent of an appointee's holdings.

For this reason, we believe that the "over $100,000" maximum proposed by OGE is simply too low. Presidential appointees may have investments worth many millions, and this information is vital to assessing potential conflicts of interest. A possible top category of value of $5 million or would be appropriate.

One potentially useful alternative to the present system could be to collapse the eleven categories to six: $2,500-$19,999; $20,000-$99,999; $100,000-$499,999; $500,000-$999,999; $1,000,000-$4,999,999; and $5,000,000 or more.

RESPONSES FROM NORMAN ORNSTEIN
TO QUESTIONS FOR THE RECORD
SUBMITTED BY SENATOR AKAKA

"The State of the Presidential Appointment Process"

April 4, 2001

1. Your testimony discussed the issue of pre-election planning. At what point in a presidential campaign would you begin planning for a new administration, and what activities would you recommend?

   Response: I believe that pre-election planning for the transition should start for both parties immediately after their conventions formally select their nominees. Money should be available from the transition funds for the parties (and their nominees) to create offices of transition. I also believe that the White House should have a permanent office of transition planning, which among other things would maintain and enhance systems for cataloguing resumes and doing personnel searches, track requirements for individual positions subject to presidential appointment, coordinate with executive departments and the White House itself over record-keeping and record maintenance to ensure a smooth transition, etc. It could then assist the party offices of transition in their planning and preparation.

2. I would assume this planning would extend to both candidates. How would candidates relay to the public that pre-planning does not assume election but may result in a smoother transition and better government?

   Response: I believe that if we enact a law to create these offices, it will give an official imprimatur to the whole idea of pre-election transition planning, making it easier for candidates to avoid the charge of presumptuousness and making it harder for journalists to question their motives.

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