



*Issue Papers
For the New Administration*

**#5 “Reform of the Nominating Process:
A CSP Overview”**

Frustrated by red tape, inertia, and personal recriminations, during the past year numerous non-profit policy organizations, media groups, government agencies and members of Congress have expressed their concern about the current government recruitment process and the ethics rules that impact higher level appointments. Most people who participate in the current process believe that it is both burdensome and ineffectual, and, most importantly, hinders some of the best citizens from serving in public office.

Problems cited include excessive and repetitive forms demanded by different government agencies, wasteful and unproductive confirmation hearings, and overly stringent and complicated ethics rules. Proposed remedies include simplifying the applications and nominating process, adopting the use of software application forms, streamlining or eliminating confirmation hearings, easing restrictions on post-federal employment activities, and raising government salaries to be more competitive with the private sector.

In **Report to the President-Elect 2000: Triumphs and Tragedies of the Modern Presidency**, the Center analyzed Presidential leadership through the lens of more than seventy-six case studies. These **Issue Papers** are a forward looking complementary series of short, single-author papers that frame and briefly analyze key issues that the next President must address during the early months of his Administration. Views expressed in these papers are those of the authors.



THINK TANKS

Brookings Institution

The Brookings Institution has taken a strong lead in calling attention to this issue and proposing reforms to help elevate the problems. In April 2000, it founded the Presidential Appointee Initiative (PAI) to “promote an agenda of pragmatic reforms that will simplify and expedite the appointments process” and “encourage talented citizens to accept senior positions... by easing the burdens of entering appointed office.” (www.appointee.brookings.org home page and undated information sheet) Led by former Senator Nancy Kassenbaum Baker and OMB Director Franklin D. Raines, the initiative formed several avenues of action. It created a website to disseminate information (see address above) and held public conferences on the subject.

With the Heritage Foundation, it hired the Princeton Survey Research Associates to conduct a survey of 435 past presidential appointees from the Reagan, Bush I and Clinton administrations. Results of the survey were published in a series of reports, including Paul Light’s “The Merit and Reputation of an Administration: Presidential Appointees on the Appointments Process,” (Apr 2000), Stephen Hess’ “First Impressions: President, Appointments, and the Transition,” (Sep 2000), and Paul Light and Virginia Thomas’ “Posts of Honor: How America’s Corporate and Civic Leaders View Presidential Appointments” (Jan 2001). The survey found that the nominating process takes increasing longer to complete and that many past officials were disgruntled and frustrated with the procedures.

In April 2001, PAI released “To Form a Government: A Bipartisan Plan to Improve the Presidential Appointments Process,” which offers nine major recommendations for reform. They include (1) the creation of a permanent Office of Presidential Personnel in the Executive Office of the President to provide transition assistance and orientation, (2) the simplification and

standardization of forms used in the appointment process, (3) the reduction in the number of positions that FBI full-field investigations are required, (4) the Congressional review of ethics requirements to eliminate unnecessarily intrusive or complex requirements, (5) the recommendation that all executive-level salaries equal changes in the Consumer Index, (6) the limitation on the positions that require Senate confirmation, (7) the limitation on “holds” by Senators to no more than 14 days for per nominee, (8) the mandate that the Senate must confirm all candidates within 45 days of nomination, (9) the permission of nominations to be held without a hearing, (10) the reduction in number and layering of political appointees by one-third, and (11) the “de-layering” of senior management levels of all executive departments and agencies.

Center for the Study of the Presidency

The Center for the Study of the Presidency, in conjunction with the Council for Excellence in Government, held a meeting in CSP office on January 9, 2001 regarding “Removing Barriers to Public Service.” Those attending including past appointees (such as Boyden Gray), government officials (such as Amy Comstock, Director of the Office of Government Ethics and Hannah Sistare, Staff Director of the Senate Government Affairs Committee), and scholar Frederick Hitz, among others. The central problem, according to CSP President David Adshire, is that “the current system is obsessed with a bureaucratic, intrusive, and litigious scrutiny of nominees, rather than with instilling a higher level of values and conduct in office.” The CSP seems to take a broader approach to the problem of recruiting top candidates to government service by focusing not just on the logistical logjams but on the cultural climate that supports the “dehumanizing, below-the-belt” nature of the process. It sees strong leadership as a key to reform and advocates consultation and cooperation with the media to end irresponsible reporting of leaks that exacerbate the problems already inherent in the current

process. The CSP hopes to facilitate changes in the current system by lobbying Senators for legislative changes and helping to influence executive reforms that will ease the present “barriers” to government service.

American Enterprise Institute

On February 14, 2001, the American Enterprise Institute, in conjunction with the Brookings Institution, held a conference entitled, “Ethics: The Revolving Door Rules,” which was part of the “Transition to Governing Project,” a program to improve the way that administrations shift from “the act of campaigning to the act of governing.” The focus of the symposium was how government ethics rules impacts those entering, working in, and leaving public service. Many speakers expressed their common frustration that the ethics rules and nominating process resulted in severe personal and financial hardships for those in high-level government positions. Panelists included staff of the Office of Government Ethics, political scientists, lawyers, and past appointees, including Boyden Gray and Lloyd Cutler. (See appendix for a summary)

Congress

On April 4 and 5, 2001, the Senate Committee on Government Affairs, chaired by Senator Fred Thompson (R-TN) held hearings on the state of the presidential appointment process. Panels included: “The Presidential Appointment Process: The Perspective of the Nominee,” “Presidential Appointment Process: Origin, Development, and Calls for Reform,” and “Recommendations to Reform the Presidential Appointment Process.” Panelists included current and former government executives, scholars, and representatives of policy organizations, such as Common Cause, AEI, and PAI.

Paul Light summarized the findings of PAI's survey and emphasized the need to simplify and expedite the current system. Recommendations were made for establishing a permanent personnel office to manage and deal with these issues. Norman Ornstein, AEI, brought a historical perspective to the subject. He suggested that the present system is a corruption of the system of a 100 years ago and that it is worth reexamining the older practices to gain insight into how the process can be improved. Disapproval was noted about how the nominating process has been caught in a quagmire, where nominees are often put on hold as a part of larger political strategies and leverage games, not because of concerns over their qualifications. In the worst cases, nominees are used as pawns by the Senate as a means of getting the administration to bend on contentious issues. Besides the issue of holds, which most agreed needed to have time limits set, panelists also addressed the topic of financial disclosures, with some recommending more flexible and less complicated systems.

Office of Government Ethics

In April 2001, the Office of Government Ethics released the "Report on Improvements to the Financial Disclosure Process for Presidential Nominees to the Committee on Government Affairs of the Senate and the Committee on Government Reform of the House of Representatives." The report recommended specific changes in existing government forms and rules in order to ease the burden on nominees and government agencies and to make the system less bureaucratic and redundant. Amy Comstock, Director of the Office of Government Ethics, spoke before the Senate Committee hearings and has also been an active participant in many of the other events around town, including the Center for the Study of the Presidency.

Media

At least two op-eds regarding this issue were published in newspapers in recent months. They include Frederick Hitz's "Today's Best and Brightest Go Elsewhere," from the December 3, 2000 Sunday addition of the *Washington Post*, which focused on the lack of motivation and incentive for young graduates to work in the public sector, and Paul Light's "The Glacial Pace of Presidential Appointments," in the April 4, 2001 issue of the *Wall Street Journal*, which summarizes the problems endemic to the present nominating system.

SUMMARY

Discussion on Removing Barriers to Public Service Center for the Study of the Presidency January 9, 2001

This discussion was convened jointly by the Center for the Study of the Presidency and the Council for Excellence in Government. Its purpose was to shape a strategy that will help focus the new leadership in the administration and the Congress on what it can do to improve the process of nominating and confirming presidential appointees.

CSP President Abshire identified a central problem: the current system is obsessed with a bureaucratic, intrusive, and litigious scrutiny of nominees, rather than with instilling a higher levels of values and conduct in office. This over regulation is a clear barrier against good people coming into government and the bureaucratic and litigious elements of the process need to be rolled back while preserving high ethical standards. Together with that effort, we need what might be called an advanced course in leadership values that would include pamphlets and case studies in the area of values—for example, on the best leadership practices of the private sector and how they could benefit government. This can help demonstrate to the Congress a serious effort to put the process on higher ground and make easier the legislative task of rolling back the overly regulatory appointments process.

Overall, the discussion traced three somewhat overlapping categories of issues—legislative, administrative, and leadership—where barriers or problems exist, and where action steps should be considered.

Legislative

The Presidential Transition Act of 2000 is a vehicle, a focal point, that this group could take as a basis for its work. (The Act requires that the Office of Government Ethics make recommendations and legislative proposals on (1) streamlining, standardizing, and coordinating the financial disclosure process and the requirements of disclosure reports; (2) avoiding duplication of effort and reducing the burden of filing financial information to the White House, the OGE, and the Senate; and (3) any other relevant and appropriate matters.) The OGE report is due on Capitol Hill in April, 2001, but will be drafted in February and early March.

The American Bar Association report (*Keeping Faith: Government Ethics and Government Ethics Regulation*, in the ABA Administrative Law Review issue for the summer of 1993) sets out recommendations in five areas, including conflict of interest, financial disclosure, and post-employment activities. This is a significant piece of work, worthy of this group's attention.

OGE's jurisdiction doesn't match the breadth of the issues that need addressing. At the same time, the requirement for the study (mentioned above) is a very open invitation. While the OGE has to be careful about what it says in its report about areas outside its jurisdiction, it would like to emphasize, and is willing to support, the broader recommendations of the last 12 years.

The Congress should understand that some current ethics rules are so burdensome that they can actually have the reverse effect of what is intended, by discouraging desirable people from entering appointed service.

The entire process should be decriminalized. This would make enforcement of the rules more effective. It would also remove most of the tools that the interest groups and the media use to

attack and discredit nominees.

The Congress should adopt a fast-track approval process for nominees, to provide for up-or-down votes and reduce the debilitating effect of current Senate "holds" on nominee confirmation.

This group should seek a breakfast meeting with Senator Thompson and other members of the Senate, to discuss some of the points outlined in this summary, exchange views, and get their comments on what they could do in a number of directions—the new administration, the Congress itself, the press—to help improve the nomination and appointment processes. The meeting, in February, should include journalists like David Broder and George Will and should take place off the Hill and off the record.

Administrative

Re-engineer the FBI investigative process, shortening it for nominees not being considered for national security positions and, for some, even eliminating it altogether.

Streamline forms such as SF-278 and the White House Personal Data Statement Questionnaire. Eliminate the existing categories for reporting the value of assets, requiring only that a nominee indicate whether he or she owns stock and, if so, whether its value exceeds a *de minimis* level.

Areas exist in which unintended missteps under the requirements of the ethics rules, because they are so complicated, can derail an appointment or delay it for "a significant enough period of time." This is a barrier to public service—the fear people have not only of getting into the nomination process, but of getting out of it unharmed, e.g., by media reporting of something a nominee did in the past that might have been a violation but was unintentional, and can nonetheless cause allegations of criminal behavior.

To attract the best people, steps should be considered to increase salaries and make it easier to return to a lucrative job after service in government.

Leadership

Something "very large" is necessary to "extract the poison" from the process. This is not something that can be done by law or executive order. Rather, it requires public-service-minded leaders to unite now and then to publicly criticize the dehumanizing, below-the-belt aspects of the process with enough gravitas, bipartisanship, and public spiritedness to have a strong impact.

A huge change in the culture is necessary. The press must be brought into it. The media should exercise much more restraint in covering nominations. It should not accept anonymous leaks, from whatever source, of unverified information, or take material produced by FBI investigation as gospel.

Orientation of appointees in such matters as dealing with the Congress and the media is an important part of the appointments process. So are efforts to help the media improve their coverage of the transition and appointments. The image and marketing of government needs to improve and government should become a more results-oriented, entrepreneurial, and attractive place for people to make a difference.

IMMEDIATE ACTION STEPS

With the Congress

The CSP should set up a meeting in February for representatives of the group with such Senators as Thompson, Lieberman, and Voinovich to discuss the lowering or removal of barriers to appointed service that can be accomplished by legislative action or collaboration with the executive branch. The meeting should probably be a breakfast session, off the Hill. Members of the group would be David Abshire, Pat McGinnis, Gil Robinson, and John Trattner. Senators should be encouraged to have senior staff, such as Hannah Sistare, in attendance. Journalists such as David Broder and George Will should be asked to attend on an off-the-record basis.

Make the preliminary points that:

1. The ethics rules embedded in the current appointments process have become so burdensome that the process is discouraging skilled people of integrity from accepting nomination.
2. Accordingly, the group has come to discuss the problem with leading Senators concerned with the process, to recommend certain steps that the Congress should consider—some in collaboration with the executive branch—and hear the legislators' comments and suggestions.

Among the recommended steps:

Simplify the requirements for nominees' reporting of financial information, including elimination of categories in valuing assets.

Accept the use of software for the reporting of information to congressional committees that is also reported to the executive branch.

Tighten control and use of information about nominees reported to committees by the FBI and made available by other sources.

Adopt up-or-down voting, after a specified period of time, on confirmation of nominees.

Ease current restrictions on post-employment activity for former appointees.

Rationalize the current FBI background investigative structure.

Decriminalize the ethics rules to make them more enforceable.

The group urges the Congress to give careful consideration to the recommendations to be made in the April report of the Office of Government Ethics that is required by the Presidential Transition Act of 2000.

With the OGE

Members of the group should support Amy Comstock's development of the April report to the Congress by submitting views, suggestions, and other materials on this subject by early March.